A BILL FOR AN ACT relating to power generation; to amend sections 70-670, 70-1012, and 70-1012.01, Reissue Revised Statutes of Nebraska, sections 70-1001, 70-1001.01, 70-1003, 70-1013, 70-1014, 70-1014.01, 70-1014.02, 70-1015, and 70-1028, Revised Statutes Cumulative Supplement, 2014, and sections 70-1903 and 77-6203, Revised Statutes Supplement, 2015; to prohibit the use of eminent domain as prescribed; to change provisions relating to private developers; to provide, change, and eliminate definitions; to change provisions relating to compensation for certain members of the Nebraska Power Review Board as prescribed; to exempt certain privately developed renewable energy generation facilities from regulation as prescribed; to eliminate provisions related to certified renewable export facilities; to harmonize provisions; to appropriate funds to aid in carrying out the provisions of this legislative bill; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 70-670, Reissue Revised Statutes of Nebraska, is amended to read:

70-670 (1) In addition to any other rights and powers hereinafter conferred upon any district organized under or subject to Chapter 70, article 6, each such district shall have and exercise the power of eminent domain to acquire from any person, firm, association, or private corporation any and all property owned, used, or operated, or useful for operation, in the generation, transmission, or distribution of electrical energy, including an existing electric utility system or any part thereof. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

(2) In the case of the acquisition through the exercise of the power of eminent domain of an existing electric utility system or part thereof, the Attorney General shall, upon request of any district, represent such district in the institution and prosecution of condemnation proceedings. After acquisition of an existing electric utility system through the exercise of the power of eminent domain, the district shall reimburse the state for all costs and expenses incurred in the condemnation proceedings by the Attorney General.

(3) A district may agree to limit its exercise of the power of eminent domain to acquire a project which is a renewable energy generation facility producing electricity with wind and any related facilities.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility meeting the requirements of section 70-1001.01 shall be subject to eminent domain by any consumer-owned electric supplier operating in the State of Nebraska.

Sec. 2. Section 70-1001, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1001 In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing and form of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the state to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

It is also the policy of the state to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities intended primarily for sale at wholesale export from the state under a statutory framework which protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates.

Sec. 3. Section 70-1001.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1001.01 For purposes of sections 70-1001 to 79-1828, 70-1827, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;
(2) Certified renewable export facility means a facility approved under section 70-1014.02 that (a) will generate electricity using solar, wind, biomass, or landfill gas, or biogas, including all electrically connected equipment used to generate the electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity; (b) is developed, constructed, and owned by an entity other than a municipality, a registered group of municipalities, a public power and irrigation district, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof; (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment and interconnection equipment within the facility and connecting the facility to the transmission grid.

(3) Electric supplier means an electric supplier producing electricity from a privately developed renewable energy generation facility that is not a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof.

(4) Privately developed renewable energy generation facility means a facility that (a) generates electricity using solar, wind, geothermal, biomass, landfill gas, or biogas, including all electrically connected equipment used to generate the electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity; (b) is developed, constructed, and owned, in whole or in part, by one or more private electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail; (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment and interconnection equipment within the facility and connecting the facility to the transmission grid.

(5) Regional transmission organization means an entity independent from those entities generating or marketing electricity at wholesale or retail, which has operational control of transmission lines in one or more designated geographic areas in order to reduce constraints and to in a joint transmission development agreement, (b) is developed, constructed, and owned, in whole or in part, by one or more private electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail; (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment and interconnection equipment within the facility and connecting the facility to the transmission grid.

(6) Unbundled retail rates means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for the generation, transmission, and distribution of electricity.

Sec. 4. Section 70-1003, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1003 (1) There is hereby established an independent board to be known as the Power Review Board. The board shall consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two laypersons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Upon expiration of the terms of the members first appointed, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor.

(2) Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, except for the member designated to represent the board on the Southwest Power Pool Regional State Committee or its equivalent successor, who shall receive two hundred fifty dollars per day when actually and necessarily engaged in the performance of his or her duties.
dollars for each day actually and necessarily engaged in the performance of his or her duties, not to exceed twenty thousand dollars in any one year. If the member shall cease to be a member of the board, the unused portion of any such reimbursement shall be credited to the State of Nebraska. The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may include:

(a) The assessments for the fiscal year imposed pursuant to section 70-1020;
(b) The gross income totals for each category of the industry and the industry total;
(c) The number of suppliers against whom the assessment is levied, by category and in total;
(d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;
(e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;
(f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;
(g) A statistical summary of board activities and an expenditure summary;
(h) A roster of power suppliers in Nebraska and the assessment each paid; and

(i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

(6) The board may, in its discretion, hold public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.

(7) The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may include:

(a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;
(b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;
(c) To what extent retail rates have been unbundled in Nebraska;
(d) A comparison of Nebraska's wholesale electricity prices to the prices in other regions; and
(e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(8) The board may establish working groups of interested parties to assist the board in carrying out the powers set forth in subsections (6) and (7).
70-1012 (1) Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board. Except that such approval shall not be required (a) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such filing is made with the board within thirty days after the filing of the application, or for any generation facility when the board finds that (i) such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (ii) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, (iii) the applicant's existing retail service area or chartered territory, (iv) the transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (g) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (d) for the construction of a qualified facility as defined in section 78-2062.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 78-1014.02.

Sec. 6. Section 70-1012.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-1012.01 (1) If in the event a supplier terminates construction or acquisition of electric generation or transmission facilities after receiving approval from the Board of Public Utilities, the supplier shall file with the board, within thirty days after of the action taken to terminate construction or acquisition, a statement of the factors or reasons relied upon by the supplier in taking such action. Within ten days after receipt of such a filing, the board shall give notice of the filing to such other suppliers as it deems interested or affected by such action and it shall hold a hearing for the purpose of obtaining that additional information as the board deems advisable or necessary to inform other suppliers and the public of the reasons for such termination. Notice of any such hearing shall be given to those suppliers previously given notice of the filing and to any other parties expressing interest in the approved application.

(3) Nothing in this section shall constitute or be construed as a defense to any cause of action, including a claim for breach of contract, resulting from such termination.

(4) A privately developed renewable energy generation facility is exempt from this section if it complies with section 78-1014.02.

Sec. 7. Section 70-1013, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1013 (1) Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such power suppliers as it deems to be affected by the application. The hearing shall be held within sixty days unless for good cause shown the applicant requests in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not more than one hundred twenty days after the filing of the application and the board shall give its decision within thirty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. The board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 78-1014 or 78-1014.01 or subdivision (2)(a) of section 78-1014.02 can be made without a hearing. Such hearing shall be conducted as provided in section 78-1066. The board, except that with respect to the application, shall not be bound to the conclusions or findings of any prior hearing. Such waiver of hearing shall include the applicant and the party or parties against whom the waiver is made, together with such other persons as the board may direct.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 78-1014.02.

Sec. 8. Section 70-1014, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1014 (1) After hearing, the board shall have authority to approve or deny the application. Except as provided in section 78-1014.01 for special generation applications and except as provided in section 78-1014.02, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.
(2) If the application involves a transmission line or related facilities planned and approved by a regional transmission organization and the regional transmission organization has notified the board that it is desired to construct the line or related facilities, the board shall also consider information from the regional transmission organization's planning process and may consider the benefits to the region, which shall include Nebraska, provided by the proposed line or related facilities as part of the board's process in determining whether to approve or deny the application.

(3) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Sec. 9. Section 70-1014.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1014.01 (1) Except as provided in subsection (2) of this section, an application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity, for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2) (a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding sales from such projects to other electric-generation entities, does not exceed ten percent of the total energy sales of such purchasing electric utilities as shown in such utilities' Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant's governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application filed under subdivision (2)(a) of this section shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer's total energy sales as described in subdivision (2)(a) of this section, (iii) the applicant's governing body has conducted at least one advertised public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3) (a) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act or any privately developed project to develop renewable energy generation facilities described in this section, (ii) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years, and (iii) the total production from all such renewable projects, excluding sales from such projects to other electric-generation entities, does not exceed ten percent of total energy sales of such purchasing electric utilities as shown in such utilities' Annual Electric Power Industry Report to the United States Department of Energy or the successor to such report.

(b) The application filed under subdivision (3)(a) of this section shall be approved by the board if the board finds that the purchasing electric utilities have met the conditions described in subdivision (3)(a) of this section.

(4) No facility or part of a facility which is approved pursuant to this section is subject to eminent domain by any electric supplier, or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(5) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Sec. 10. Section 70-1014.02, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1014.02 (1) For purposes of this section:

(1)(a) A privately developed renewable energy generation facility that meets the requirements of this section is exempt from sections 70-1012 to 70-1012 if no less than thirty days prior to the commencement of construction the owner of the facility:

(i) Notifies the board in writing of its intent to commence construction
of a privately developed renewable energy generation facility:

(ii) Certifies to the board that the facility will meet the requirements for a developed renewable energy generation facility;

(iii) Certifies to the board that the private electric supplier will (A) comply with any decommissioning requirements adopted by the local governmental entities having jurisdiction over the privately developed renewable energy generation facility and (B) except as otherwise provided in subdivision (b) of this subsection, submit a decommissioning plan to the board obligating the private electric supplier to bear all costs of decommissioning the privately developed renewable energy generation facility and requiring that the private electric supplier post a security bond or other instrument, no later than the tenth year following commercial operation, securing the costs of decommissioning the facility and provide a copy of the bond or instrument to the board;

(iv) Certifies to the board that the private electric supplier has entered into or prior to commencing construction will enter into a joint transmission development agreement pursuant to subdivision (c) of this subsection with the electric supplier owning the transmission facilities of sixty thousand volts or greater to which the privately developed renewable energy generation facility will interconnect; and

(v) Certifies to the board that the private electric supplier has consulted with the Game and Parks Commission to identify potential measures to avoid, minimize, and mitigate impacts to species identified under subsection (a)(iii)(B) of this subsection does not apply if a local government entity with the authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction.

(c) The joint transmission development agreement shall address construction, ownership, operation, and maintenance of such additions or upgrades to the transmission facilities as required for the privately developed renewable energy generation facility. The joint transmission development agreement shall be negotiated and executed contemporaneously with the generator interconnection agreement or other directives of the applicable regional transmission organization with jurisdiction over the addition or upgrade of transmission, upon terms consistent with prudent electric utility practices for the interconnection of renewable generation facilities, the electric supplier’s transmission interconnection requirements, and applicable transmission design and construction standards. The electric supplier shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement. The private electric supplier of the privately developed renewable energy generation facility shall have the right to construct any necessary facilities or improvements set forth in the joint transmission development agreement pursuant to the standards set forth in the agreement at the private electric supplier’s cost.

(2) Within ten days after receipt of a written notice complying with subsection (1) of this section, the executive director of the board shall issue a written acknowledgement that the privately developed renewable energy generation facility is exempt from sections 70-1012 to 70-1014.01.

(3) The exemption allowed under this section for a privately developed renewable energy generation facility shall extend to and exempt all private electric suppliers owning any interest in the facility, including any successor private electric supplier which subsequently acquires any interest in the facility.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility shall be subject to eminent domain by a consumer-owned electric supplier operating in the State of Nebraska. Nothing in this section shall be construed to grant the power of eminent domain to a private electric supplier or limit the rights of any entity to acquire any public, municipal, or utility right-of-way across property owned, used, or operated as part of a privately developed renewable energy generation facility as long as the right-of-way does not prevent the operation of or access to the privately developed renewable energy generation facility.

(5) Only a consumer-owned electric supplier operating in the State of Nebraska may exercise eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities. The exercise of eminent domain to provide needed transmission lines and related facilities for a privately developed renewable energy generation facility is a public use.

(6) Nothing in this section shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska.

(7) Nothing in this section shall be construed to limit the authority of or require a consumer-owned electric supplier operating in the State of Nebraska to enter into a joint agreement with a private electric supplier to develop, construct, and jointly own a privately developed renewable energy generation facility.

(a) Electric supplier means a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative, and

(b) Electric supplier does not have the same meaning as in section 70-1011.01.
(2)(a) The board shall conditionally approve an application for a certified renewable export facility if it finds that the criteria described in subdivisions (b) through (viii) of this subsection have also been met by the applicant and after the board has fulfilled the requirements of subsection (3) of section 37-807, the board shall grant final approval of an application for a certified renewable export facility:

(i) There has been no demonstration that the proposed facility will result in a substantial risk of creating stranded assets;

(ii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider;

(iii) There has been no demonstration that the proposed facility will result in a substantial risk of creating stranded assets.

(b) Following the board's conditional approval of an application under subdivision (a) of this subsection, the board shall notify the applicant of an interest in exercising the option to purchase power, except that such suppliers may withdraw their option to purchase power once the costs of the transmission additions and upgrades are determined. Electric suppliers withdrawing their option to purchase power shall be responsible for their pro rata share of any costs resulting from their participation in and withdrawal from the generation interconnection and transmission delivery studies.

(c) Upon finding that the criteria described in subdivisions (c)(i) through (viii) of this subsection have also been met by the applicant and after the board has fulfilled the requirements of subsection (2) of section 37-807, the board shall grant final approval of an application for a certified renewable export facility:

(i) The facility is prepared to proceed to consideration of the criteria in subdivision (c) of this subsection. The board may extend such eighteen-month deadline not more than twelve additional months for good cause shown. If the applicant fails to notify the board within such time that it is so prepared, the conditional approval granted under this subdivision is void.

(ii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.

(iii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.

(iv) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.

(v) The applicant and the electric supplier owning the transmission facilities to which the certified renewable export facility will be interconnected, along with any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1023, have entered into a joint transmission development agreement on reasonable terms and conditions consistent with and subject to the notice to construct or other directives of any regional transmission organization with jurisdiction over the addition or upgrade to transmission facilities.

(vi) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.

(vii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.

(viii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such regional transmission organization, transmission owner, or transmission provider.
joint transmission development agreement.

(vi) The applicant agrees to reimburse any costs that are not covered by a regional transmission organization or an instrument, a copy of which is given to the board, no later than the tenth year following final approval of the facility to ensure sufficient funding is available for removal of the facility and reclamation at the end of the useful life of such facility pursuant to the decommissioning plan. The owner of the certified renewable export facility shall provide the board with evidence demonstrating that substitute decommissioning security has been posted or given prior to transfer of ownership. The requirements of this subdivision (vii) shall be waived if a local governmental entity with authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction.

(vii) The facility meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01.

(viii) The facility submits an application, the board shall provide written notification to the applicant of any reasonable expenses the board incurs as a result of an appeal of the board's decision, the costs which allow the interconnected electric supplier to operate and maintain the transmission facilities under reasonable terms and conditions agreed to by the parties within the joint transmission development agreement;

(vii) The applicant shall submit a decommissioning plan. The applicant or owner of the facility shall establish decommissioning security by posting an instrument, a copy of which is given to the board, no later than the tenth year following final approval of the facility to ensure sufficient funding is available for removal of the facility and reclamation at the end of the useful life of such facility pursuant to the decommissioning plan. The owner of the certified renewable export facility shall provide the board with evidence demonstrating that substitute decommissioning security has been posted or given prior to transfer of ownership. The requirements of this subdivision (vii) shall be waived if a local governmental entity with authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction; and

(ix) The facility is subject to eminent domain by an electric supplier or any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(x) No facility or part of a facility which is a certified renewable export facility is subject to eminent domain by an electric supplier or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(xi) Except as provided in subsection (x) of this section, only an electric supplier may exercise its eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities to provide transmission services for a certified renewable export facility. The exercise of eminent domain to provide transmission lines and related facilities for a certified renewable export facility is a public use. Nothing in this section shall be construed to grant the power of eminent domain to a private entity.

(xii) If any transmission facilities serving a certified renewable export facility are proposed to cross the service area of any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, then such electric supplier may elect to be a party to a joint transmission development agreement for the construction of the transmission facilities.

(xiii) If a certified renewable export facility no longer meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01, the owner of the facility shall notify the board. An electric supplier or a governmental entity with regulatory jurisdiction over the certified renewable export facility may apply to the board or the board may file its own motion to have the certification of a certified renewable export facility revoked upon a showing by the applicant for decertification that the facility no longer meets
the requirements of such subdivisions. Upon the filing of such application and making of a prima facie showing by the applicant for decertification that the facility no longer meets the requirements of such subdivisions, the board shall set the matter for hearing. The hearing shall be held within forty-five days unless an extension is necessary for good cause shown. The applicant for decertification shall have the burden of proof. Within forty-five days after the conclusion of the hearing, the board shall enter an order to either reaffirm the facility's status as a certified renewable export facility or revoke the certification. During the pendency of the application for decertification and before the board's final order on decertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the State of Nebraska, or to an electric supplier pursuant to a power purchase agreement or similar agreement. The board shall retain jurisdiction over the decertification action for at least thirty days after entry of such an order. Within thirty days after a final order revoking certification, the owner of the facility may apply for recertification, with the time period for recertification being no longer than one year unless the board extends the time period for good cause shown. An application for recertification shall extend the board's jurisdiction over the decertification action until the board completes its review of the application for recertification and enters an order granting or denying the application. If the applicant for recertification demonstrates to the board that it is working diligently and in good faith to restore its compliance with subdivisions (2)(a) through (c) of section 70-1001.01, the board shall not terminate the application for recertification. During the pendency of the application for recertification and before the board's final order on recertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the State of Nebraska, or to an electric supplier pursuant to a power purchase agreement or similar agreement. If the board retains jurisdiction over the decertification action, the prohibition on eminent domain set forth in subsection (5) of this section shall remain in full force and effect. If the board enters an order decertifying a certified renewable export facility and such order becomes final due to a failure to timely seek recertification, or upon judicial review, the prohibition on eminent domain set forth in subsection (5) of this section shall no longer apply. Nothing in this section shall prohibit a decertified facility from being recertified in the same manner as a new facility.

Sec. 11. Section 70-1015, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1015 (1) If any supplier violates Chapter 70, article 10, by either (1) commencing the construction or finalizing or attempting to commence the construction or finalizes or attempts to commence the construction of an electric generation facility or any transmission lines, or any related facilities without first providing notice or obtaining board approval, whichever is required, or (2) serving or attempting to serve at retail any customers located in Nebraska or any wholesale customers in violation of section 70-1002.02, or any customers are served in violation of the provisions of Chapter 70, article 10, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska until such construction, acquisition, or service is complied with by the board pursuant to the conclusion of the hearing.

(2) If any person owning or operating a certified renewable export facility violates any provision of Chapter 70, article 10, or violates or disobeys any requirement imposed by the board pursuant to the board's jurisdiction established in section 70-1014.02 or the board enters an order decertifying a facility becomes final, the facility may be enjoined or otherwise limited or have conditions put upon it in an action brought in the name of the State of Nebraska until such person rectifies the violation or disobedience of the order or the facility becomes recertified.

Sec. 12. Section 70-1028, Revised Statutes Cumulative Supplement, 2014, is amended to read:

70-1028 (1) If an electric transmission line has been approved for construction in a regional transmission organization transmission plan, the incumbent electric transmission owner of the existing electric transmission facility may continue to construct a transmission line, which the owner will convey to the Nebraska Power Review Board, in writing, within ninety days after such approval, if it intends to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line and any other incumbent electric transmission owner may file an application for the electric transmission line under section 70-1012. Within twenty-four months after such notice, the incumbent electric transmission owner shall file an application with the board pursuant to section 70-1012.

(2) For purposes of this section:

(a) Electric transmission line means any line and related facilities connecting to existing electric transmission facilities for transmitting electric energy at a voltage of one hundred kilovolts or greater, other than a line solely for connecting an electric generation facility to facilities owned by an electric supplier; and

(b) Incumbent electric transmission owner means an entity that: (i) Is an electric supplier; (ii) is a member of a regional transmission organization; and (iii) owns and operates electric transmission lines at a
voltage of one hundred kilovolts or greater; and (c) regional transmission
organization has the meaning provided in section 70-1001.01.

Sec. 13. Section 70-1903, Revised Statutes Supplement, 2015, is amended to
read:

70-1903 For purposes of the Rural Community-Based Energy Development Act:
(1) C-BED project or community-based energy development project means a
new energy generation project using wind, solar, biomass, or landfill gas as
the (a) Has at least twenty-five percent of the gross power purchase agreement
payments flowing to the qualified owner or owners or as payments to the local
community; and
(b) Has a resolution of support or zoning approval adopted:
(ii) By the county board of each county in which the C-BED project is to be
located and which has adopted zoning regulations that require planning
commission, county board, or county commission approval for the C-BED project; or
(ii) By the tribal council for a C-BED project located within the
boundaries of an Indian reservation;
(2) Electric utility means an electric supplier that:
(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or
larger transmission lines in the State of Nebraska;
(b) Owns more than two hundred megawatts of electric generating
facilities; and
(c) Has the obligation to directly serve more than two hundred megawatts
of wholesale or retail electric load in the State of Nebraska;
(3) Gross power purchase agreement payments means the total amount of
payments during the first twenty years of the agreement;
(4) Payments to the local community include, but are not limited to:
(a) Lease and easement payments to property owners made as part of a C-BED
project;
(b) Contract payments for concrete, steel, gravel, towers, turbines,
blades, wire, or engineering, procurement, construction, geotechnical,
environmental, meteorological, or legal services or payments for other
components, materials, or services that are necessary to permit or
construct the C-BED project and that are provided by a company that has been
organized or incorporated in Nebraska under Nebraska law and has employed at
least five Nebraska residents for at least eighteen months prior to the date of
the project application for certification as a C-BED project; and
(c) Payments that are for physical parts, materials, or components that
are manufactured, assembled, or fabricated in Nebraska and that are not
described in subdivision (a) or (b) of this subdivision.
Such payments need not be made directly from power purchase agreement
revenue and may be made from other funds in advance of receiving power purchase
agreement revenue; and
(5) Qualified owner means:
(a) A Nebraska resident;
(b) A limited liability company that is organized under the Nebraska
Uniform Limited Liability Company Act and that is made up of members who are
Nebraska residents;
(c) A Nebraska nonprofit corporation organized under the Nebraska
Nonprofit Corporation Act;
(d) A public power district, a public power and irrigation district, a
municipality, a registered group of municipalities, an electric cooperative, or
an electric membership association An electric supplier as defined in section
70-1014.02, except that qualified ownership in a single C-BED project is
limited to no more than:
(i) Fifteen percent either directly or indirectly by a single electric
supplier; and
(ii) A combined total of twenty-five percent either directly or indirectly
by multiple electric suppliers;
(e) A tribal council;
(f) A domestic corporation organized in Nebraska under the Nebraska Model
Business Corporation Act and domiciled in Nebraska; or
(g) A cooperative corporation organized under sections 21-1301 to 21-1306
and domiciled in Nebraska.

Sec. 14. Section 77-6203, Revised Statutes Supplement, 2015, is amended to
read:

77-6203 (1) The owner of a renewable energy generation facility annually
shall pay a nameplate capacity tax equal to the total nameplate capacity of the
commissioned renewable energy generation facility multiplied by a tax rate of
three thousand five hundred eighteen dollars per megawatt.
(2) No tax shall be imposed on a renewable energy generation facility:
(a) Owned or operated by the federal government, the State of Nebraska, a
public power district, a public power and irrigation district, an individual
municipality, a registered group of municipalities, an electric membership
association, or a cooperative; or
(b) That is a customer-generator as defined in section 70-2002.
(3) No tax levied pursuant to this section shall be construed to
constitute restricted funds as defined in section 13-518 for the first five
years after the renewable energy generation facility is commissioned.
(4) The presence of one or more renewable energy generation facilities or
supporting infrastructure shall not be a factor in the assessment,
determination of actual value, or classification under section 77-291 of the
real property underlying or adjacent to such facilities or infrastructure.

(5)(a) The Department of Revenue shall collect the tax due under this section.

(b) The tax shall be imposed beginning the first calendar year the renewable energy generation facility is commissioned. A renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be prorated based upon the number of days remaining in the calendar year after the renewable energy generation facility is commissioned.

(ii) In the first year in which a renewable energy generation facility is taxed or in any year in which additional commissioned nameplate capacity is added to a renewable energy generation facility, the taxes on the initial or additional nameplate capacity shall be prorated for the number of days remaining in the calendar year.

(iii) When a renewable energy generation facility is decommissioned or made nonoperational by a change in law or decertification from its status as a certified renewable export facility during a tax year, the taxes shall be prorated for the number of days during which the renewable energy generation facility was not decommissioned or was operational.

(iv) When the capacity of a renewable energy generation facility to produce electricity is reduced but the renewable energy generation facility is not decommissioned, the nameplate capacity of the renewable energy generation facility is deemed to be unchanged.

(6)(a) On March 1 of each year, the owner of a renewable energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a renewable energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department shall adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the renewable energy generation facility is located within thirty days after receipt of such proceeds.

Sec. 15. There is hereby appropriated (1) $19,000 from the Nebraska Power Review Fund for FY2016-17 and (2) $19,000 from the Nebraska Power Review Fund for FY2017-18 to the Nebraska Power Review Board, for Program 72, to aid in carrying out the provisions of this act.

Total expenditures for permanent and temporary salaries and per diems from funds appropriated in this section shall not exceed $19,000 for FY2016-17 or $19,000 for FY2017-18.

Sec. 16. Original sections 70-670, 70-1012, and 70-1912.01, Reissue Revised Statutes of Nebraska, sections 70-1001, 70-1001.01, 70-1003, 70-1013, 70-1014, 70-1014.01, 70-1014.02, 70-1015, and 70-1828, Revised Statutes Cumulative Supplement, 2014, and sections 70-1903 and 77-6203, Revised Statutes Supplement, 2015, are repealed.