Introduce by Watermeier, 1.

Read first time January 18, 2017

Committee: Natural Resources

A BILL FOR AN ACT relating to power districts and corporations; to amend section 70-667, Reissue Revised Statutes of Nebraska, and sections 70-670 and 70-1014.02, Revised Statutes Cumulative Supplement, 2016; to state findings; to change provisions relating to the exercise of eminent domain; to change provisions relating to privately developed generation facilities as prescribed; to provide an exemption from review by the Nebraska Power Review Board; to remove a restriction on private electric suppliers; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. The Legislature finds and declares that:

(1) Competition is one of the most fundamental principles of America's free market economy;

(2) The threat of eminent domain by Nebraska's public utilities against privately developed and operated electric generation and transmission facilities has stifled investment in the state;

(3) Nebraska needs to grow its economy for the benefit of its citizens;

(4) It is the policy of the state to remove restrictions on private investment and free market economics; and

(5) Publicly-owned utilities should not be authorized to use eminent domain to restrict private electric generation or transmission investment in Nebraska.

Sec. 2. Section 70-667, Reissue Revised Statutes of Nebraska, is amended to read:

70-667 All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or
subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility, a privately operated electric generation or transmission facility, or a privately operated hydrogen production, storage, or distribution facility. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Sec. 3. Section 70-670, Revised Statutes Cumulative Supplement, 2016, is amended to read:

70-670 (1) In addition to any other rights and powers 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 not 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 electric renewable energy generation or transmission facility
meeting the requirements of section 70-1014.02 shall be subject to
eminent domain by any consumer-owned electric supplier operating in the
State of Nebraska.

Sec. 4. Section 70-1014.02, Revised Statutes Cumulative Supplement,
2016, is amended to read:

70-1014.02 (1)(a) A privately developed electric renewable energy
generation or transmission facility that meets the requirements of this
section is exempt from review by the Nebraska Power Review Board sections
70-1012 to 70-1014.01 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 electric renewable energy
generation facility;

(ii) Certifies to the board that the facility will meet the
requirements for a privately developed electric 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
electric 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 electric 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 electric 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 (1) or (2) of section 37-806 during the project planning and design phases, if possible, but in no event later than the commencement of construction.

(b) The board may bring an action in the name of the State of Nebraska for failure to comply with subdivision (a)(iii)(B) of this subsection. Subdivision (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 electric 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 reasonable 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 electric 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 acknowledgment that the privately developed electric renewable energy generation facility is exempt from review by the Nebraska Power Review Board sections 70-1012 to 70-1014.01.

(3) The exemption allowed under this section for a privately developed electric 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 electric 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 electric renewable energy generation facility as long as the
right-of-way does not prevent the operation of or access to the privately
developed electric 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 electric 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.

(6) (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 electric renewable energy generation facility.

Sec. 5. Original section 70-667, Reissue Revised Statutes of
Nebraska, and sections 70-670 and 70-1014.02, Revised Statutes Cumulative
Supplement, 2016, are repealed.