A BILL FOR AN ACT relating to public power; to amend section 70-1014.02, Revised Statutes Cumulative Supplement, 2016; to adopt the Nebraska Retail Electricity Choice Act; to remove a restriction on the sale or delivery of retail electricity by a private electric supplier; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 5 of this act shall be known and may be cited as the Nebraska Retail Electricity Choice Act.

Sec. 2. The Legislature finds and declares that:

(1) Competition and retail choice are fundamental principles of America's free market economy;

(2) Nebraska retail electric customers have no choice in choosing their electricity service provider;

(3) Public power districts in Nebraska have monopolies of service in their respective service areas;

(4) Section 70-1001 states it is 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;

(5) Section 70-1003 provides review criteria for the Nebraska Power Review Board concerning conditions which indicate that retail electric competition would benefit Nebraska's citizens, including, but not limited to:

(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; and

(d) A comparison of Nebraska's wholesale electricity prices to the prices in the region;

(6) The criteria in section 70-1003 for retail competition have been met, since (a) there is a viable regional transmission organization that exists in a region which includes Nebraska, (b) there is a viable wholesale electricity market that exists in a region which includes Nebraska, (c) retail electric rates have not been unbundled to a significant extent in Nebraska, and (d) wholesale electric prices of some
Nebraska electric suppliers are higher than those of several utilities which provide service in the region. Despite the fact that these conditions have been met, the Nebraska Power Review Board has taken no steps to open up Nebraska's retail electric market to competition;

(7) Nebraska's retail electric rates have increased significantly from 2006 to 2016 and in some instances are higher than rates charged by comparable utilities in neighboring states;

(8) Nebraska retail electric customers should be given the opportunity to receive the benefits of retail electric competition; and

(9) It is appropriate for the Public Service Commission to engage in a review of electric rates and service in order to regulate a competitive electric market for the benefit of all Nebraska residents.

Sec. 3. The Public Service Commission shall establish criteria for retail electric competition in Nebraska. In order to establish such criteria, the commission shall hold a series of public hearings across the state and gather and review such information as necessary to make a thorough review of issues related to retail electricity choice, including, but not limited to, retail electricity choice provisions from other states. The commission shall adopt and promulgate rules and regulations necessary to carry out the purposes of the Nebraska Retail Electricity Choice Act. The commission shall file a report with the Governor and the Legislature on or before December 15, 2017, regarding the process of enabling retail electric choice to benefit the Nebraska residents, including, but not limited to, recommendations for any additional legislation necessary to carry out the purposes of the Nebraska Retail Electricity Choice Act.

Sec. 4. Beginning July 1, 2018, private electric suppliers shall be authorized to engage in the sale of electricity at retail for the benefit of Nebraska retail customers.

Sec. 5. Notwithstanding any other provision of law, no electric supplier as defined in section 70-1001.01 shall have the right to
exercise eminent domain over any facilities, real estate, or other property used for the purpose of providing electricity to retail customers pursuant to the Nebraska Retail Electricity Choice Act, including, but not limited to, facilities used for generation, transmission, or distribution of electricity.

Sec. 6. Section 70-1014.02, Revised Statutes Cumulative Supplement, 2016, is amended to read:

70-1014.02 (1)(a) A privately developed renewable energy generation facility that meets the requirements of this section is exempt from 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 renewable energy generation facility;

(ii) Certifies to the board that the facility will meet the requirements for a privately 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 (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 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 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 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.

(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 renewable energy generation facility.

Sec. 7. Original section 70-1014.02, Revised Statutes Cumulative
Supplement, 2016, is repealed.