

AMENDMENTS TO LB155

Introduced by Brewer, 43.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 70-1014.02, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 70-1014.02 (1) The Legislature finds that:

6 (a) Nebraska has the authority as a sovereign state to protect its
7 land, natural resources, and cultural resources for economic and
8 aesthetic purposes for the benefit of its residents and future
9 generations by regulation of energy generation projects;

10 (b) The unique terrain and ecology of the Nebraska Sandhills provide
11 an irreplaceable habitat for millions of migratory birds and other
12 wildlife every year and serve as the home to numerous ranchers and
13 farmers;

14 (c) The grasslands of the Nebraska Sandhills and other natural
15 resources in Nebraska will become increasingly valuable, both
16 economically and strategically, as the demand for food and energy
17 increases; and

18 (d) The Nebraska Sandhills are home to priceless archaeological
19 sites of historical and cultural significance to American Indians.

20 (2)(a) ~~(1)(a)~~ A privately developed renewable energy generation
21 facility that meets the requirements of this section is exempt from
22 sections 70-1012 to 70-1014.01 if no less than thirty days prior to the
23 commencement of construction the owner of the facility:

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

27 (ii) Certifies to the board that the facility will meet the

1 requirements for a privately developed renewable energy generation
2 facility;

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

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

20 (v) Certifies to the board that the private electric supplier has
21 consulted with the Game and Parks Commission to identify potential
22 measures to avoid, minimize, and mitigate impacts to species identified
23 under subsection (1) or (2) of section 37-806 during the project planning
24 and design phases, if possible, but in no event later than the
25 commencement of construction.

26 (b) The board may bring an action in the name of the State of
27 Nebraska for failure to comply with subdivision (a)(iii)(B) of this
28 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if
29 a local government entity with the authority to create requirements for
30 decommissioning has enacted decommissioning requirements for the
31 applicable jurisdiction.

1 (c) The joint transmission development agreement shall address
2 construction, ownership, operation, and maintenance of such additions or
3 upgrades to the transmission facilities as required for the privately
4 developed renewable energy generation facility. The joint transmission
5 development agreement shall be negotiated and executed contemporaneously
6 with the generator interconnection agreement or other directives of the
7 applicable regional transmission organization with jurisdiction over the
8 addition or upgrade of transmission, upon terms consistent with prudent
9 electric utility practices for the interconnection of renewable
10 generation facilities, the electric supplier's reasonable transmission
11 interconnection requirements, and applicable transmission design and
12 construction standards. The electric supplier shall have the right to
13 purchase and own transmission facilities as set forth in the joint
14 transmission development agreement. The private electric supplier of the
15 privately developed renewable energy generation facility shall have the
16 right to construct any necessary facilities or improvements set forth in
17 the joint transmission development agreement pursuant to the standards
18 set forth in the agreement at the private electric supplier's cost.

19 (3) ~~(2)~~ Within ten days after receipt of a written notice complying
20 with subsection (2) ~~(1)~~ of this section, the executive director of the
21 board shall issue a written acknowledgment that the privately developed
22 renewable energy generation facility is exempt from sections 70-1012 to
23 70-1014.01.

24 (4) ~~(3)~~ The exemption allowed under this section for a privately
25 developed renewable energy generation facility shall extend to and exempt
26 all private electric suppliers owning any interest in the facility,
27 including any successor private electric supplier which subsequently
28 acquires any interest in the facility.

29 (5) ~~(4)~~ No property owned, used, or operated as part of a privately
30 developed renewable energy generation facility shall be subject to
31 eminent domain by a consumer-owned electric supplier operating in the

1 State of Nebraska. Nothing in this section shall be construed to grant
2 the power of eminent domain to a private electric supplier or limit the
3 rights of any entity to acquire any public, municipal, or utility right-
4 of-way across property owned, used, or operated as part of a privately
5 developed renewable energy generation facility as long as the right-of-
6 way does not prevent the operation of or access to the privately
7 developed renewable energy generation facility.

8 ~~(6)~~ (5) Only a consumer-owned electric supplier operating in the
9 State of Nebraska may exercise eminent domain authority to acquire the
10 land rights necessary for the construction of transmission lines and
11 related facilities. There is a rebuttable presumption that the The
12 exercise of eminent domain to provide needed transmission lines and
13 related facilities for a privately developed renewable energy generation
14 facility is a public use.

15 ~~(7)~~ (6) Nothing in this section shall be construed to authorize a
16 private electric supplier to sell or deliver electricity at retail in
17 Nebraska.

18 ~~(8)~~ (7) Nothing in this section shall be construed to limit the
19 authority of or require a consumer-owned electric supplier operating in
20 the State of Nebraska to enter into a joint agreement with a private
21 electric supplier to develop, construct, and jointly own a privately
22 developed renewable energy generation facility.

23 Sec. 2. Section 70-1015, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 70-1015 (1) If any supplier violates Chapter 70, article 10, by
26 either (a) commencing the construction or finalizing or attempting to
27 finalize the acquisition of any generation facilities, any transmission
28 lines, or any related facilities without first providing notice or
29 obtaining board approval, whichever is required, or (b) serving or
30 attempting to serve at retail any customers located in Nebraska or any
31 wholesale customers in violation of section 70-1002.02, such

1 construction, acquisition, or service of such customers shall be enjoined
2 in an action brought in the name of the State of Nebraska until such
3 supplier has complied with Chapter 70, article 10.

4 (2) If the executive director of the board determines that a private
5 electric supplier commenced construction of a privately developed
6 renewable energy generation facility less than thirty days prior to
7 providing the notice required in subdivision (2)(a) ~~(1)(a)~~ of section
8 70-1014.02, the executive director shall send notice via certified mail
9 to the private electric supplier, informing it of the determination that
10 the private electric supplier is in violation of such subdivision and is
11 subject to a fine in the amount of five hundred dollars. The private
12 electric supplier shall have twenty days from the date on which the
13 notice is received in which to submit the notice described in such
14 subdivision and to pay the fine. Within ten days after the private
15 electric supplier submits a notice compliant with ~~the provisions of~~
16 subsection (2) ~~(1)~~ of section 70-1014.02 and payment of the fine, the
17 executive director of the board shall issue the written acknowledgment
18 described in subsection (3) ~~(2)~~ of section 70-1014.02. If the private
19 electric supplier fails to submit a notice compliant with ~~the provisions~~
20 ~~of~~ subsection (2) ~~(1)~~ of section 70-1014.02 and pay the fine within
21 twenty days after the date on which the private electric supplier
22 receives the notice from the executive director of the board, the private
23 electric supplier shall immediately cease construction or operation of
24 the privately developed renewable energy generation facility.

25 (3) If the private electric supplier disputes that construction was
26 commenced less than thirty days prior to submitting the written notice
27 required by subdivision (2)(a) ~~(1)(a)~~ of section 70-1014.02, the private
28 electric supplier may request a hearing before the board. Such request
29 shall be submitted within twenty days after the private electric supplier
30 receives the notice sent by the executive director pursuant to subsection
31 (3) ~~(2)~~ of this section. If the private electric supplier does not accept

1 the certified mail sent pursuant to such subsection, the executive
2 director shall send a second notice to the private electric supplier by
3 first-class United States mail. The private electric supplier may submit
4 a request for hearing within twenty days after the date on which the
5 second notice was mailed.

6 (4) Upon receipt of a request for hearing, the board shall set a
7 hearing date. Such hearing shall be held within sixty days after such
8 receipt. The board shall provide to the private electric supplier written
9 notice of the hearing at least twenty days prior to the date of the
10 hearing. The board or its hearing officer may grant continuances upon
11 good cause shown or upon the request of the private electric supplier.
12 Timely filing of a request for hearing by a private electric supplier
13 shall stay any further enforcement under this section until the board
14 issues an order pursuant to subsection (6) ~~(5)~~ of this section or the
15 request for hearing is withdrawn.

16 (5) The board shall issue a written decision within sixty days after
17 conclusion of the hearing. All costs of the hearing shall be paid by the
18 private electric supplier if (a) the board determines that the private
19 electric supplier commenced construction of the privately developed
20 renewable energy generation facility less than thirty days prior to
21 submitting the written notice required pursuant to subsection (2) ~~(1)~~ of
22 section 70-1014.02 or (b) the private electric supplier withdraws its
23 request for hearing prior to the board issuing its decision.

24 (6) A private electric supplier which the board finds to be in
25 violation of the requirements of subsection (2) ~~(1)~~ of section 70-1014.02
26 shall either (a) pay the fine described in this section and submit a
27 notice compliant with ~~the provisions of~~ subsection (2) ~~(1)~~ of section
28 70-1014.02 or (b) immediately cease construction or operation of the
29 privately developed renewable energy generation facility.

30 Sec. 3. Original sections 70-1014.02 and 70-1015, Reissue Revised
31 Statutes of Nebraska, are repealed.