

ENGROSSED LEGISLATIVE BILL 1261

Introduced by DeKay, 40; at the request of the Governor; Holdcroft, 36; Meyer, F., 41.

A BILL FOR AN ACT relating to electrical energy; to amend section 70-670, Reissue Revised Statutes of Nebraska; to prohibit the use of eminent domain to acquire certain privately owned electric generation facilities; and to repeal the original section.

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 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

70-1014.02 shall be subject to eminent domain by any consumer-owned electric supplier operating in the State of Nebraska.

(5)(a) Notwithstanding any other provision of law to the contrary, no consumer-owned utility providing wholesale or retail electric service in Nebraska shall exercise the power of eminent domain to acquire a privately owned electric generation facility that is constructed to provide electric service to an industrial customer at a single site with new electric load greater than one thousand megawatts, provided that:

(i) The privately owned electric generation facility is co-located on or adjacent to the industrial customer, has an electrically equivalent point of grid interconnection to the industrial customer, and has received approval of the Nebraska Power Review Board;

(ii) The privately owned electric supplier and consumer-owned utility providing retail electric service within the service area where the industrial customer is located, and where applicable, the consumer-owned wholesale power supplier responsible for a regional transmission organization's resource adequacy requirements for the consumer-owned retail utility, and the applicable transmission owner for the relevant service area, have executed a long-term power purchase agreement, lease, joint venture, or other commercial contractual structure that (A) preserves the exclusive right of the consumer-owned utility to serve retail customers in the relevant service area and, where applicable, the contractual right of the consumer-owned wholesale power supplier to supply the consumer-owned retail utility, (B) provides commercial benefits acceptable to the consumer-owned utility or utilities, (C) prohibits resale of electricity by the industrial customer, and (D) includes a contractual waiver of the authority to exercise eminent domain to acquire the subject generation assets for the duration of the contract with the consumer-owned utility or utilities. Any contract entered into under this subdivision must be approved by the governing body of the consumer-owned utility or utilities;

(iii) The industrial customer shall pay all costs, fees, congestion fees, and electric system upgrade costs of any kind incurred by any consumer-owned

utility providing wholesale or retail electric service in Nebraska as a result of the industrial customer's project; and

(iv) The privately owned electric generation facility shall only be used to serve the industrial customer, unless waived by the consumer-owned utility or utilities with which the privately owned electric generation facility has contracted under the provisions of this subsection. Any such waiver must be approved by the governing body of such consumer-owned utility or utilities.

(b) For purposes of this subsection, consumer-owned utility means 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.

(c) This subsection shall apply to contracts to serve new industrial loads entered into with consumer-owned utilities on or before December 31, 2031.

Sec. 2. Original section 70-670, Reissue Revised Statutes of Nebraska, is repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 1261 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR