

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1261

FINAL READING

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

Read first time January 27, 2026

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to electrical energy; to amend section 70-670,
- 2 Reissue Revised Statutes of Nebraska; to prohibit the use of eminent
- 3 domain to acquire certain privately owned electric generation
- 4 facilities; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 70-670 (1) In addition to any other rights and powers conferred upon
4 any district organized under or subject to Chapter 70, article 6, each
5 such district shall have and exercise the power of eminent domain to
6 acquire from any person, firm, association, or private corporation any
7 and all property owned, used, or operated, or useful for operation, in
8 the generation, transmission, or distribution of electrical energy,
9 including an existing electric utility system or any part thereof. The
10 procedure to condemn property shall be exercised in the manner set forth
11 in Chapter 76, article 7.

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

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

24 (4) No property owned, used, or operated as part of a privately
25 developed renewable energy generation facility meeting the requirements
26 of section 70-1014.02 shall be subject to eminent domain by any consumer-
27 owned electric supplier operating in the State of Nebraska.

28 (5)(a) Notwithstanding any other provision of law to the contrary,
29 no consumer-owned utility providing wholesale or retail electric service
30 in Nebraska shall exercise the power of eminent domain to acquire a
31 privately owned electric generation facility that is constructed to

1 provide electric service to an industrial customer at a single site with
2 new electric load greater than one thousand megawatts, provided that:

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

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

26 (iii) The industrial customer shall pay all costs, fees, congestion
27 fees, and electric system upgrade costs of any kind incurred by any
28 consumer-owned utility providing wholesale or retail electric service in
29 Nebraska as a result of the industrial customer's project; and

30 (iv) The privately owned electric generation facility shall only be
31 used to serve the industrial customer, unless waived by the consumer-

1 owned utility or utilities with which the privately owned electric
2 generation facility has contracted under the provisions of this
3 subsection. Any such waiver must be approved by the governing body of
4 such consumer-owned utility or utilities.

5 (b) For purposes of this subsection, consumer-owned utility means a
6 public power district, a public power and irrigation district, a
7 municipality, a registered group of municipalities, an electric
8 cooperative, an electric membership association, any other governmental
9 entity, or any combination thereof.

10 (c) This subsection shall apply to contracts to serve new industrial
11 loads entered into with consumer-owned utilities on or before December
12 31, 2031.

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