

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 35**

Introduced by Brandt, 32.

Read first time January 09, 2025

Committee: Natural Resources

1 A BILL FOR AN ACT relating to privately developed renewable energy  
2 generation facilities; to amend section 70-1014.02, Revised Statutes  
3 Cumulative Supplement, 2024; to change provisions relating to the  
4 requirements for certain exemptions; and to repeal the original  
5 section.

6 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Section 70-1014.02, Revised Statutes Cumulative  
2 Supplement, 2024, is amended to read:

3           70-1014.02 (1) The Legislature finds that:

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

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

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

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

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

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

25           (ii) Certifies to the board that the facility will meet the  
26 requirements for a privately developed renewable energy generation  
27 facility;

28           (iii) Certifies to the board that the private electric supplier will  
29 (A) comply with any decommissioning requirements adopted by the local  
30 governmental entities having jurisdiction over the privately developed  
31 renewable energy generation facility and (B) except as otherwise provided

1 in subdivision (b) of this subsection, submit a decommissioning plan to  
2 the board obligating the private electric supplier to bear all costs of  
3 decommissioning the privately developed renewable energy generation  
4 facility and requiring that the private electric supplier post a security  
5 bond or other instrument, no later than the sixth year following  
6 commercial operation, securing the costs of decommissioning the facility  
7 and provide a copy of the bond or instrument to the board;

8 (iv) Certifies to the board that the private electric supplier has  
9 entered into or prior to commencing construction will enter into a joint  
10 transmission development agreement pursuant to subdivision (c) of this  
11 subsection with the electric supplier owning the transmission facilities  
12 of sixty thousand volts or greater to which the privately developed  
13 renewable energy generation facility will interconnect;

14 (v) Certifies to the board that the private electric supplier has  
15 consulted with the Game and Parks Commission to identify potential  
16 measures to avoid, minimize, and mitigate impacts to species identified  
17 under subsection (1) or (2) of section 37-806 during the project planning  
18 and design phases, if possible, but in no event later than the  
19 commencement of construction;

20 (vi) Certifies in writing to the board that the facility, if located  
21 within a ten-mile radius of a military installation:

22 (A) Contains no materials, electronics, or other components  
23 manufactured by any foreign government or foreign nongovernment person  
24 determined to be a foreign adversary pursuant to 15 C.F.R. 7.4; or

25 (B) Will, upon reaching commercial operation, be ~~Is~~ in compliance  
26 with the critical infrastructure protection requirements issued by the  
27 North American Electric Reliability Corporation if connected to the  
28 transmission grid at one hundred kilovolts or higher voltage and has to  
29 have a nameplate rating of twenty megavolt amperes for a single  
30 generation unit or injecting at an aggregate of seventy-five megavolt  
31 amperes or greater. The private electric supplier shall also submit

1 written notice to the board at any time such private electric supplier is  
2 no longer in such compliance; and

3 (vii) For a proposed privately developed renewable energy generation  
4 facility that has a generating capacity that is greater than ten  
5 megawatts, certifies to the board that the private electric supplier has  
6 held at least one public meeting with advanced publicized notice in one  
7 of the counties in which the proposed facility will be located at which  
8 (A) the private electric supplier explains the need for the proposed  
9 facility and the type of facility and (B) real property owners in any of  
10 the counties in which the proposed facility will be located are provided  
11 an opportunity to comment on the proposed facility. The private electric  
12 supplier shall provide a report to the board containing the minutes of  
13 any such meeting and how many people commented on the proposed facility.  
14 Documentation received at any such meeting shall be made available to the  
15 board upon its request. A meeting described in this subdivision is not  
16 subject to the requirements described in subdivision (3)(b)(iv) of  
17 section 84-1411.

18 (b) The board may bring an action in the name of the State of  
19 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
20 subsection, except that such subdivision does not apply if a local  
21 government entity with the authority to create requirements for  
22 decommissioning has enacted decommissioning requirements for the  
23 applicable jurisdiction.

24 (c) A joint transmission development agreement shall be entered into  
25 to address construction, ownership, operation, and maintenance of such  
26 additions or upgrades to the transmission facilities as required for the  
27 privately developed renewable energy generation facility. The joint  
28 transmission development agreement shall be negotiated and executed  
29 contemporaneously with the generator interconnection agreement or other  
30 directives of the applicable regional transmission organization with  
31 jurisdiction over the addition or upgrade of transmission, upon terms

1 consistent with prudent electric utility practices for the  
2 interconnection of renewable generation facilities, the electric  
3 supplier's reasonable transmission interconnection requirements, and  
4 applicable transmission design and construction standards. The electric  
5 supplier shall have the right to purchase and own transmission facilities  
6 as set forth in the joint transmission development agreement. The private  
7 electric supplier of the privately developed renewable energy generation  
8 facility shall have the right to construct any necessary facilities or  
9 improvements set forth in the joint transmission development agreement  
10 pursuant to the standards set forth in the agreement at the private  
11 electric supplier's cost.

12 (3) Within ten days after receipt of a written notice complying with  
13 subsection (2) of this section, the executive director of the board shall  
14 issue a written acknowledgment that the privately developed renewable  
15 energy generation facility is exempt from sections 70-1012 to 70-1014.01  
16 if such facility remains in compliance with the requirements of this  
17 section.

18 (4) The exemption allowed under this section for a privately  
19 developed renewable energy generation facility shall extend to and exempt  
20 all private electric suppliers owning any interest in the facility,  
21 including any successor private electric supplier which subsequently  
22 acquires any interest in the facility.

23 (5) No property owned, used, or operated as part of a privately  
24 developed renewable energy generation facility shall be subject to  
25 eminent domain by a consumer-owned electric supplier operating in the  
26 State of Nebraska. Nothing in this section shall be construed to grant  
27 the power of eminent domain to a private electric supplier or limit the  
28 rights of any entity to acquire any public, municipal, or utility right-  
29 of-way across property owned, used, or operated as part of a privately  
30 developed renewable energy generation facility as long as the right-of-  
31 way does not prevent the operation of or access to the privately

1 developed renewable energy generation facility.

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

9 (7) Nothing in this section shall be construed to authorize a  
10 private electric supplier to sell or deliver electricity at retail in  
11 Nebraska.

12 (8) Nothing in this section shall be construed to limit the  
13 authority of or require a consumer-owned electric supplier operating in  
14 the State of Nebraska to enter into a joint agreement with a private  
15 electric supplier to develop, construct, and jointly own a privately  
16 developed renewable energy generation facility.

17 **Sec. 2.** Original section 70-1014.02, Revised Statutes Cumulative  
18 Supplement, 2024, is repealed.