

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 43**

Introduced by DeKay, 40; Hardin, 48.

Read first time January 09, 2025

Committee:

1 A BILL FOR AN ACT relating to electricity; to amend sections 70-1001.01,  
2 70-1012, 70-1014.02, and 70-1015, Revised Statutes Cumulative  
3 Supplement, 2024; to define and redefine terms; to change provisions  
4 relating to notice and certification requirements for electric  
5 generation facilities, transmission lines, and privately developed  
6 renewable energy generation facilities located near military  
7 installations; to harmonize provisions; to repeal the original  
8 sections; and to declare an emergency.  
9 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Section 70-1001.01, Revised Statutes Cumulative  
2 Supplement, 2024, is amended to read:

3           70-1001.01 For purposes of sections 70-1001 to 70-1028.02, unless  
4 the context otherwise requires:

5           (1) Board means the Nebraska Power Review Board;

6           (2) Commercial electric vehicle charging station means equipment  
7 designed to provide electricity for a fee for the charging of an electric  
8 vehicle or a plug-in hybrid electric vehicle, including an electric  
9 vehicle direct-current charger or a super-fast charger, any successor  
10 technology, and all components thereof. Commercial electric vehicle  
11 charging station does not include the residence of a person where an  
12 electric vehicle or a plug-in hybrid electric vehicle is charged if no  
13 customer usage fee is charged;

14           (3) Commercial electric vehicle charging station operator means a  
15 person, partnership, corporation, or other business entity or political  
16 subdivision that operates a commercial electric vehicle charging station;

17           (4) Direct-current, fast-charging station means a publicly available  
18 charging system capable of delivering at least fifty kilowatts of direct-  
19 current electrical power to an electric vehicle's rechargeable battery at  
20 a voltage of two hundred volts or greater;

21           (5) Direct-current, fast-charging station operator means a person,  
22 partnership, corporation, or other business entity that operates a  
23 direct-current, fast-charging station open to the public. The term does  
24 not include an electric supplier or a political subdivision;

25           (6) Electric supplier or supplier of electricity means any legal  
26 entity supplying, producing, or distributing electricity within the state  
27 for sale at wholesale or retail. Electric supplier does not include a  
28 commercial electric vehicle charging station operator that is a private  
29 person or privately owned partnership, privately owned corporation, or  
30 other privately owned business;

31           (7) Electronic-related means relating to electronic devices,

1 circuits, or similar systems, or the components of such electronic  
2 devices, circuits, or similar systems, that require electrical currents  
3 or electromagnetism to operate;

4 ~~(8) (7) Military installation means: a military base other than a~~  
5 ~~National Guard base where fixed-wing aircraft or strategic weapon assets~~  
6 ~~are on a permanent or temporary basis assigned, stored, operated from, or~~  
7 ~~otherwise located;~~

8 (a) A United States Air Force ballistic missile silo located within  
9 the geographic area described in 31 C.F.R. 802.211(b)(3), as such  
10 regulation existed on January 1, 2025; or

11 (b) A United States Air Force base described in 31 C.F.R.  
12 802.227(c), as such regulation existed on January 1, 2025;

13 ~~(9) (8) Plug-in hybrid electric vehicle has the same meaning as in~~  
14 ~~section 60-345.01;~~

15 ~~(10) (9) Private electric supplier means an electric supplier~~  
16 ~~producing electricity from a privately developed renewable energy~~  
17 ~~generation facility that is not a public power district, a public power~~  
18 ~~and irrigation district, a municipality, a registered group of~~  
19 ~~municipalities, an electric cooperative, an electric membership~~  
20 ~~association, any other governmental entity, or any combination thereof. A~~  
21 ~~private electric supplier is limited to the development of those~~  
22 ~~facilities as provided in subdivision (11) (10) of this section;~~

23 ~~(11) (10) Privately developed renewable energy generation facility~~  
24 ~~means and is limited to a facility that (a) generates electricity using~~  
25 ~~solar, wind, geothermal, biomass, landfill gas, or biogas, including all~~  
26 ~~electrically connected equipment used to produce, collect, and store the~~  
27 ~~facility output up to and including the transformer that steps up the~~  
28 ~~voltage to sixty thousand volts or greater, and including supporting~~  
29 ~~structures, buildings, and roads, unless otherwise agreed to in a joint~~  
30 ~~transmission development agreement, (b) is developed, constructed, and~~  
31 ~~owned, in whole or in part, by one or more private electric suppliers,~~

1 and (c) is not wholly owned by a public power district, a public power  
2 and irrigation district, a municipality, a registered group of  
3 municipalities, an electric cooperative, an electric membership  
4 association, any other governmental entity, or any combination thereof;

5 (12) ~~(11)~~ Regional transmission organization means an entity  
6 independent from those entities generating or marketing electricity at  
7 wholesale or retail, which has operational control over the electric  
8 transmission lines in a designated geographic area in order to reduce  
9 constraints in the flow of electricity and ensure that all power  
10 suppliers have open access to transmission lines for the transmission of  
11 electricity;

12 (13) ~~(12)~~ Reliable or reliability means the ability of an electric  
13 supplier to supply the aggregate electric power and energy requirements  
14 of its electricity consumers in Nebraska at all times under normal  
15 operating conditions, taking into account scheduled and unscheduled  
16 outages, including sudden disturbances or unanticipated loss of system  
17 components that are to be reasonably expected for any electric utility  
18 following prudent utility practices, recognizing certain weather  
19 conditions and other contingencies may cause outages at the distribution,  
20 transmission, and generation level;

21 (14) ~~(13)~~ Representative organization means an organization  
22 designated by the board and organized for the purpose of providing joint  
23 planning and encouraging maximum cooperation and coordination among  
24 electric suppliers. Such organization shall represent electric suppliers  
25 owning a combined electric generation plant accredited capacity of at  
26 least ninety percent of the total electric generation plant accredited  
27 capacity constructed and in operation within the state;

28 (15) ~~(14)~~ State means the State of Nebraska; and

29 (16) ~~(15)~~ Unbundled retail rates means the separation of utility  
30 bills into the individual price components for which an electric supplier  
31 charges its retail customers, including, but not limited to, the separate

1 charges for the generation, transmission, and distribution of  
2 electricity.

3 **Sec. 2.** Section 70-1012, Revised Statutes Cumulative Supplement,  
4 2024, is amended to read:

5 70-1012 (1) Before any electric generation facilities or any  
6 transmission lines or related facilities carrying more than seven hundred  
7 volts are constructed or acquired by any supplier, an application, filed  
8 with the board and containing such information as the board shall  
9 prescribe, shall be approved by the board, except that such approval  
10 shall not be required (a) for the construction or acquisition of a  
11 transmission line extension or related facilities within a supplier's own  
12 service area or for the construction or acquisition of a line not  
13 exceeding one-half mile outside its own service area when all owners of  
14 electric lines located within one-half mile of the extension consent  
15 thereto in writing and such consents are filed with the board, (b) for  
16 any generation facility when the board finds that (i) such facility is  
17 being constructed or acquired to replace a generating plant owned by an  
18 individual municipality or registered group of municipalities with a  
19 capacity not greater than that of the plant being replaced, (ii) such  
20 facility will generate less than twenty-five thousand kilowatts of  
21 electric energy at rated capacity, and (iii) the applicant will not use  
22 the plant or transmission capacity to supply wholesale power to customers  
23 outside the applicant's existing retail service area or chartered  
24 territory, (c) for acquisition of transmission lines or related  
25 facilities, within the state, carrying one hundred fifteen thousand volts  
26 or less, if the current owner of the transmission lines or related  
27 facilities notifies the board of the lines or facilities involved in the  
28 transaction and the parties to the transaction, or (d) for the  
29 construction of a qualified facility as defined in section 70-2002.

30 (2)(a) Before any electric supplier commences construction of or  
31 acquires an electric generation facility or transmission lines or related

1 facilities carrying more than seven hundred volts, or expands, alters,  
2 reconstructs, upgrades, repairs, engages in maintenance on, or installs  
3 new or replacement equipment or components in such facility, transmission  
4 lines, or related facilities that will be or are located within a ten-  
5 mile radius of a military installation, the owner of such ~~proposed~~  
6 facility, transmission lines, or related facilities shall provide written  
7 notice certifying to the board that such facility or facilities contain  
8 no electronic-related equipment or materials, ~~electronics, or other~~  
9 components manufactured by any foreign government or foreign  
10 nongovernment person determined to be a foreign adversary pursuant to 15  
11 C.F.R. 791.4, as such regulation existed on January 1, 2025 7-4.

12 (b) Any electric supplier supplying, producing, or distributing  
13 electricity within the state for sale at retail is exempt from  
14 subdivision (a) of this subsection if it is in compliance with the  
15 critical infrastructure protection requirements issued by the North  
16 American Electric Reliability Corporation. To receive such exemption, the  
17 electric supplier shall submit written notice to the board certifying  
18 that it is in such compliance. The electric supplier shall also submit  
19 written notice to the board at any time such supplier is no longer in  
20 such compliance.

21 (3) Any electric supplier required to provide certification under  
22 subsection (2) of this section may, following consultation with such  
23 supplier's vendors, submit a one-time written notice to the board  
24 certifying that the supplier is continually operating in compliance with  
25 the requirements of subsection (2) of this section. The electric supplier  
26 shall also submit written notice to the board at any time such supplier  
27 is no longer in compliance with the requirements of subsection (2) of  
28 this section.

29 (4) Notwithstanding subsections (2) and (3) of this section, an  
30 electric supplier required to provide certification under subsection (2)  
31 of this section may use electronic-related equipment or components

1 manufactured by a foreign government or foreign nongovernment person  
2 determined to be a foreign adversary pursuant to 15 C.F.R. 791.4, as such  
3 regulation existed on January 1, 2025, if the board preapproves the use  
4 of such equipment or components after finding that:

5 (a) There is no other reasonable option for procuring such equipment  
6 or components; and

7 (b) Not procuring or using such equipment or components would cause  
8 a greater harm to the state or residents of the state than the harm  
9 associated with the equipment or components.

10 (5) ~~(3)~~ A privately developed renewable energy generation facility  
11 is exempt from this section if it complies with section 70-1014.02.

12 **Sec. 3.** Section 70-1014.02, Revised Statutes Cumulative Supplement,  
13 2024, is amended to read:

14 70-1014.02 (1) The Legislature finds that:

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

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

23 (c) The grasslands of the Nebraska Sandhills and other natural  
24 resources in Nebraska will become increasingly valuable, both  
25 economically and strategically, as the demand for food and energy  
26 increases; and

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

29 (2)(a) A privately developed renewable energy generation facility  
30 that meets the requirements of this section is exempt from sections  
31 70-1012 to 70-1014.01 if, no less than thirty days prior to the

1 commencement of construction, the owner of the facility:

2 (i) Notifies the board in writing of its intent to commence  
3 construction of a privately developed renewable energy generation  
4 facility;

5 (ii) Certifies to the board that the facility will meet the  
6 requirements for a privately developed renewable energy generation  
7 facility;

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

19 (iv) Certifies to the board that the private electric supplier has  
20 entered into or prior to commencing construction will enter into a joint  
21 transmission development agreement pursuant to subdivision (d) ~~(c)~~ of  
22 this subsection with the electric supplier owning the transmission  
23 facilities of sixty thousand volts or greater to which the privately  
24 developed renewable energy generation facility will interconnect;

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

31 ~~(vi) Certifies in writing to the board that the facility, if located~~



1 ~~within a ten-mile radius of a military installation:~~

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

5 ~~(B) Is in compliance with the critical infrastructure protection~~  
6 ~~requirements issued by the North American Electric Reliability~~  
7 ~~Corporation if connected to the transmission grid at one hundred~~  
8 ~~kilovolts or higher voltage and has to have a nameplate rating of twenty~~  
9 ~~megavolt amperes for a single generation unit or injecting at an~~  
10 ~~aggregate of seventy-five megavolt amperes or greater. The private~~  
11 ~~electric supplier shall also submit written notice to the board at any~~  
12 ~~time such private electric supplier is no longer in such compliance; and~~

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

28 (b)(i) Prior to the commencement of initial construction or  
29 subsequent expansion, alteration, reconstruction, upgrade, repair or  
30 maintenance of a privately developed renewable energy generation facility  
31 located within a ten-mile radius of a military installation, the owner of

1 such facility shall certify in writing to the board, no less than thirty  
2 days prior to the commencement of such initial construction or subsequent  
3 expansion, alteration, reconstruction, upgrade, repair or maintenance,  
4 that the facility:

5 (A) Contains no electronic-related equipment or components  
6 manufactured by any foreign government or foreign nongovernment person  
7 determined to be a foreign adversary pursuant to 15 C.F.R. 791.4, as such  
8 regulation existed on January 1, 2025; or

9 (B) Is in compliance with the critical infrastructure protection  
10 requirements issued by the North American Electric Reliability  
11 Corporation if such facility is connected to the transmission grid at one  
12 hundred kilovolts or higher voltage and has a nameplate rating of twenty  
13 megavolt amperes for a single generation unit or is injecting at an  
14 aggregate of seventy-five megavolt amperes or greater. The owner of such  
15 facility shall also submit written notice to the board at any time such  
16 facility is no longer in compliance with such requirements.

17 (ii) The owner of a facility required to provide the certification  
18 under subdivision (2)(b)(i) of this section may, following consultation  
19 with the owner's vendors, submit a one-time written notice to the board  
20 certifying that the facility is continually operating in compliance with  
21 the requirements of subdivision (2)(b)(i) of this section. The owner  
22 shall also submit written notice to the board at any time such owner is  
23 no longer in compliance with the requirements of this section.

24 (iii) Notwithstanding subdivisions (2)(b)(i) and (ii) of this  
25 section, the owner of a facility required to provide the certification  
26 under subsection (2)(b)(i) may use electronic-related equipment or  
27 electronic-related components manufactured by a foreign government or  
28 foreign nongovernment person determined to be a foreign adversary  
29 pursuant to 15 C.F.R. 791.4, as such regulation existed on January 1,  
30 2025, if the board preapproves the use of such equipment or components  
31 after finding that:

1        (A) There is no other reasonable option for procuring such equipment  
2 or components; and

3        (B) Not procuring or using such equipment or components would cause  
4 a greater harm to the state than the harm associated with the equipment  
5 or components.

6        (c) ~~(b)~~ The board may bring an action in the name of the State of  
7 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
8 subsection, except that such subdivision does not apply if a local  
9 government entity with the authority to create requirements for  
10 decommissioning has enacted decommissioning requirements for the  
11 applicable jurisdiction.

12        (d) ~~(e)~~ A joint transmission development agreement shall be entered  
13 into to address construction, ownership, operation, and maintenance of  
14 such additions or upgrades to the transmission facilities as required for  
15 the privately developed renewable energy generation facility. The joint  
16 transmission development agreement shall be negotiated and executed  
17 contemporaneously with the generator interconnection agreement or other  
18 directives of the applicable regional transmission organization with  
19 jurisdiction over the addition or upgrade of transmission, upon terms  
20 consistent with prudent electric utility practices for the  
21 interconnection of renewable generation facilities, the electric  
22 supplier's reasonable transmission interconnection requirements, and  
23 applicable transmission design and construction standards. The electric  
24 supplier shall have the right to purchase and own transmission facilities  
25 as set forth in the joint transmission development agreement. The private  
26 electric supplier of the privately developed renewable energy generation  
27 facility shall have the right to construct any necessary facilities or  
28 improvements set forth in the joint transmission development agreement  
29 pursuant to the standards set forth in the agreement at the private  
30 electric supplier's cost.

31        (3) Within ten days after receipt of a written notice complying with

1 subsection (2) of this section, the executive director of the board shall  
2 issue a written acknowledgment that the privately developed renewable  
3 energy generation facility is exempt from sections 70-1012 to 70-1014.01  
4 if such facility remains in compliance with the requirements of this  
5 section.

6 (4) The exemption allowed under this section for a privately  
7 developed renewable energy generation facility shall extend to and exempt  
8 all private electric suppliers owning any interest in the facility,  
9 including any successor private electric supplier which subsequently  
10 acquires any interest in the facility.

11 (5) No property owned, used, or operated as part of a privately  
12 developed renewable energy generation facility shall be subject to  
13 eminent domain by a consumer-owned electric supplier operating in the  
14 State of Nebraska. Nothing in this section shall be construed to grant  
15 the power of eminent domain to a private electric supplier or limit the  
16 rights of any entity to acquire any public, municipal, or utility right-  
17 of-way across property owned, used, or operated as part of a privately  
18 developed renewable energy generation facility as long as the right-of-  
19 way does not prevent the operation of or access to the privately  
20 developed renewable energy generation facility.

21 (6) Only a consumer-owned electric supplier operating in the State  
22 of Nebraska may exercise eminent domain authority to acquire the land  
23 rights necessary for the construction of transmission lines and related  
24 facilities. There is a rebuttable presumption that the exercise of  
25 eminent domain to provide needed transmission lines and related  
26 facilities for a privately developed renewable energy generation facility  
27 is a public use.

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

31 (8) Nothing in this section shall be construed to limit the

1 authority of or require a consumer-owned electric supplier operating in  
2 the State of Nebraska to enter into a joint agreement with a private  
3 electric supplier to develop, construct, and jointly own a privately  
4 developed renewable energy generation facility.

5 **Sec. 4.** Section 70-1015, Revised Statutes Cumulative Supplement,  
6 2024, is amended to read:

7 70-1015 (1) If any supplier violates Chapter 70, article 10, by  
8 either (a) commencing the construction or finalizing or attempting to  
9 finalize the acquisition of any generation facilities, any transmission  
10 lines, or any related facilities without first providing notice or  
11 obtaining board approval, whichever is required, or (b) serving or  
12 attempting to serve at retail any customers located in Nebraska or any  
13 wholesale customers in violation of section 70-1002.02, such  
14 construction, acquisition, or service of such customers shall be enjoined  
15 in an action brought in the name of the State of Nebraska until such  
16 supplier has complied with Chapter 70, article 10.

17 (2) If the executive director of the board determines that a private  
18 electric supplier commenced construction of a privately developed  
19 renewable energy generation facility less than thirty days prior to  
20 providing the notice and certification required in subdivisions  
21 ~~subdivision~~ (2)(a) and (b) of section 70-1014.02, the executive director  
22 shall send notice via certified mail to the private electric supplier,  
23 informing it of the determination that the private electric supplier is  
24 in violation of such subdivision and is subject to a fine in the amount  
25 of five hundred dollars. The private electric supplier shall have twenty  
26 days from the date on which the notice is received in which to submit the  
27 notice and certification described in such subdivisions ~~subdivision~~ and  
28 to pay the fine. Within ten days after the private electric supplier  
29 submits a notice and certification compliant with subsection (2) of  
30 section 70-1014.02 and payment of the fine, the executive director of the  
31 board shall issue the written acknowledgment described in subsection (3)

1 of section 70-1014.02. If the private electric supplier fails to submit a  
2 notice and certification compliant with subsection (2) of section  
3 70-1014.02 and pay the fine within twenty days after the date on which  
4 the private electric supplier receives the notice from the executive  
5 director of the board, the private electric supplier shall immediately  
6 cease construction or operation of the privately developed renewable  
7 energy generation facility.

8 (3) If the private electric supplier disputes that construction was  
9 commenced less than thirty days prior to submitting the written notice  
10 and certification required by subdivisions ~~subdivision~~ (2)(a) and (b) of  
11 section 70-1014.02, the private electric supplier may request a hearing  
12 before the board. Such request shall be submitted within twenty days  
13 after the private electric supplier receives the notice sent by the  
14 executive director pursuant to subsection (2) of this section. If the  
15 private electric supplier does not accept the certified mail sent  
16 pursuant to such subsection, the executive director shall send a second  
17 notice to the private electric supplier by first-class United States  
18 mail. The private electric supplier may submit a request for hearing  
19 within twenty days after the date on which the second notice was mailed.

20 (4) Upon receipt of a request for hearing, the board shall set a  
21 hearing date. Such hearing shall be held within sixty days after such  
22 receipt. The board shall provide to the private electric supplier written  
23 notice of the hearing at least twenty days prior to the date of the  
24 hearing. The board or its hearing officer may grant continuances upon  
25 good cause shown or upon the request of the private electric supplier.  
26 Timely filing of a request for hearing by a private electric supplier  
27 shall stay any further enforcement under this section until the board  
28 issues an order pursuant to subsection (5) of this section or the request  
29 for hearing is withdrawn.

30 (5) The board shall issue a written decision within sixty days after  
31 conclusion of the hearing. All costs of the hearing shall be paid by the

1 private electric supplier if (a) the board determines that the private  
2 electric supplier commenced construction of the privately developed  
3 renewable energy generation facility less than thirty days prior to  
4 submitting the written notice and certification required pursuant to  
5 subsection (2) of section 70-1014.02 or (b) the private electric supplier  
6 withdraws its request for hearing prior to the board issuing its  
7 decision.

8 (6) A private electric supplier which the board finds to be in  
9 violation of the requirements of subsection (2) of section 70-1014.02  
10 shall either (a) pay the fine described in this section and submit a  
11 notice and certification compliant with subsection (2) of section  
12 70-1014.02 or (b) immediately cease construction or operation of the  
13 privately developed renewable energy generation facility.

14 **Sec. 5.** Original sections 70-1001.01, 70-1012, 70-1014.02, and  
15 70-1015, Revised Statutes Cumulative Supplement, 2024, are repealed.

16 **Sec. 6.** Since an emergency exists, this act takes effect when  
17 passed and approved according to law.