

LEGISLATIVE BILL 181

Approved by the Governor May 22, 1981

Introduced by Public Works Committee, Kremer, 34, Chpn.;
Beutler, 28; DeCamp, 40; Wesely, 26; Lamb, 43;
Hoagland, 6

AN ACT relating to public power; to amend sections 70-407, 70-505, 70-506, 70-509, 70-601 to 70-604, 70-604.05, 70-604.06, 70-607, 70-608, 70-610, 70-612, 70-621, 70-625.02, 70-626, 70-626.01, 70-628, 70-629, 70-631, 70-636, 70-645, 70-647, 70-648, 70-655, 70-662 to 70-667, 70-670, 70-672, 70-680, 70-802 to 70-807, 70-1001, 70-1002, 70-1002.01, 70-1002.03, 70-1004, 70-1011, 70-1014, 70-1015, 70-1017, 70-1019, and 70-1020, Reissue Revised Statutes of Nebraska, 1943, sections 70-1003, 70-1012, and 70-1012.01, Revised Statutes Supplement, 1980, and sections 27, 29 to 34, 51, and 53, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981; to require reports; to change certain provisions relating to public power districts; to provide definitions; to provide duties; to change provisions relating to delinquent assessments; to harmonize provisions; to make technical corrections; to change duties; and to repeal the original sections, and also section 70-623.01, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 70-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-407. For the purpose of ~~sections--70-407--to 70-409~~ Chapter 70 the following words shall be construed to mean as follows:

(1) A kilowatt hour shall be deemed and considered to equal one thousand watts, or the energy resulting from an activity of one kilowatt continued for one hour, which equals about one and one-third horse power hours;

(2) The word watt shall be construed to mean the practical unit of electric power, activity, or rate of work equivalent to 107 ergs or one joule per second, or approximately 1/746 of a horse power.

Sec. 2. That section 70-505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-505. In order to consummate and complete the sale, lease, or transfer of any electric light and power plant, distribution system, or transmission lines by any city, village, or public electric light and power district of this state, to any private person, firm, association, or corporation, there shall be filed in the office of the ~~Department of Water Resources~~ Nebraska Power Review Board of this state, prior to any delivery or change of possession, control, or management under such sale, lease, or transfer, true and exact duplicate signed copies of all agreements, conveyances, contracts, franchises, deeds, leases, bills of sale, and other instruments, under which such sale, lease, or transfer is to be made. Said instruments shall be certified to under the oath of the executive or presiding officers of the seller and purchaser, respectively, as such true and exact duplicates.

Sec. 3. That section 70-506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-506. At the same time, and accompanying said documents and instruments of sale and transfer, there shall be filed with the ~~Department of Water Resources~~ Nebraska Power Review Board a statement and report, in form and detail to be approved by the ~~department~~ Nebraska Power Review Board and the Attorney General, clearly setting forth the following facts and data: (1) The location and detailed description, including source and methods of generation, of all the property involved in the sale, lease, or transfer; (2) the dates of the construction, purchase, or other acquisition, by such municipality, or public electric light and power district, of such power plant, distribution system, or transmission lines, including all replacements, extensions, repairs, and betterments, together with a detailed statement of the actual cost; (3) a detailed description of such parts of the utility to be sold as, between the time of acquisition thereof and the time of the sale under consideration, shall have become obsolete, or shall have been sold, transferred, lost, destroyed, abandoned, or otherwise disposed of by such municipality or public electric light and power district, and the cost of such part of the utility, including extensions or additions thereto, and (4) a complete schedule of the rates and charges made or levied by such municipality or public electric light and power district for electric current, and a full and complete statement showing the

financial condition and the receipts and disbursements of such municipality or public power district in the operation of the utility during the preceding three-year period, and a statement of the bonded indebtedness, if any, of such municipality or public power district in connection with its ownership or operation of the utility, including the amount of all bonds issued and paid.

Sec. 4. That section 70-509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-509. Any instrument, statement and report, or certificate filed with the ~~Department of Water--Resources~~ Nebraska Power Review Board, as provided for in sections 70-504 to 70-515 Chapter 70, article 5, or certified copies thereof, shall be competent evidence in any hearing or proceeding involving the valuation of the electric light and power plant, distribution system, or transmission lines covered by the statement and report and certificate, for rate-making purposes, taxation, or in any other matter in which the facts and statements in such instrument, statement and report, or certificate, may be involved or drawn in question, and the purchaser thereof and his her, or its successor or assigns, shall be forever estopped to deny the facts set forth in such instrument, statement and report, or certificate.

Sec. 5. That section 70-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-601. As used in ~~sections--70-604--to--70-679~~ Chapter 70, article 6, unless the context otherwise requires:

(1) Public power district, public irrigation district, public power and irrigation district, or district, shall mean a district organized under ~~sections 70-604--to--70-679~~ Chapter 70, article 6 either as originally organized or as the same may from time to time be altered or extended, and shall include, when applicable, rural public power districts organized under Chapter 70, article 8 and subject to Chapter 70, article 6.

(2) Municipality, when used in relation to the organization of a public power district, shall mean any county, city, incorporated village, or voting precinct in this state; but when used in relation to the election of successors to the board of directors of a public power district, as provided in sections 70-610 to 70-618,

municipality or municipalities, comprising such public power district, shall be deemed automatically to be extended so as to include each incorporated city or village to which the public power district shall furnish or sell electrical energy either at retail to the inhabitants of such city or village or at wholesale to the city or village to be resold by it if the sale at wholesale is for more than fifty per cent of the power requirements of the city or village. When the public power district ceases to sell electrical energy at retail to the inhabitants of the city or village, or at wholesale to the city or village, for more than fifty per cent of its the power requirements, such city or village shall cease to be a part of the public power district;

(3) Governing body, whenever used in relation to any municipality, shall mean the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body shall mean the county board of the county in which the precinct is located;

(4) Irrigation works shall mean any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale or furnishing of water supply or storage of water for irrigation purposes, or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power shall include any and all electrical energy generated, distributed, bought, or sold for purposes of lighting, heating, power, and any and every other useful purpose whatsoever; and

(6) Plant or system shall include any and all property owned, used or operated, or useful for operation, in the generation by means of water power, steam, or other means, or the transmission, distribution, sale or purchase of electrical energy for any and every useful purpose, including any and all irrigation works, as defined herein, which may be owned, used, or operated in conjunction with such power plant or system.

Sec. 5. That section 70-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-602. A public power district may be created as hereinafter provided, and when so created, shall be a public corporation and political subdivision of this state, and may sue or be sued in its corporate name. A public power district may be composed of the territory of one or more municipalities as defined in subsection (2) of section 70-601, whether contiguous or otherwise, but no city, village, or voting precinct shall be divided in the formation of a public power district. Nothing in ~~sections-70-604-to-70-679~~ Chapter 70, article 6 shall be construed to prevent the organization of a district within, or partly within, the territorial boundaries of another district organized hereunder, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of one such district, do not nullify, conflict with, or materially affect those of, or on the part of, another such district.

Sec. 7. That section 70-603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-603. A public power district, or public irrigation district, or public power and irrigation district, may be organized under the provisions of ~~sections-70-604-to-70-679~~ Chapter 70, article 6 by the filing in the office of the ~~Department of Water Resources of the State of~~ Nebraska Power Review Board of a petition in compliance with requirements set forth in sections 70-604 to 70-606, and the approval of the petition by the department Nebraska Power Review Board.

Sec. 8. That section 70-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-604. The petition shall be addressed to the ~~Department of Water Resources~~ Nebraska Power Review Board, and state in substance that it is the intent and purpose of the petitioners by such petition to create a district under the provisions of ~~sections-70-604-to-70-679~~ Chapter 70, article 6, subject to approval by the department Nebraska Power Review Board. The petition must state and contain:

(1) The name of the proposed district, which name shall contain, if the district is to engage in the electric light and power business, the words public power district. If the proposed district is to engage in the business of owning and operating irrigation works, the name shall include the words public irrigation district; Provided, if electric light and power are the major

business of such district it need not include these words in its name. A district may be organized to engage only in the electric light and power business, only in the business of owning and operating irrigation works, or to engage in both of such businesses;

(2) The names of the municipalities constituting the proposed district, and the boundaries thereof;

(3) A general description of the nature of the business which the district intends to engage in, and the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the proposed district;

(5) A statement that the proposed district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) Where When the Director--of--Water--Resources Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable such subdivisions shall be of substantially equal population; and

(7) Except in a public power district having within its proposed boundaries twenty-five or more cities or villages, the names and addresses of the members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve until their successors are elected and qualified. In any proposed district having within its boundaries twenty-five or more cities and villages, the petition shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within thirty days after the approval of the formation of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first general state election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second general state election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third general state election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, in case the district has within its proposed

boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Sec. 9. That section 70-604.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-604.05. When it appears that a district or districts is or are in noncompliance with the provisions of ~~this act~~ Chapter 70, article 6, the corporate amendments required to conform ~~to the provisions of this act~~ shall be made generally in accordance with the procedures and requirements contained in Chapter 70, article 6, as well as the additional provisions of this act. In the absence of voluntary amendment anytime after one year from July 21, 1967, any person residing in the geographical area of alleged noncompliance, or any ~~public power district; public power and irrigation district; or any two or more of such districts,~~ public power and irrigation district; or any two or more of such districts, may file a complaint with the ~~Department of Water Resources~~ Nebraska Power Review Board against one or more other districts alleging the area of noncompliance of such other districts, whereupon the ~~Director of Water Resources~~ Nebraska Power Review Board shall issue an order directed to the alleged noncomplying district granting a hearing and requiring it to show cause why an amended petition for creation eliminating such noncompliance should not be filed for approval. Thirty-three days' notice of hearing, which includes mailing time, shall be given to such alleged noncomplying district by either registered or certified mail. The alleged noncomplying district may appear by answer or by petition for amended petition for creation of the district. The burden of proof of noncompliance shall be upon the complainant and of proposed amendments upon the proposer. If the ~~Director of Water Resources~~ Nebraska Power Review Board finds that an amended petition for creation should be made, and the alleged noncomplying district has not proposed an acceptable one, the ~~director~~ Nebraska Power Review Board shall frame the amendment to be approved after continuing the hearing to receive such evidence as may be offered by the parties having appeared before the ~~department~~ Nebraska Power Review Board regarding the contents of the amendment to be framed by the ~~director~~ Nebraska Power Review Board.

The members of the board of directors of any noncomplying district, including any district failing to comply with an amended petition as framed by the ~~director~~ Nebraska Power Review Board, shall each be liable for a civil penalty of fifty dollars for each day of noncompliance which continues after thirty days following final adjudication of noncompliance. Such penalty shall be recovered for the benefit of the Permanent School Fund

in an action brought by the Attorney General in the district court for Lancaster County. Service of summons in such action may be had anywhere in the state. No member of any such board shall receive any compensation or reimbursement of expenses during the period for which he or she is liable to such penalty, nor shall he or she be eligible as a candidate for reelection.

Sec. 10. That section 70-604.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-604.06. An appeal may be taken to the Supreme Court from any final action of the ~~Director of Water Resources~~ Nebraska Power Review Board in the same manner as appeals are taken from decisions of the ~~State Railway Public Service~~ Commission.

Sec. 11. That section 70-607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-607. Upon receipt of such petition it shall be the duty of the ~~Department of Water Resources~~ Nebraska Power Review Board at once to make an investigation of the proposed district and of its proposed plants, systems, or irrigation works, and, if deemed by the ~~department~~ Nebraska Power Review Board feasible and conforming to public convenience and welfare, the ~~department~~ Nebraska Power Review Board, or its successor, by its executive head, shall thereupon and within thirty days from the receipt of such petition, execute a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved. ~~;-Provided, that in the matter of petitions filed by public power districts or public power and irrigation districts, the Director of Water Resources may request the Nebraska Power Review Board to conduct any investigation or hearing that might be required under this section or section 70-663.~~

Sec. 12. That section 70-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-608. The ~~Department of Water Resources~~ Nebraska Power Review Board shall immediately cause one of the certificates to be forwarded to and filed in the office of the Secretary of State and the other one in the office of the county clerk of the county in which the principal place of business of the district is located. Thereupon such district under its designated name shall be and constitute a body politic and corporate.

Sec. 13. That section 70-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-610. (1) After the selection of the original board of directors of a district as provided for in sections 70-604 and 70-609, their successors shall, except as provided in this section, be nominated and elected and shall take office, subject to the provisions of ~~sections 70-604 to 70-672~~ Chapter 70, article 6. Registered voters residing within the voting precincts in which any or all of the precinct is served by a public power district, except those areas specifically excluded in the chartered territory, shall be qualified electors of such public power district and shall be eligible to cast ballots for the directors.

Any person filing nomination papers as a candidate for director shall file such nomination papers as provided in Chapter 32. A candidate for director shall be a qualified elector and shall reside within the chartered territory or subdivision as defined in the charter of the district.

In districts receiving annual gross revenue of less than forty million dollars the candidates for district director shall not appear on the primary ballot. Candidates for directors of such districts shall file applications for nomination with the Secretary of State on or before August 1 of each general election year. In such districts the candidates receiving the highest number of votes at the general election shall be declared duly elected to the offices for which they were candidates.

In those districts receiving annual gross revenue of forty million dollars or more, there shall be a treasurer's receipt from the candidate's county of residence accompanying the application for nomination in the amount of twenty-five dollars, and in those districts receiving annual gross revenue of less than forty million dollars, there shall be a treasurer's receipt from the candidate's county of residence in the amount of ten dollars.

(2) Such nomination and election of directors, as referred to in subsection (1) of this section, shall be by separate nonpartisan ballot. If, after a primary election in a district receiving annual gross revenue of forty million dollars or more, there shall be a vacancy on the ballot for members of board of directors through any cause whatever, the ~~man~~ person polling the third highest in the primary shall be the candidate, and if two

vacancies exist then the third and fourth highest in the primary shall be the candidates. If there were no third and fourth highest in the primary, then candidates may file by petition, by securing signatures of ten per cent of the legal voters voting for Governor or President within the district at the preceding general election, and if more persons file than there are places vacant, the candidates shall be chosen by drawing for place. Any such petition must be filed with the Secretary of State not less than sixty days prior to the general election. The petition must show the name and address of the candidate, the office to be filled, and the names and addresses of the signers, the truth of which must be shown by the circulator or circulators thereof by the affidavit filed with such petition. In those districts receiving annual gross revenue of forty million dollars or more, there shall be a treasurer's receipt from the candidate's county of residence accompanying the petition in the amount of twenty-five dollars, and in those districts receiving annual gross revenue of less than forty million dollars, there shall be a treasurer's receipt from the candidate's county of residence in the amount of ten dollars. A vacancy shall be deemed to exist whenever any person shall cease for any reason to be a candidate for the office of member of board of directors for which he or she was nominated in the primary or when no person was nominated for such office in the primary. It shall be the duty of all state and local officers and officers of election to perform all duties imposed upon them by the laws of this state pertaining to primary and general elections, insofar as applicable to the election of directors of districts organized under the provisions of ~~sections--70-604--to 70-672~~ Chapter 70, article 6. Each public power district shall pay for the election expenses of nominating and electing its directors as provided in this section. Except as provided in this section, the district shall pay to each county wherein the name of one or more candidates appears upon the ballot as follows: Counties having a population of less than three thousand inhabitants, seventy-five dollars; counties having a population of three thousand but less than nine thousand inhabitants, one hundred fifty dollars; counties having a population of nine thousand but less than fourteen thousand inhabitants, two hundred dollars; counties having a population of fourteen thousand but less than twenty thousand inhabitants, two hundred fifty dollars; counties having a population of twenty thousand but less than sixty thousand inhabitants, three hundred dollars; counties having a population of sixty thousand but less than one hundred thousand inhabitants, fifteen hundred dollars; counties having a population of one hundred thousand but less than two hundred thousand inhabitants,

three thousand dollars; and counties having a population of two hundred thousand inhabitants or more, fifty-five hundred dollars. The population of a county for purposes of this section shall be the population as determined by the most recent federal decennial census.

When the name of one or more candidates of a district appears on ballots in less than one half of the precincts in a county, the cost to the district shall be reduced fifty per cent. When the name of one or more candidates of a district appears on ballots in less than one-tenth of the precincts in a county, there shall be no cost to the district. Election expenses shall be due and payable by each public power district within thirty days after receipt of a statement from the county.

Sec. 14. That section 70-612, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-612. Subject to the provisions of sections ~~70-604 to 70-672~~ Chapter 70, article 6, and subject to the approval of the ~~Department of Water Resources~~ Nebraska Power Review Board, the board of directors of a public power district may amend the petition for its creation to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of the directors. Each subdivision shall be composed of one or more voting precincts, and the total number of electors in each such subdivision shall be approximately the same; Provided, that when no less than ninety per cent of the population of each of two or more such subdivisions is within the corporate limits of any city, members of the board of directors may be nominated and elected at large from such city; and provided further, that in the event a district formed comprises three or more counties, and is solely engaged in furnishing electric light and power to rural customers, or engaged in furnishing electric light and power and in the business of owning and operating irrigation works, then and in that event such subdivisions may be formed by following county boundary lines without regard to population; if in the judgment of the ~~Director of Water Resources, for the Department of Water Resources~~, Nebraska Power Review Board the interests of the rural users of electricity or of users of irrigation water service in such district will not be prejudiced thereby.

Sec. 15. That section 70-621, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-621. The board of directors may adopt rules and regulations, or by-laws not inconsistent with the provisions of ~~sections--70-604--to--70-679~~ Chapter 70, article 6, for the conduct of the business and affairs of the district.

Sec. 16. That section 70-625.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-625.02. It is declared to be the policy of the State of Nebraska that electric transmission facilities and interconnections which are defined as being electric lines having a rating of thirty-four thousand five hundred volts and higher will be provided and made available to all power agencies so as to result in the lowest possible cost for the transmission and delivery of electric energy over the transmission and interconnected facilities of any public power district, public power and irrigation district, individual municipality, group of municipalities registered with the Nebraska Power Review Board, governmental subdivision, or nonprofit electric cooperative corporation.

Sec. 17. That section 70-626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-626. Subject to the limitations of the petition for its creation and all amendments thereto, a ~~public-power~~ district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use or operate any electric light and power plants, lines and systems, either within or beyond, or partly within and partly beyond, the boundaries of the district, and may engage in, or transact business, or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or agency, or with the government of the United States, the Rural Electrification Administration, the Public Works Administration, or with any officer, department, bureau, or agency thereof, or with any corporation organized by federal law, including the Reconstruction Finance Corporation, or any successor thereof, or with any body politic or corporate, for any of the purposes above mentioned, or for or incident to the exercise of any one or more of the foregoing powers, or for the generation, distribution, transmission, sale, or purchase of electrical energy for lighting, power, heating, and any and every other useful whatsoever, and for any and every service involving, employing or in any manner pertaining to the use of, electrical energy, by whatever

means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation, of an existing electric light and power plant, lines, or system, from any person, firm, association, or private corporation by any such power district, a copy of the proposed contract shall be filed with the ~~Department of~~ Water Resources Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise thereunder until after such period of thirty days has expired.

Sec. 18. That section 70-626.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-626.01. A ~~public power district or public power and irrigation district, individual municipality, or group of municipalities registered with the Nebraska Power Review Board~~ which is engaged in the generation and transmission of electrical energy, ~~both all~~ of which are hereinafter referred to in ~~sections 70-625:02 and 70-626:04 to 70-626:04~~ Chapter 70, article 6 by the term generating power agency, shall be required to sell electrical energy at wholesale under the terms and conditions of a fair and reasonable contract directly to any municipality, ~~registered group of municipalities, other public power or public power and irrigation district, political subdivision in the state, or any nonprofit electric cooperative corporation organized under Chapter 70, article 7, all of which are hereinafter referred to in sections 70-625:02 and 70-626:04 to 70-626:04~~ Chapter 70, article 6 by the term distribution power agency, when such distribution power agency makes application for the purchase of electrical energy, if such sale is not in violation of an agreement of the generating power agency approved by the Nebraska Power Review Board and such generating power agency has the requested amount of electrical energy available for sale, and the distribution power agency agrees to make or pay for the necessary physical connection with the electrical facilities of such generating power agency.

Sec. 19. That section 70-628, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628. In addition to the rights and powers enumerated in ~~sections--70-601--to--70-679~~ Chapter 70, article 6, and in no manner limiting or restricting the same, such each district shall be deemed to be and shall have and exercise each and all of the rights and powers of a public electric light and power district or public power district within the meaning of sections 70-501 to 70-503.

Sec. 20. That section 70-629, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-629. Except for the authority to make assessments granted by section 70-667 to districts organized under or subject to Chapter 70, article 6, the district shall have no power of taxation, and no governmental authority shall have the power to levy or collect taxes for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district or upon which the district may be or become in any manner liable.

Sec. 21. That section 70-631, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-631. Any district organized under or subject to Chapter 70, article 6, hereunder shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability or obligation of such district for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) from revenue, income, receipts and profits derived by the district from its operation and management of power plants, systems, irrigation works, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom, or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it.

Sec. 22. That section 70-636, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-636. The directors of any district organized under or subject to the provisions of Chapter 70, article 6 sections 70-601 to 70-679 are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, or other service, sold by the district.

Sec. 23. That section 70-645, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-645. Nothing in sections 70-644 to 70-654 contained shall prevent the district from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness to the federal government; Provided, that the State of Nebraska shall never pledge its credit or funds, or any part thereof, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under or subject to the provisions of Chapter 70, article 6. sections 70-601 to 70-679.

Sec. 24. That section 70-647, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-647. In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, warrants, or other evidences of indebtedness, issued by any district organized under or subject to Chapter 70, article 6 sections 70-601 to 70-679, each such district may agree with such purchasers or holders that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, or in the event of default in performance of any duty or obligation of such district in connection therewith, such purchasers or holders, or trustee selected by them, may take possession and control of the business and the property of the district, and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any there be, of the revenues of the district as follows:

(1) In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, or other evidences of indebtedness, so far as such net revenues will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in

full all of the interest; and (2) if any sums shall remain after the payment of interest as aforesaid, then in the payment of the revenue debentures, notes, warrants, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata when the money available is not sufficient to pay in full. When all legal taxes and charges, and all arrears of interest, and all matured revenue debentures, notes, warrants, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the district shall then be restored to such district. The privilege herein granted shall be a continuing one as often as the occasion therefor may arise.

Sec. 25. That section 70-648, Peissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-648. The board of directors of any district organized under or subject to Chapter 70, article 6 issuing revenue debentures, notes, warrants, or other evidences of indebtedness, ~~under sections 70-641 to 70-679,~~ is hereby also authorized and empowered to agree and contract with the purchasers or holders thereof that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, issued, or in the event of default in the performance of any duty or obligation under any agreement by such district, the holder or holders of such revenue debentures, notes, warrants, or other evidences of indebtedness then outstanding shall be entitled as a matter of right, upon application to a court of competent jurisdiction, to have appointed a receiver of the business and property of the district, including all tolls, rents, revenue, issues, income, receipts, profits, benefits, and additions derived, received or had thereof or therefrom, with power to operate and maintain such business and property, collect, receive, and apply all revenue, income, profits, and receipts arising therefrom, and prescribe rates, tolls, and charges, in the same way and manner as the district might do. Whenever all defaults in the payment of principal of, and interest on, such revenue debentures, notes, warrants, or other evidences of indebtedness, and any other defaults under any agreement made by the district, shall have been made good, such receiver shall be discharged by the court and shall therefore surrender control of the business and possession of the property in his or her hands to the district.

Sec. 26. That section 70-655, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-655. The board of directors of any district organized under sections-70-694-to-70-679 or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges, for electrical energy, water service, water storage, and for any and all other commodities, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

Sec. 27. That section 70-662, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-662. (1) A petition for the creation of a district organized under or subject to the provisions of sections-70-694-to-70-679 Chapter 70, article 5 may be amended, as provided in this section. Any ~~public-power district, public-irrigation-district, or public-power-and irrigation~~ district, now existing or hereafter created under or subject to the provisions of said--sections, Chapter 70, article 6 may eliminate, detach, reduce, and subdivide area and territory from within the boundaries of such district, if such district does not own or operate any electric light and power plants, lines or systems, or irrigation works within such territory to be so eliminated or detached. Any such district may add to, increase, enlarge its area and territory, or may amend its charter to provide for a change in the general description of the nature of the business in which the district is engaged and the location and method of operation of the power plants and systems or irrigation works of the district proposed in its charter, as long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of such district do not nullify, conflict with, or materially affect those of, or on the part of, any other district.

(2) Any such district, referred to in subsection (1) of this section, may amend its charter to provide for a change in its name or a change in the location of its principal place of business, and may reduce or increase the number of members of its board of directors. No such

elimination or detachment, or increase or enlargement, of the territory of a district, or change in its principal place of business, its name, or the number of members of its board of directors, or change in the general description of the nature of its business or methods of operation, shall occur unless authorized by the affirmative vote of three-fifths of all the directors of the district involved.

Sec. 28. That section 70-663, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-663. Upon such authorization occurring, the proposed amendment shall thereupon be submitted to the ~~Department of Water Resources of the State of~~ Nebraska Power Review Board, together with a petition setting forth the reasons for the adoption of such amendment, and requesting that the same be approved. The ~~department~~ Nebraska Power Review Board shall thereupon fix the time and place for hearing, to be given by publication for three consecutive weeks in two legal newspapers of general circulation within such district. Such notice shall set forth in full the proposed amendment. The cost of such publication shall be paid by such district. Any person residing in such district, or affected by the proposed amendment, may appear at such hearing, and contest the approval by the ~~department~~ Nebraska Power Review Board of such proposed amendment.

Sec. 29. That section 70-664, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-664. Unless it shall appear affirmatively that the adoption of such proposed amendment will be contrary to the best interests of such district, or that it will jeopardize and impair the rights of the creditors of such districts, or of other persons, the ~~Department of Water Resources~~ Nebraska Power Review Board shall issue in duplicate a certificate of approval of such proposed amendment, and cause one copy to be filed in the office of the Secretary of State of the State of Nebraska and one copy to be filed in the office of the county clerk of the county in which is located the principal place of business of the district.

Sec. 30. That section 70-665, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-665. Such proposed amendment shall become effective and in full force immediately upon the issuance

of such certificate of approval by the ~~Department of Water Resources~~ Nebraska Power Review Board. Thereupon and thereafter the district shall, as in case of the original district, be a public corporation and political subdivision, and operate and function accordingly in such reduced and subdivided area, or such increased and enlarged area, under or subject to the terms, powers, privileges, and conditions of sections ~~70-604 to 70-679~~ Chapter 70, article 6.

Sec. 31. That section 70-666, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-666. Whenever a petition signed by a majority of the members of the board of directors or by twenty-five or more qualified electors of the state residing within the territorial boundaries of any district organized under or subject to and by virtue of sections 70-604 to 70-679 Chapter 70, article 6, shall be presented to the ~~Department of Water Resources of the State of Nebraska~~ Nebraska Power Review Board, praying for the dissolution of such district, and it shall appear from the petition that such district has no property of any kind, owes no debts of any kind, that the district is not functioning, has ceased to function, and probably will not function in the future, the department Nebraska Power Review Board shall forthwith publish a notice for three consecutive weeks in the legal newspaper published in the district which has the largest circulation therein, or, if no legal newspaper is published in the district, then in any legal newspaper widely circulated therein, setting forth, in substance and in a clear and concise manner, the nature and prayer of the petition, and setting a time and place for a public hearing by the department Nebraska Power Review Board upon the petition. After such hearing and such independent investigation as may be deemed advisable, the department Nebraska Power Review Board shall grant or reject the prayer of the petition, and, if the prayer of the petition is granted, the department Nebraska Power Review Board shall thereupon issue its certificate declaring the district dissolved and terminated. One duly certified copy of such certificate shall be immediately filed by the department Nebraska Power Review Board in its office with the original organization records of the district. The department Nebraska Power Review Board shall also immediately file one such certified copy in the office of the Secretary of State, and another such certified copy in the office of the county clerk of the county in which the principal place of business of such district was last located. The district shall thereupon be dissolved and cease to exist. The persons filing such petition for dissolution shall

advance and pay the necessary expense incurred by the department Nebraska Power Review Board in the investigations made, and the proceedings and hearings held or conducted, pursuant to the provisions of this section.

Sec. 32. That section 70-667, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-667. All power plants and systems, and all irrigation works, constructed or otherwise acquired, or used or operated by any district organized under or subject to the provisions of sections--70-604--to--70-672 Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated, are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement, and all provisions of law now applicable to electric light and power corporations, or to irrigation districts, or to privately-owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, or other acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under sections--70-604 to--70-672 or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under sections--70-604--to--70-672 Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects, and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred. The procedure to condemn property shall be exercised in the manner set forth in sections--76-794--to--76-724 Chapter 76, article 7.

Sec. 33. That section 70-670, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-670. In addition to any other rights and powers hereinabove conferred upon any district organized under or subject to Chapter 70, article 6, sections 70-601 to 70-672, 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 ~~sections 76-704 to 76-724~~ Chapter 76, article 7. 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 ~~public-power~~ 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.

Sec. 34. That section 70-672, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-672. Whenever the directors of an irrigation district vote to acquire and appropriate by the exercise of the power of eminent domain any water being used for power purposes, or whenever any person, firm, association, corporation, or organization seeks to acquire any water being used for power purposes and shall be unable to agree with the user of such water for power purposes upon the compensation to be paid to such power user, the procedure to condemn property shall be exercised in the manner set forth in ~~sections--76-704--to 76-724~~ Chapter 76, article 7.

Sec. 35. That section 70-680, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-680. No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any ~~public power-district-or-public-power--and-irrigation~~ district organized under or subject to Chapter 70, article 6, organized--or--created--pursuant--to--the--provisions--of Chapter 70, article 6, or of any officer, board, head of any department, agent, or employee of such ~~public-power district-or-public-power-and-irrigation~~ district in any proceeding or court action in which the ~~public-power~~

~~district or public power and irrigation~~ district or any officer, board, head of department, agent, or employee is a party litigant in its, or his, or her official capacity.

Sec. 36. That section 70-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-802. Unless AS used in Chapter 70, article 8, unless the context otherwise requires:

(1) ~~Department~~ means ~~Department of Water Resources Board~~ shall mean the Nebraska Power Review Board;

(2) The terms public power district and district as used in sections ~~70-801 to 70-808~~ Chapter 70, article 8 shall each mean the same and also have the same meaning as the term public power district as applied to public corporations created under the provisions of article 6, Chapter 70, and amendments thereof;

(3) Petitioner means shall mean the corporation or association which presents a petition to the ~~Department of Water Resources~~ Nebraska Power Review Board for the creation of a public power district pursuant to the provisions of ~~sections 70-801 to 70-803~~ Chapter 70, article 8;

(4) Electric utility means shall mean the business of conducting or carrying on, in service to the public, any one or more of the functions or operations of generation, transmission, distribution, sale, and purchase of electrical energy for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;

(5) Electric cooperative corporation means shall mean a corporation organized under ~~sections 70-701 to 70-738~~ Chapter 70, article 7; and

(6) Rural area means shall mean any area not included within the boundaries of any incorporated city or village.

Sec. 37. That section 70-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-803. Any electric cooperative corporation, whether organized or incorporated under the laws of this state or of any other state, which shall own and operate within this state any electric utility engaged in furnishing electric energy to customers in a rural area, may file in the office of the ~~Department--of--Water Resources--of--the--State--of~~ Nebraska Power Review Board a petition for the creation of a public power district, which petition must state and contain:

(1) The name of the proposed district, incorporating in each name the words public power district;

(2) The location of the principal place of business of the proposed district;

(3) The names of the municipalities within the proposed district and the boundaries thereof, including within the same, but not limited to all municipalities served by the petitioner in its electric utility business;

(4) A general description of the nature of the business in which the proposed district is to engage, the location and method of operation of the electric utility both theretofore operated by the petitioner and as proposed for the district when created;

(5) A statement that the proposed district shall not have the power to levy taxes nor to issue bonds which shall be general obligations of the district;

(6) The names and the addresses of the members of the board of directors of the district, which board shall consist of not less than five nor more than twenty-one members, except where the district comprises or proposes to operate in more than fifty counties in the state in which case the number shall be seven, who shall serve until their successors are elected and qualified as provided for in ~~sections 70-801--to--70-800~~ Chapter 70, article 8; the directors named shall be divided as nearly as possible into three equal groups, (a) the members of the first group to hold office until their successors elected at the first general state election thereafter shall have qualified, (b) the members of the second group to hold office until their successors elected at the second general state election thereafter shall have qualified, and (c) the members of the third group to hold office until their successors elected at the third general state election thereafter shall have qualified; and after the name of each director, it shall state to which of the three groups he or she belongs;

(7) A statement in substance that the proposed district when created pursuant to the provisions of ~~sections 70-894 to 70-898~~ Chapter 70, article 8, shall be a public power district subject to and governed by the provisions of article 6, Chapter 70, and all other provisions of law, insofar as the same are applicable to public power districts in this state after their creation; and

(8) Duly certified copies of documents and records of proceedings preceding the filing of the petition which must include and show the following: (a) Due authorization of and an irrevocable covenant for the complete dissolution of the corporate existence of the petitioner, such dissolution to be effective when, as, and if the petition is approved and the proposed district created; (b) due authorization of and irrevocable covenant for the absolute assignment, transfer, grant, deed, and conveyance of all of the property and assets of the petitioner to the district when, as, and if the petition is approved and the district created, including an itemized and detailed description of all of said property and assets, the location thereof, and the exact nature and amount of the consideration and terms of each such assignment, transfer, grant, deed, and conveyance, and further including the names and addresses of the officers of the petitioner authorized to execute, acknowledge, and deliver any and all instruments and documents necessary or proper to fully consummate said transaction; and (c) duly certified copies of resolutions of the stockholders or members of the petitioner authorizing the execution and filing of the petition and the prosecution of the same to conclusion.

Sec. 33. That section 70-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-804. Upon receipt of such petition the department board shall immediately make an investigation of the proposed district, of all matters set forth in the petition, and, as the department board may deem necessary or proper, of any other facts and circumstances surrounding the existing business and operation of the petitioner, its proposed dissolution and transfer of its assets to the district. The department board shall also conduct a public hearing upon such petition after publishing a notice of the time and place of such hearing for three consecutive weeks in any legal newspaper widely circulated in the territory comprising the proposed district. The petitioner shall pay the necessary expenses incurred by the department board in making investigations and conducting hearings pursuant to the

provisions of ~~sections--70-804--to--70-808~~ Chapter 70, article 8.

Sec. 39. That section 70-805, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-805. At such public hearing any interested person, firm, association, or corporation may appear and present evidence or argument in support of or opposition to such petition. After such hearing and such independent investigation as may be deemed advisable, if the department board finds that the proposed district and its proposed operation of an electric utility are feasible and conform to public convenience and welfare, the department board shall thereupon and without delay issue a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved. The department board shall cause said certificate to be filed as provided in section 70-608, and thereupon such district under its designated name shall be and constitute a body politic and corporate and thenceforth shall be a public power district governed by all provisions of article 6, Chapter 70, and of other pertinent statutes, insofar as the same pertain to public power districts after their creation.

Sec. 40. That section 70-806, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-806. The petitioner may appeal from the decision of the department board dismissing the petitioner's petition either to the district court for the county in which the capital of this state is located or to the district court for the county in which, if in this state, the principal place of business of the petitioner is located. Such appeal shall be taken by filing notice of such appeal with the department board within twenty days after receiving written notice of such decision by executing and filing with the department board a bond to the State of Nebraska with sufficient surety, to be approved by the Secretary of State, conditioned upon the faithful prosecution of the appeal and the payment of all costs that shall be adjudged against appellant. Within thirty days after the filing of such notice of appeal and bond, the department board shall prepare and file in the office of the clerk of the proper district court a complete transcript of the proceedings before the department board, and such appeal shall be entered, tried, and determined de novo upon formal pleadings as in a cause in equity, the petition of appellant to be filed within thirty days after filing of

the transcript.

Sec. 41. That section 70-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-807. Any interested person, firm, or corporation may likewise appeal from a decision of the department board granting the petition, in like manner and times as aforesaid, except that such appellant shall also be required to furnish a bond to the petitioner and district, with sufficient surety, approved by the Secretary of State, conditioned that in the event of adjudication against appellant in such appeal, appellant pay all damages sustained by either or both the petitioner and the district by reason of such appeal.

Sec. 42. That section 70-1001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1001. In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

Sec. 43. That section 70-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1002. (1) All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, serving customers at retail in adjoining service areas shall have the authority to enter into written agreements with each other specifying either the service area or customers each shall serve with electric energy. Before such agreements shall be effective, except agreements referred to in subsection (2) of this section, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. In the event that such suppliers fail to consummate such agreements, prior-to

July 17, 1964, except agreements referred to in subsection (2) of this section, the matter shall be referred to the Nebraska Power Review Board created by section 70-1003.

(2) When two or more suppliers serve the same municipality at retail, such agreements shall specify the service areas within such municipality which each supplier is to serve.

(3) It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and, except agreements referred to in subsection (2) of this section, shall require the approval of the Nebraska Power Review Board, and they shall be submitted to the board for amendment upon before the transfer of ownership or control of the facilities serving a service area.

Sec. 44. That section 70-1002.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1002.01. All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, shall have authority to enter into written agreements with each other limiting the areas in which or the customers to which a party to the agreement shall provide or sell electric energy at wholesale. Wholesale electric energy is hereby defined as electric energy which is sold to another agency for resale to the ultimate user, hereafter referred to as the retail customer. Before such agreements shall become effective, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and such amendments shall require the prior approval of the Nebraska Power Review Board. When requested to approve such an agreement or amendment thereto, the Nebraska Power Review Board shall consider whether or not the proposed agreement or amendment can be reasonably expected to provide a reliable wholesale power supply at a reasonable cost for the area covered by the agreement. It may make such investigation as it determines is necessary and hold a hearing if it determines one to be desirable. At the conclusion of its investigation, the Nebraska Power Review Board shall approve the agreement or amendment unless it determines that it cannot be reasonably expected to provide a

reliable wholesale power supply at a reasonable cost for the area covered. Such agreements when approved by the Nebraska Power Review Board shall not be binding upon other suppliers that are not parties to the agreement and the Nebraska Power Review Board shall have no authority to impose conditions that will be binding or applicable to other suppliers that are not parties to such agreements. Such agreements shall not be considered as establishing service areas within the meaning of Chapter 70, article 10.

Sec. 45. That section 70-1002.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1002.03. When an any electric generation facility or transmission facility over seventy thousand volts is constructed or acquired, either within or without the State of Nebraska, and the output of the generation or transmission facility would be transmitted over existing transmission facilities of others within this state or transmitted over new transmission facilities to be constructed or acquired within this state or through an interconnection with existing facilities of others within this state, and such transmission of the output would substantially affect the reliability, operation, or safety of the transmission system of a generating power agency or a distribution power agency in this state, as defined in section 70-626.01, the party or parties that would jointly or individually receive the output from such electric generation or transmission facility and the party or parties whose existing transmission system would be so affected shall determine, pursuant to prudent utility practice, what new transmission facilities or interconnection, if any, should be constructed or acquired so that the output of the generation or transmission facility will be transmitted in a reliable and safe manner. As used in this section, prudent utility practice shall mean any of the practices, methods and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. If the parties determine that new transmission facilities or interconnection are to be required, the parties will determine what new transmission facilities should be constructed or acquired and what interconnection should be provided, utilizing to the fullest extent possible the

existing transmission facilities for the maximum benefit of the electric ratepayers of this state. In the event that the parties are unable to agree, before construction begins or the acquisition is finalized, but after having made a reasonable effort to reach agreement, upon any of the terms or conditions of (1) what new transmission facilities are to be constructed or acquired, (2) who shall construct or acquire such new transmission facilities, or (3) agreement for the electrical interconnection of transmission facilities, the matter shall be submitted to the Nebraska Power Review Board for hearing and determination, before construction begins or the acquisition is finalized, in accordance with prudent utility practice as defined in this section and the provisions of sections 70-626.04 and 70-1014, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. Any determination by such board regarding rates shall be advisory only and not binding upon the parties. Rates, tolls, and charges shall be as provided for in section 70-655.

Sec. 46. That section 70-1003, Revised Statutes Supplement, 1980, be amended to read as follows:

70-1003. (1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two lay persons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Members of the board first appointed shall be appointed within thirty days of May 16, 1963. Of the members initially appointed, two shall serve until January 1, 1965, two until January 1, 1966, and one until January 1, 1967. Upon expiration of such terms, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor. ~~;-Provided;-that;-this;-provision;-shall;-not;-be;-interpreted;-to;-create;-a;-vacancy;-on;-the;-board;-with;-respect;-to;-members;-presently;-serving;-and;-whose;-terms;-have;-not;-expired;-and;-provided;-further;-that;-this;-provision~~

~~shall not become mandatory until July 1, 1973.~~ Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, and shall be reimbursed for his or her actual and necessary expenses while so engaged. The board shall have jurisdiction as provided in sections 70-1001 to 70-1022 Chapter 70, article 10, and section 56 of this act.

(2) The board shall meet promptly after its members have been appointed. They shall elect from their members a chairperson and a vice-chairperson. Decisions of the board shall require the approval of a majority of the members of the board.

(3) The board shall employ an executive director and may employ such other staff necessary to carry out the duties pursuant to sections 70-1001 to 70-1022 Chapter 70, article 10, and section 56 of this act. The executive director shall serve at the pleasure of the board and shall be solely responsible to the board. The executive director shall be responsible for the administrative operations of the board and shall perform such other duties as may be delegated or assigned to him or her by the board. The board may obtain the services of experts and consultants necessary to carry out the board's duties pursuant to sections 70-1001 to 70-1022 Chapter 70, article 10, and section 56 of this act.

~~Decisions of the board shall require the approval of a majority of the members of the board.~~

(4) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with the State Energy Office. The State Energy Office shall consider the information in the Nebraska Power Review Board's report when the State Energy Office prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

(a) The assessments for the fiscal year imposed pursuant to section 70-1020;

(b) The gross income totals for each category of the industry and the industry total;

(c) The number of suppliers against whom the assessment is levied, by category and in total;

(d) The projected dollar costs of generation, transmission, and microwave applications, approved and

denied;

(e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;

(f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;

(g) A statistical summary of board activities and an expenditure summary;

(h) A roster of power suppliers in Nebraska and the assessment each paid; and

(i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

Sec. 47. That section 70-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1004. ~~On or before July 4, 1964, each~~ Each supplier which ~~has become~~ becomes a party to an agreement under the provisions of section 70-1002 shall file with the secretary of the board a suitable map or maps, in such form as the board shall prescribe, showing either the service area or customers to be served. Whenever any changes occur in the service area, new maps shall be filed. Each supplier in the state which fails to file a map or maps ~~on or before July 4, 1964,~~ showing its service area or customers to be served as established by agreement shall file a statement with the secretary showing the service area and customers actually served by it, what it claims to be its service area, stating the reason it has not entered into agreements with suppliers in adjoining service areas, and if a dispute exists as to furnishing service to any service area, the nature and extent thereof. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Sec. 48. That section 70-1011, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1011. Except by agreement of the suppliers involved, no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted duplication of facilities. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Sec. 49. That section 70-1012, Revised Statutes Supplement, 1980, be amended to read as follows:

70-1012. Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (1) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one half mile outside its own service area when all owners of electric lines located within one half mile of the extension consent thereto in writing and such consents are filed with the board or (2) for any generation facility when the board finds that: (a) Such facility is being constructed or acquired to replace a generating plant owned by the an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (b) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (c) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory.

Sec. 50. That section 70-1012.01, Revised Statutes Supplement, 1980, be amended to read as follows:

70-1012.01. In the event a supplier terminates construction or acquisition of electric generation or transmission facilities after receiving approval for the

facilities from the Nebraska Power Review Board, the supplier shall file with the board within thirty days of the action taken to terminate construction or acquisition, a statement of the factors or reasons relied upon by the supplier in taking such action. Within ten days after receipt of such a filing, the board shall give notice of the filing to such other suppliers as it deems interested or affected by such action and it shall hold a hearing for the purpose of obtaining such additional information as the board deems advisable or necessary to inform other suppliers and the public of the reasons for such termination. Notice of any such hearing shall be given to those suppliers previously given notice of the filing and to any other parties expressing interest in the approved application. The board shall not have authority to approve or deny the action of a supplier terminating construction or acquisition, and any such filing or hearing shall be advisory and solely for the purpose of informing the board, other suppliers, interested parties, and the ratepayers of this state of the factors or reasons relied upon in taking action to terminate construction or acquisition. Nothing in this section shall constitute or be construed as a defense to any cause of action, including a claim for breach of contract, resulting from such termination.

Sec. 51. That section 70-1014, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1014. After hearing, the board shall have authority to approve or deny the application. Before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

Sec. 52. That section 70-1015, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1015. If any supplier shall commence the construction or finalize or attempt to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities, or any customers are served in violation of the provisions of sections ~~70-1011 to 70-1012~~ Chapter 70, article 10, and section 70-1012 of such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska, until such supplier has complied with the provisions of

sections-70-1001-to-70-1020 Chapter 70, article 10, and section 56 of this act.

Sec. 53. That section 70-1017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1017. Any supplier of electricity at retail shall furnish service, upon application, to any applicant within the service area of such supplier if it is economically feasible to service and supply the applicant. The electric service shall be furnished by the supplier within a reasonable time after the application is made. If the supplier and the applicant cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination within the same rate class, the matter shall be submitted to the board for hearing and determination.

Sec. 54. That section 70-1019, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1019. In any proceeding had before it under the provisions of sections-70-1001-to-70-1020 Chapter 70, article 10, and section 56 of this act, the board shall have authority, by subpoena, to compel the attendance of witnesses, and the production of any books, papers, records, accounts, or other documents which may be necessary to assist in a determination of any matter pending before the board. If any person shall disobey any such subpoena or refuse to testify concerning any matter regarding which he or she may be lawfully interrogated, the district court of Lancaster County, upon application by the board, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

Sec. 55. That section 70-1020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1020. In order to defray the expenses of the Nebraska Power Review Board, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, and also upon all registered groups of municipalities, an assessment each fiscal year in such

sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of the board which may reasonably be anticipated for the fiscal year for which assessment is made, and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each supplier on or before June 1 of each year, and such assessment shall be payable on or before July 1 of each year. Any assessment not paid when due shall draw interest at ~~the rate of six per cent per year until paid a rate equal to the maximum rate of interest allowed per annum under section 1, Legislative Bill 167, Eighty-seventh Legislature, First Session, 1981, as such rate may from time to time be adjusted by the Legislature.~~ The proceeds of such assessment shall be transmitted as received to the State Treasurer for deposit in the state treasury to the credit of the Nebraska Power Review Fund, which is hereby created and which, when appropriated by the Legislature, shall be used solely to administer the provisions of ~~sections 70-1004 to 70-1020 Chapter 70, article 10, and section 56 of this act.~~ Any money in the Nebraska Power Review Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 56. Two or more municipalities owning or operating separate electric systems that join together for the purpose of facilitating the performance of any of their respective powers or duties shall, before such a group of municipalities commences operations, register with the Nebraska Power Review Board on such forms as the board may prescribe and containing such information as the board may request. Such a group shall comply with any additional reporting requirements the board imposes that are applied to individual municipalities. Any action taken by an individual municipality that is subjected to the Nebraska Power Review Board review or approval, shall, if taken by a group of municipalities, be subject to similar review or approval.

Sec. 57. That section 27, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 27. Upon adoption of ordinances in accordance with section 20 of this act, a petition shall be addressed to the ~~Department--of--Water---Resources~~ Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 26 to 34 of this act, subject to approval by the ~~department~~ Nebraska Power Review Board. The petition shall state

the name of the proposed agency, the names of the proposed participating municipalities, the percentage of each participating municipality's total annual firm power requirements provided from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8 during each of the five calendar years preceding the effective date of this act, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Sec. 58. That section 29, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 29. If each of the participating municipalities in an agency required to file a petition with the ~~Department of Water Resources~~ Nebraska Power Review Board pursuant to sections 26 to 34 of this act has, for any one year during the five calendar years preceding the effective date of this act, received at least fifty per cent of its total annual firm power requirements from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, the ~~department~~ Nebraska Power Review Board shall, upon receipt of such petition, review the allegations of the petition. If the ~~department~~ Nebraska Power Review Board determines that the statements in the petition are true, the ~~department~~ Nebraska Power Review Board or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved.

Sec. 59. That section 30, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 30. If any of the participating municipalities in the agency has not received at least fifty per cent of its total annual firm power requirements for any one of the five years preceding the effective date of this act from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, the ~~Department of Water Resources~~ Nebraska Power Review Board, upon receipt of such petition, shall make an investigation of the proposed

agency and its proposed plants and systems. If the department Nebraska Power Review Board determines that the statements in the petition are true and conform to public convenience and welfare and, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8, the department Nebraska Power Review Board or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved. ~~The Director of Water Resources may request the Nebraska Power Review Board to conduct any investigation or hearing that might be required under this section.~~

Sec. 60. That section 31, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 31. Upon final approval the ~~Department of Water Resources~~ Nebraska Power Review Board shall immediately cause one copy of the certificate to be forwarded to and filed in the office of the Secretary of State and the other one to be forwarded to and filed in the office of the county clerk of the county in which the principal place of business of the agency is located. Thereupon such agency under its designated name shall be and constitute a body politic and corporate, and the agency and its directors shall possess the powers provided by law.

Sec. 61. That section 32, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 32. An appeal of any final action taken by the ~~Department of Water Resources~~ Nebraska Power Review Board pursuant to this act may be taken to the Supreme Court in the same manner as appeals are taken from decisions of the Public Service Commission.

Sec. 62. That section 33, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 33. (1) A petition for the creation of an agency which intends to engage in the operation of power projects or the generation or supply of electrical energy may be amended as provided in this section. Upon a

majority vote of the directors, an agency may amend its petition for creation or may amend its charter to provide for a change in the general description of the nature of the business in which the agency is engaged, upon petition to the ~~Department of--Water--Resources~~ Nebraska Power Review Board and approval by the ~~Department--of~~ Water--Resources Nebraska Power Review Board in accordance with the procedure established in sections 26 to 34 of this act.

(2) With respect to the formation, organization, or operation of power projects or the generation or supply of electric energy, the amendments shall be approved if each new proposed participating municipality has for any one year during the five calendar years preceding the effective date of this act received at least fifty per cent of its total annual firm power requirements from a source other than a district or a corporation organized pursuant to Chapter 70, article 6, 7, or 8, and the statements in the petition are deemed by the department Nebraska Power Review Board to be true.

(3) If any new proposed municipality has not received at least fifty per cent of its total annual firm power requirements for any one of the five calendar years preceding the effective date of this act from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, such amendments shall be approved if the department Nebraska Power Review Board, after notice to interested parties and a public hearing, determines that the statements in the petition are true and conform to public convenience and welfare, and so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumptions of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of any other district or a corporation organized under the provisions of Chapter 70, article 6, 7, or 8 or those of any part of such district or corporation.

Sec. 63. That section 34, Legislative Bill 132, Eighty-seventh Legislature, First Session 1981, be amended to read as follows:

Sec. 34. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the agency, the agency shall be conclusively deemed to have been established, except as against the state, in accordance with this act upon proof of the issuance of the certificate issued by the ~~Department--of--Water--Resources~~ Nebraska Power Review Board. A copy of such certificate duly certified by the

~~Department of Water Resources Nebraska Power Review Board~~ shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Sec. 64. That section 51, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 51. The books and records of an agency created pursuant to sections 26 to 34 of this act shall be public records and shall be kept at the principal place of business of such agency. The agency books and records shall be open to public inspection at reasonable times and upon reasonable notice. The agency shall annually cause to be filed with the Auditor of Public Accounts an audit of the books, records, and financial affairs of the agency. Such audit shall be made by a certified public accountant or firm of such accountants and shall be in a form prescribed by the Auditor of Public Accounts. ~~Such audit shall show (1) the gross income from all sources of the agency for the previous year, (2) the gross amount of electrical energy supplied by such agency, (3) the amount expended during the previous year for maintenance, (4) the amount expended during the previous year for plant investments, (5) the amount of depreciation of the plant during the previous year, (6) the cost of supplying electrical energy, including production cost, transmission cost, and distribution cost, (7) the number of employees as of December 31 of each year, (8) the salaries paid employees, and (9) all other facts necessary to give an accurate and comprehensive view of the cost of maintaining and operating the agency.~~ When the audit has been examined and approved by the Auditor of Public Accounts, written copies thereof shall be placed and kept on file at the principal place of business of the agency, and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred twenty days after December 31 of each year.

Sec. 65. That section 53, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 53. Subject to the limitations of the petition for its creation and all amendments thereto, an agency may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, either within or beyond, or partly within and partly beyond, the boundaries of the participating municipalities, and may engage in, transact business, or

enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the United States, or any officer, department, bureau, or agency thereof, any corporation organized by federal law, or any body politic or corporate, for any of the purposes enumerated in this section, or for or incident to the exercise of any one or more of the powers enumerated in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of, electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, or incident to any obligation or indebtedness entered into or incurred by the agency. In the case of the acquisition, by purchase, lease, or any other contractual obligation, of an existing electric light and power plant, lines, or system, from any person, firm, association, or private corporation by any such agency, a copy of the proposed contract shall be filed with the Department of Water Resources Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise thereunder until after such period of thirty days has expired.

Sec. 66. That original sections 70-407, 70-505, 70-506, 70-509, 70-601 to 70-604, 70-604.05, 70-604.06, 70-607, 70-608, 70-610, 70-612, 70-621, 70-625.02, 70-626, 70-626.01, 70-628, 70-629, 70-631, 70-636, 70-645, 70-647, 70-648, 70-655, 70-662 to 70-667, 70-670, 70-672, 70-680, 70-802 to 70-807, 70-1001, 70-1002, 70-1002.01, 70-1002.03, 70-1004, 70-1011, 70-1014, 70-1015, 70-1017, 70-1019, and 70-1020, Reissue Revised Statutes of Nebraska, 1943, sections 70-1003, 70-1012, and 70-1012.01, Revised Statutes Supplement, 1980, and sections 27, 29 to 34, 51, and 53, Legislative Bill 132, Eighty-seventh Legislature, First Session, 1981, and also section 70-623.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.