

LEGISLATIVE BILL 907

Approved by the Governor February 24, 1990

Introduced by Natural Resources Committee, Schmit, 23,
Chairperson; R. Johnson, 34; Morrissey, 1;
Lamb, 43; Smith, 33; Beck, 8; Weihing, 48;
Elmer, 38

AN ACT relating to public power; to amend sections 70-504 and 70-628.01, Reissue Revised Statutes of Nebraska, 1943; to remove restrictions on sales, leases, combinations, mergers, and consolidations by districts; to require a vote of the board of directors for such actions; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 70-504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-504. In the following cases, a sale, lease, or transfer of any electric light or power plant, distribution system, or transmission line shall not be valid unless the sale, lease, or transfer ~~is~~ ~~shall~~ be authorized at any state or municipal election, including a primary or special election, except as otherwise provided in this section, and approved by sixty percent of the electors voting on the proposed matter, except that an election and such approval shall not be required when the sale, lease, or transfer is part of a merger or consolidation of a public power district:

(1) By any city or village to any private person, firm, association, corporation, or ~~any~~ public power district, ~~;~~ except that any city or village may by resolution of the city council or board of trustees sell, lease, or transfer all or part of its electric light or power plant, distribution system, or transmission lines to any public power district, or an electric cooperative, which cooperative has an approved retail service area adjoining such city or village, but ~~;~~ PROVIDED, that such transaction shall not be consummated nor become effective until thirty days' notice of the transaction ~~has~~ ~~shall~~ have been given by the governing body by publication once each week for three successive weeks in such city or village, or, if no newspaper is published therein, then by posting in

five or more public places therein. If, within thirty days after the last publication of such notice or posting thereof, a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein ~~shall~~ ~~be~~ is filed with the municipal clerk, such transaction shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such transaction, the transaction shall not become effective. If no such petitions are filed, the transaction shall become effective at the expiration of such thirty-day period. The power district shall charge fair, reasonable, and nondiscriminatory rates so adjusted as, in a fair and equitable manner, to confer upon and distribute among its customers the benefits of a successful and efficient operation and conduct of the business of the district; or

(2) By any public power district operating lines, owning lines, or operating and owning lines in less than thirteen counties in this state to any other public power district, except (a) where transmission or distribution lines extend into another power district and the board of directors of the selling power district, ~~shall~~, by resolution entered on its records, ~~determine~~ determines that such transmission or distribution lines would serve customers more advantageously in the purchasing power district and that the sale thereof should be made, or (b) sales of any surplus equipment which the selling district, by resolution adopted by its board of directors and entered on its records, determines ~~shall determine~~ that it does not then need and is needed by the purchasing district, which sales are hereby expressly authorized to be made. Except for the referendum election provided for in subdivision (1) of this section, notice of the submission of the proposition shall be given by publication thereof three consecutive weeks in a legal newspaper published and of general circulation in such city, village, or public power district or, if no newspaper is published therein, by posting in five or more public places therein. Any elections herein required in public power districts or public power and irrigation districts shall be held at the same time and in connection with the next regular primary or general election in the state thereafter at which directors of the said public power district are to be nominated or

elected. Any proposals for the sale of lines or other property required to be submitted to an election under the provisions of this section shall be certified by the board of directors of the district selling or disposing of the said property to the county clerk of the respective county or counties wherein such election of directors is to be held in the form of a question to be submitted upon the said ballot not less than thirty days before the said election. The county clerks to whom such certificates are submitted shall cause the same question submitted by the board of directors to be placed upon the same ballot and in proximity to the names of the directors to be nominated or elected in the same district at the next primary or general election. The results of the said election with relation to the said proposal shall be counted, canvassed, and certified in the same manner as the other results of the said election.

Sec. 2. That section 70-628.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628.01. (1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities or ethanol production or distribution facilities, each district shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility or ethanol production or distribution facility with the other district or districts participating therein, and such agreement shall contain such terms, conditions, and provisions consistent with this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as

may be determined by the participating districts and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. As used in For purposes of 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. In no event shall anything in this section be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines or ethanol production or distribution facilities, either alone or in association with another district or districts, ~~in thirteen or more counties in the state~~ may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or

districts with the approval of a majority of the board of directors of each district involved in the sale, lease, combination, merger, or consolidation.

Sec. 3. That original sections 70-504 and 70-628.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.