

LEGISLATIVE BILL 901

Approved by the Governor April 11, 2000

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
Hudkins, 21; Jones, 43; Kremer, 34; Preister, 5; Stuhr, 24

AN ACT relating to public utilities; to amend sections 46-154, 70-609, 70-624.02, 70-624.03, 70-1001, 70-1003, and 70-1023, Reissue Revised Statutes of Nebraska, and section 11-201, Revised Statutes Supplement, 1998; to change provisions relating to the Nebraska Power Review Board and public utility districts and boards of directors; to provide intent; to define terms; to provide powers and duties; to eliminate a bond requirement; to harmonize provisions; to repeal the original sections; and to outright repeal section 70-617, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 11-201, Revised Statutes Supplement, 1998, is amended to read:

11-201. It shall be the duty of the Risk Manager:

(1) To prescribe the amount, terms, and conditions of any bond when the amount or terms are not fixed by any specific statute. The Risk Manager, in prescribing the amount, deductibles, conditions, and terms, shall consider the type of risks to be bonded, the relationship of the bond premium to risks involved, the past and projected trends for bond premiums, the ability of the Tort Claims Fund, the State Self-Insured Property Fund, and state agencies to pay the deductibles, and any other factors the manager may, in his or her discretion, deem necessary in order to accomplish the provisions of sections 2-1201, 3-103, 8-104, 8-105, 11-119, 11-121, 11-201, 37-110, 48-158, 48-609, 48-618, 48-721, 48-804.03, 53-109, 55-123, 55-126, 55-127, 55-150, 57-917, 60-1303, 60-1502, ~~71-1,132.11~~, 71-1,206.13, 71-222.01, 72-1241, 80-401.02, 81-111, 81-151, 81-8,128, 81-1108.14, 81-2002, 83-128, 84-106, 84-206, and 84-801;

(2) To pass upon the sufficiency of and approve the surety on the bonds of all officers and employees of the state, when approval is not otherwise prescribed by any specific statute;

(3) To arrange for the writing of corporate surety bonds for all the officers and employees of the state who are required by statute to furnish bonds;

(4) To arrange for the writing of the blanket corporate surety bond required by this section; and

(5) To order the payment of corporate surety bond premiums out of the State Insurance Fund created by section 81-8,239.02.

All state employees not specifically required to give bond by section 11-119 shall be bonded under a blanket corporate surety bond for faithful performance and honesty in an amount not to exceed one million dollars.

The Risk Manager may separately bond any officer, employee, or group thereof under a separate corporate surety bond for performance and honesty pursuant to the standards set forth in subdivision (1) of this section if the corporate surety will not bond or excludes from coverage any officer, employee, or group thereof under the blanket bond required by this section, or if the Risk Manager finds that the reasonable availability or cost of the blanket bond required under this section is adversely affected by any of the following factors: The loss experience, types of risks to be bonded, relationship of bond premium to risks involved, past and projected trends for bond premiums, or any other factors.

Surety bonds of ~~public power district directors, as required by section 70-617,~~ collection agencies, as required by section 45-608, and detective agencies, as required by section 71-3207, shall be approved by the Secretary of State. The Attorney General shall approve all bond forms distributed by the Secretary of State.

Sec. 2. Section 46-154, Reissue Revised Statutes of Nebraska, is amended to read:

46-154. The board of directors shall provide a payment for each director of not to exceed ~~fifty~~ seventy dollars per day for each day that a director attends meetings of the board or is engaged in matters concerning the district, but not to exceed two thousand eight hundred dollars per annum. Each director shall also be paid necessary traveling expenses actually incurred while engaged in the performance of his or her duties, including

mileage at the rate provided in section 81-1176. ~~for state employees.~~ The board shall fix the compensation to be paid to the other officers named in sections 46-101 to 46-1,111, including the secretary, the assessor, and the treasurer to be paid out of the treasury of the district. The board may also employ a chief engineer, an attorney, and such other agents, assistants, and employees as may be necessary and provide for their compensation.

Sec. 3. Section 70-609, Reissue Revised Statutes of Nebraska, is amended to read:

70-609. Immediately upon the filing of the certificate in the office of the Secretary of State and in the office of ~~such the~~ county clerk, the members of the board of directors named in the petition, or appointed by the Governor in case the district has within its boundaries twenty-five or more cities and villages, shall qualify as provided for in ~~sections~~ section 70-616 and 70-617, and immediately assume the duties of their office. Failure or refusal to qualify shall be deemed to create a vacancy, which shall be filled as provided in section 70-615. The first meeting of the board of directors shall be called by the director first named in the petition who qualifies.

Sec. 4. Section 70-624.02, Reissue Revised Statutes of Nebraska, is amended to read:

70-624.02. The members of the board of directors shall be paid their actual expenses, while engaged in the business of the district under the authority of the board of directors, and, for their services, such compensation as shall be fixed by the board of directors.

The boards of directors of those districts with gross revenue of less than forty million dollars may fix compensation at not to exceed ~~four thousand eight hundred six thousand seven hundred twenty~~ four thousand eight hundred six thousand seven hundred twenty dollars per year as to all members except the president and not exceeding ~~five thousand four hundred seven thousand five hundred sixty~~ five thousand four hundred seven thousand five hundred sixty dollars a year as to the president.

The boards of directors of those districts with gross revenue of forty million dollars or more may fix compensation at not to exceed ~~nine thousand six hundred thirteen thousand four hundred forty~~ nine thousand six hundred thirteen thousand four hundred forty dollars per year as to all members except the president or chairperson of the board and not exceeding ~~ten thousand eight hundred fifteen thousand one hundred twenty~~ ten thousand eight hundred fifteen thousand one hundred twenty dollars per year as to the president or chairperson of the board. All salaries and compensation shall be obligations against and be paid solely from the revenue of the district. No director shall receive any other compensation from the district, except as provided in this section, during the term for which he or she was elected or appointed or in the year following the expiration of his or her term, and resignation from such board of directors shall not be construed as the termination of the term of office for which he or she was elected or appointed. A member of the board of directors of a public power district organized under the laws of this state shall not be limited to service on the board of directors in the district in which he or she has been elected so as to preclude service in similar positions of trust on a state, regional, or national level which are the result of his or her membership as a director on such board. For time expended in his or her duties in such position of trust, the director shall not be limited to any existing provisions of law of this state relating to payment of per diem for services as a member of such board of directors, but shall be entitled to receive such additional compensation as may be provided for such service, regardless of the fact that such compensation may be paid from funds to which his or her district has made contributions in the form of dues or otherwise.

Sec. 5. Section 70-624.03, Reissue Revised Statutes of Nebraska, is amended to read:

70-624.03. The board of directors may establish a plan of insurance, designed and intended for the benefit of the employees of the district and the dependents of employees of the district, and, in the discretion of the board, expend funds of the district for the payment of premiums for such employees' and dependents' group, franchise, or wholesale insurance policies. Members of the board of directors of the district may be considered employees for purposes of this section. The dollar amount of any health insurance premiums paid from the funds of the district for the benefit of a member of the board of directors may be in addition to ~~shall not exceed~~ the amount of compensation authorized to be paid to such director pursuant to section 70-624.02.

Sec. 6. Section 70-1001, Reissue Revised Statutes of Nebraska, is amended to read:

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.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing and form of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the State of Nebraska to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

Sec. 7. Section 70-1023, Reissue Revised Statutes of Nebraska, is amended to read:

~~70-1023.~~ For the purposes of sections ~~70-1023~~ 70-1001 to 70-1027 and section 7 of this act, unless the context otherwise requires:

- (1) Board ~~shall mean~~ means the Nebraska Power Review Board;
- (2) Electric suppliers or suppliers of electricity means ~~shall mean~~ any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;
- (3) Regional transmission organization means an entity independent from those entities generating or marketing electricity at wholesale or retail, which has operational control over the electric transmission lines in a designated geographic area in order to reduce constraints in the flow of electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity;
- (4) Representative organization ~~shall mean~~ means an organization designated by the board and organized for the purpose of providing joint planning and encouraging maximum cooperation and coordination among electric suppliers. Such organization shall represent electric suppliers owning a combined electric generation plant capacity of at least ninety percent of the total electric generation plant capacity constructed and in operation within the state; ~~and~~
- ~~(4)~~ (5) State ~~shall mean~~ means the State of Nebraska; ~~and~~
- (6) Unbundled retail rates means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for the generation, transmission, and distribution of electricity.

Sec. 8. Section 70-1003, Reissue Revised Statutes of Nebraska, is amended to read:

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 laypersons. 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. 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 as provided in sections 81-1174 to 81-1177. ~~for state employees.~~ The board shall have jurisdiction as provided in Chapter 70, article 10.

(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 Chapter 70, article 10. 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 Chapter 70, article 10.

(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.

(5) The board shall annually hold one or more public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market.

(6) The board shall submit an annual report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report shall include:

(a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;

(b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;

(c) To what extent retail rates have been unbundled in Nebraska;

(d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and

(e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(7) The board may submit periodic reports on the information set out in subsection (6) of this section if the board determines that significant changes to those conditions have occurred of which the Governor and the Legislature should be apprised prior to the submission of the next annual report.

(8) The board is authorized to establish working groups of interested parties to assist the board in carrying out the duties set forth in subsections (5) and (6) of this section.

Sec. 9. Original sections 46-154, 70-609, 70-624.02, 70-624.03, 70-1001, 70-1003, and 70-1023, Reissue Revised Statutes of Nebraska, and section 11-201, Revised Statutes Supplement, 1998, are repealed.

Sec. 10. The following section is outright repealed: Section 70-617, Reissue Revised Statutes of Nebraska.