

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 53**

FINAL READING

Introduced by Fischer, 43; Giese, 17; Langemeier, 23.

Read first time January 8, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to public power districts; to amend  
2 sections 70-603, 70-604.01, 70-604.05, and 70-681,  
3 Reissue Revised Statutes of Nebraska, and section  
4 70-604.02, Revised Statutes Cumulative Supplement, 2008;  
5 to change provisions relating to formation, territory,  
6 and operating area of districts; to harmonize provisions;  
7 and to repeal the original sections.

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

1           Section 1. Section 70-603, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           70-603 ~~(1)~~ A district may be organized and may amend  
4 its charter under Chapter 70, article 6, by filing in the office  
5 of the Nebraska Power Review Board a petition in compliance with  
6 requirements set forth in Chapter 70, article 6, and receiving the  
7 approval of the petition by the Nebraska Power Review Board.

8           ~~(2)~~ The chartered territory of each district organized  
9 pursuant to Chapter 70, article 6, and engaged in the operation of  
10 electric generation, transmission, or distribution facilities, or  
11 any combination thereof, in more than fifty counties in this state  
12 shall include the entire state except (a) any county which has a  
13 population exceeding seventy-five thousand inhabitants in which the  
14 district does not sell power and energy directly to the largest  
15 incorporated municipality in such county and (b) any city of the  
16 first class, primary class, or metropolitan class (i) in which the  
17 district does not sell power and energy at retail, (ii) for which  
18 the district does not sell power and energy to another district  
19 or municipality for resale in such first-class, primary-class, or  
20 metropolitan-class city, or (iii) with which the district does not  
21 have a direct electrical interconnection and an interconnection  
22 agreement pursuant to which such city may purchase power and energy  
23 from such district.

24           ~~(3)~~ For purposes of this section, the phrase sell power  
25 and energy directly to the largest incorporated municipality shall

1 mean to sell to a municipally owned and operated electric utility  
2 system.

3           (4) In order to establish charter boundary lines  
4 coincident with voting precinct lines, a district described in  
5 subsection (2) of this section may exclude from its chartered  
6 territory any precinct within or partly within any city which,  
7 pursuant to this section, is to be excluded from the chartered  
8 territory of the district. Any customer whose principal residence  
9 is not in the chartered territory but which residence is being  
10 served at retail by such district may be certified pursuant to  
11 section 70-604.03 to vote for and be eligible to hold office as a  
12 member of the board of directors of such district.

13           (5) The chartered territory of each district organized  
14 pursuant to Chapter 70, article 6, and engaged in the operation of  
15 electric generation, transmission, or distribution facilities, or  
16 any combination thereof, in fifty counties or less in this state  
17 shall include the operating area of the district and such other  
18 areas as may be authorized by other provisions of Chapter 70,  
19 article 6.

20           Sec. 2. Section 70-604.01, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           70-604.01 (1) Except as the same may be further limited  
23 or expanded by requirements in Chapter 70, article 6, the chartered  
24 territory of any district, organized pursuant to and existing by  
25 virtue of, or subject to the provisions of, Chapter 70, article 6,

1 shall include the area in this state within which such district  
2 renders electric service of the nature defined in section 70-604.02  
3 and termed its operating area. There may be included, within  
4 the chartered area of such district, areas which are outside the  
5 operating area as defined in section 70-604.02, but as to which  
6 inclusion is nevertheless authorized by other sections of Chapter  
7 70, article 6.

8 (2) Subject to the requirements of section 70-662 and  
9 the approval of the Nebraska Power Review Board in accordance  
10 with sections 70-663 and 70-664, any district organized pursuant  
11 to Chapter 70, article 6, and engaged in the operation of  
12 electric generation, transmission, or distribution facilities, or  
13 any combination thereof, ~~in fifty counties or less in this state~~  
14 may, in the discretion of the board of directors of such district  
15 and upon a finding by the board of directors of such district that  
16 the inclusion or exclusion thereof would be consistent with the  
17 best interests of the district and its customers, either include  
18 within or exclude from the chartered area all municipalities which  
19 have a population of ~~less~~ fewer than one thousand five hundred  
20 inhabitants and which are within a county where such district  
21 provides electric service but are not otherwise in such district's  
22 operating area.

23 Sec. 3. Section 70-604.02, Revised Statutes Cumulative  
24 Supplement, 2008, is amended to read:

25 70-604.02 The operating area of a district, for purposes

1 of establishing its chartered territory, is the geographical area  
2 in this state comprising:

3 (1) The district's retail distribution area, which is  
4 that area within which the district delivers electricity by  
5 distribution lines directly to those of its customers who consume  
6 the electricity; and

7 (2) The district's wholesale distribution area, which is  
8 the aggregate of those retail distribution areas of the public  
9 electric utilities which purchase electricity either directly  
10 or indirectly from the district for resale to their retail  
11 customers if the selling district has the responsibility, in whole  
12 or in part, of charging for and delivery of the electricity  
13 by transmission lines to the retail public electric utility  
14 distribution lines at one or more points of delivery pursuant  
15 to a power contract, having an original term of five years or more,  
16 to deliver firm power and energy and ~~having an original term of~~  
17 ~~five years or more.~~ that constitutes fifty percent or more of the  
18 purchasing public electric utility's annual energy requirements. To  
19 the extent that a selling district leases its plant or systems  
20 to another district to be operated by such other district, or  
21 produces electricity, hydrogen, or ethanol which other districts  
22 may purchase, and such other districts provide or operate the  
23 transmission lines to carry such electricity from the producer to  
24 such other districts, the retail and wholesale distribution areas  
25 of such other districts are not a part of the operating area of the

1 selling district by reason alone of such leasing or production.

2           Sec. 4. Section 70-604.05, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           70-604.05 When it appears that a ~~district or~~ one or more  
5 districts are in noncompliance with the provisions of Chapter 70,  
6 article 6, the corporate amendments required to comply shall be  
7 made generally in accordance with the procedures and requirements  
8 contained in Chapter 70, article 6. In the absence of voluntary  
9 amendment any time subsequent to six months after the publication  
10 of the first federal decennial census published after ~~July 17,~~  
11 1986, the effective date of this act, any person residing in the  
12 geographical area of alleged noncompliance, or any district or any  
13 two or more districts, may file a complaint with the Nebraska  
14 Power Review Board against one or more other districts alleging  
15 the area of noncompliance of such other districts. Upon receipt  
16 of such complaint, ~~whereupon~~ the Nebraska Power Review Board shall  
17 issue an order directed to the alleged noncomplying district,  
18 granting a hearing and requiring it to show cause why an amended  
19 petition for creation eliminating such noncompliance should not be  
20 filed for approval. Thirty-three days' notice of hearing, which  
21 includes mailing time, shall be given to such alleged noncomplying  
22 district by either registered or certified mail. The alleged  
23 noncomplying district may appear by answer or by petition for  
24 amended petition for creation of the district. The burden of proof  
25 of noncompliance shall be upon the complainant and of proposed

1 amendments upon the petitioner. If the Nebraska Power Review Board  
2 finds that an amended petition for creation should be made and the  
3 alleged noncomplying district has not proposed an acceptable one,  
4 the Nebraska Power Review Board shall frame the amendment to be  
5 approved after continuing the hearing to receive such evidence as  
6 may be offered by the parties having appeared before the Nebraska  
7 Power Review Board regarding the contents of the amendment to be  
8 framed by the Nebraska Power Review Board.

9           The members of the board of directors of any noncomplying  
10 district, including any district failing to comply with an amended  
11 petition as framed by the Nebraska Power Review Board, shall each  
12 be liable for a civil penalty of fifty dollars for each day of  
13 noncompliance which continues after thirty days following final  
14 adjudication of noncompliance. Such penalty shall be recovered ~~for~~  
15 ~~the benefit of the permanent school fund~~ in an action brought by  
16 the Attorney General in the district court for Lancaster County.  
17 Service of summons in such action may be had anywhere in the state.  
18 Any penalty collected pursuant to this section shall be remitted  
19 to the State Treasurer for distribution in accordance with Article  
20 VII, section 5, of the Constitution of Nebraska. No member of  
21 any such board shall receive any compensation or reimbursement of  
22 expenses during the period for which he or she is liable ~~to~~ for  
23 such penalty, nor shall he or she be eligible as a candidate for  
24 reelection.

25           Sec. 5. Section 70-681, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           70-681 In order to provide for orderly compliance with  
3 Chapter 70, article 6, ~~as amended by Laws 1986, LB 949,~~ districts  
4 existing on ~~July 17, 1986,~~ the effective date of this act are  
5 hereby deemed to be properly constituted and incorporated and their  
6 directors duly elected and, notwithstanding any other provision of  
7 law, a district shall not be required to amend its charter in order  
8 to be in such compliance until six months after the publication of  
9 the first federal decennial census published after ~~July 17, 1986.~~  
10 the effective date of this act. A director holding office at the  
11 time of any such amendment to a charter may continue to serve until  
12 the expiration of his or her term of office if such director meets  
13 the qualifications of section 70-619 for holding office under the  
14 charter as so amended.

15           Sec. 6. Original sections 70-603, 70-604.01, 70-604.05,  
16 and 70-681, Reissue Revised Statutes of Nebraska, and section  
17 70-604.02, Revised Statutes Cumulative Supplement, 2008, are  
18 repealed.