

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 547

Introduced by Watermeier, 1.

Read first time January 18, 2017

Committee: Natural Resources

1 A BILL FOR AN ACT relating to power districts and corporations; to amend
2 section 70-667, Reissue Revised Statutes of Nebraska, and sections
3 70-670 and 70-1014.02, Revised Statutes Cumulative Supplement, 2016;
4 to state findings; to change provisions relating to the exercise of
5 eminent domain; to change provisions relating to privately developed
6 generation facilities as prescribed; to provide an exemption from
7 review by the Nebraska Power Review Board; to remove a restriction
8 on private electric suppliers; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds and declares that:

2 (1) Competition is one of the most fundamental principles of
3 America's free market economy;

4 (2) The threat of eminent domain by Nebraska's public utilities
5 against privately developed and operated electric generation and
6 transmission facilities has stifled investment in the state;

7 (3) Nebraska needs to grow its economy for the benefit of its
8 citizens;

9 (4) It is the policy of the state to remove restrictions on private
10 investment and free market economics; and

11 (5) Publicly-owned utilities should not be authorized to use eminent
12 domain to restrict private electric generation or transmission investment
13 in Nebraska.

14 Sec. 2. Section 70-667, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 70-667 All power plants and systems, all hydrogen production,
17 storage, or distribution systems, all ethanol production or distribution
18 systems, and all irrigation works constructed, acquired, used, or
19 operated by any district organized under or subject to Chapter 70,
20 article 6, or proposed by such district to be so constructed, acquired,
21 owned, used, or operated are hereby declared to be works of internal
22 improvement. All laws applicable to works of internal improvement and all
23 provisions of law applicable to electric light and power corporations,
24 irrigation districts, or privately owned irrigation corporations, the use
25 and occupation of state and other public lands and highways, the
26 appropriation, acquisition, or use of water, water power, water rights,
27 or water diversion or storage rights, for any of the purposes
28 contemplated in such statutory provisions, the manner or method of
29 construction and physical operation of power plants, systems,
30 transmission lines, and irrigation works, as herein contemplated, shall
31 be applicable, as nearly as may be, to all districts organized under or

1 subject to Chapter 70, article 6, and in the performance of the duties
2 conferred or imposed upon them under such statutory provisions. Such
3 laws, provisions of law, or statutory provisions are hereby made
4 applicable to all irrigation works and facilities operated by irrigation
5 divisions of public power and irrigation districts organized under
6 Chapter 70, article 6, and shall include, but not be limited to, the
7 right of such district to exercise the powers conferred upon districts by
8 Chapters 31 and 46, relating to operation, maintenance, rehabilitation,
9 construction, reconstruction, repairs, extension, recharge for ground
10 water, and surface and subsurface drainage projects and the assessment of
11 the cost thereof to the lands benefited thereby. The right to exercise
12 the power of eminent domain is conferred, except that this power may not
13 be exercised for the purpose of condemning property for use by a
14 privately operated ethanol production or distribution facility, a
15 privately operated electric generation or transmission facility, or a
16 privately operated hydrogen production, storage, or distribution
17 facility. The procedure to condemn property shall be exercised in the
18 manner set forth in Chapter 76, article 7.

19 Sec. 3. Section 70-670, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 70-670 (1) In addition to any other rights and powers conferred upon
22 any district organized under or subject to Chapter 70, article 6, each
23 such district shall have and exercise the power of eminent domain to
24 acquire from any person, firm, association, or private corporation any
25 and all property owned, used, or operated, or useful for operation, in
26 the ~~generation, transmission, or~~ distribution of electrical energy,
27 including an existing electric utility system or any part thereof. The
28 procedure to condemn property shall be exercised in the manner set forth
29 in Chapter 76, article 7.

30 (2) In the case of the acquisition through the exercise of the power
31 of eminent domain of an existing electric utility system or part thereof,

1 the Attorney General shall, upon request of any district, represent such
2 district in the institution and prosecution of condemnation proceedings.
3 After acquisition of an existing electric utility system through the
4 exercise of the power of eminent domain, the district shall reimburse the
5 state for all costs and expenses incurred in the condemnation proceedings
6 by the Attorney General.

7 (3) A district may not ~~agree to limit its~~ exercise of the power of
8 eminent domain to acquire a project which is a renewable energy
9 generation facility producing electricity with wind and any related
10 facilities.

11 (4) No property owned, used, or operated as part of a privately
12 developed electric renewable energy generation or transmission facility
13 ~~meeting the requirements of section 70-1014.02~~ shall be subject to
14 eminent domain by any consumer-owned electric supplier operating in the
15 State of Nebraska.

16 Sec. 4. Section 70-1014.02, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 70-1014.02 (1)(a) A privately developed electric renewable energy
19 generation or transmission facility that meets the requirements of this
20 section is exempt from review by the Nebraska Power Review Board ~~sections~~
21 ~~70-1012 to 70-1014.01~~ if no less than thirty days prior to the
22 commencement of construction the owner of the facility:

23 (i) Notifies the board in writing of its intent to commence
24 construction of a privately developed electric renewable energy
25 generation facility;

26 (ii) Certifies to the board that the facility will meet the
27 requirements for a privately developed electric renewable energy
28 generation facility;

29 (iii) Certifies to the board that the private electric supplier will
30 (A) comply with any decommissioning requirements adopted by the local
31 governmental entities having jurisdiction over the privately developed

1 ~~electric renewable energy~~ generation facility and (B) except as otherwise
2 provided in subdivision (b) of this subsection, submit a decommissioning
3 plan to the board obligating the private electric supplier to bear all
4 costs of decommissioning the privately developed ~~electric renewable~~
5 ~~energy~~ generation facility and requiring that the private electric
6 supplier post a security bond or other instrument, no later than the
7 tenth year following commercial operation, securing the costs of
8 decommissioning the facility and provide a copy of the bond or instrument
9 to the board;

10 (iv) Certifies to the board that the private electric supplier has
11 entered into or prior to commencing construction will enter into a joint
12 transmission development agreement pursuant to subdivision (c) of this
13 subsection with the electric supplier owning the transmission facilities
14 of sixty thousand volts or greater to which the privately developed
15 ~~electric renewable energy~~ generation facility will interconnect; and

16 (v) Certifies to the board that the private electric supplier has
17 consulted with the Game and Parks Commission to identify potential
18 measures to avoid, minimize, and mitigate impacts to species identified
19 under subsection (1) or (2) of section 37-806 during the project planning
20 and design phases, if possible, but in no event later than the
21 commencement of construction.

22 (b) The board may bring an action in the name of the State of
23 Nebraska for failure to comply with subdivision (a)(iii)(B) of this
24 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if
25 a local government entity with the authority to create requirements for
26 decommissioning has enacted decommissioning requirements for the
27 applicable jurisdiction.

28 (c) The joint transmission development agreement shall address
29 construction, ownership, operation, and maintenance of such additions or
30 upgrades to the transmission facilities as required for the privately
31 developed ~~electric renewable energy~~ generation facility. The joint

1 transmission development agreement shall be negotiated and executed
2 contemporaneously with the generator interconnection agreement or other
3 directives of the applicable regional transmission organization with
4 jurisdiction over the addition or upgrade of transmission, upon terms
5 consistent with prudent electric utility practices for the
6 interconnection of renewable generation facilities, the electric
7 supplier's reasonable transmission interconnection requirements, and
8 applicable transmission design and construction standards. The electric
9 supplier shall have the right to purchase and own transmission facilities
10 as set forth in the joint transmission development agreement. The private
11 electric supplier of the privately developed electric ~~renewable~~ energy
12 generation facility shall have the right to construct any necessary
13 facilities or improvements set forth in the joint transmission
14 development agreement pursuant to the standards set forth in the
15 agreement at the private electric supplier's cost.

16 (2) Within ten days after receipt of a written notice complying with
17 subsection (1) of this section, the executive director of the board shall
18 issue a written acknowledgment that the privately developed electric
19 ~~renewable~~ energy generation facility is exempt from review by the
20 Nebraska Power Review Board sections 70-1012 to 70-1014.01.

21 (3) The exemption allowed under this section for a privately
22 developed electric ~~renewable~~ energy generation facility shall extend to
23 and exempt all private electric suppliers owning any interest in the
24 facility, including any successor private electric supplier which
25 subsequently acquires any interest in the facility.

26 (4) No property owned, used, or operated as part of a privately
27 developed electric ~~renewable~~ energy generation facility shall be subject
28 to eminent domain by a consumer-owned electric supplier operating in the
29 State of Nebraska. Nothing in this section shall be construed to grant
30 the power of eminent domain to a private electric supplier or limit the
31 rights of any entity to acquire any public, municipal, or utility right-

1 of-way across property owned, used, or operated as part of a privately
2 developed electric ~~renewable energy~~ generation facility as long as the
3 right-of-way does not prevent the operation of or access to the privately
4 developed electric ~~renewable energy~~ generation facility.

5 (5) Only a consumer-owned electric supplier operating in the State
6 of Nebraska may exercise eminent domain authority to acquire the land
7 rights necessary for the construction of transmission lines and related
8 facilities. The exercise of eminent domain to provide needed transmission
9 lines and related facilities for a privately developed electric ~~renewable~~
10 ~~energy~~ generation facility is a public use.

11 ~~(6) Nothing in this section shall be construed to authorize a~~
12 ~~private electric supplier to sell or deliver electricity at retail in~~
13 ~~Nebraska.~~

14 (6) ~~(7)~~ Nothing in this section shall be construed to limit the
15 authority of or require a consumer-owned electric supplier operating in
16 the State of Nebraska to enter into a joint agreement with a private
17 electric supplier to develop, construct, and jointly own a privately
18 developed electric ~~renewable energy~~ generation facility.

19 Sec. 5. Original section 70-667, Reissue Revised Statutes of
20 Nebraska, and sections 70-670 and 70-1014.02, Revised Statutes Cumulative
21 Supplement, 2016, are repealed.