

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 399

FINAL READING

Introduced by Brewer, 43; Erdman, 47; Albrecht, 17.

Read first time January 12, 2023

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Nebraska Power Review Board; to amend
2 section 70-1014, Reissue Revised Statutes of Nebraska, sections
3 70-1014.02 and 84-1411, Revised Statutes Cumulative Supplement,
4 2022, and section 70-1001.01, Revised Statutes Supplement, 2023; to
5 redefine terms; to provide a public meeting and report requirement
6 for board approval of certain proposed electric generation
7 facilities; to change and provide certification requirements for
8 issuance of an acknowledgment of exemption by the board of a
9 proposed privately developed renewable energy generation facility;
10 to provide an exception to a virtual conferencing requirement under
11 the Open Meetings Act; to harmonize provisions; and to repeal the
12 original sections.

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

1 Section 1. Section 70-1001.01, Revised Statutes Supplement, 2023, is
2 amended to read:

3 70-1001.01 For purposes of sections 70-1001 to 70-1028, unless the
4 context otherwise requires:

5 (1) Board means the Nebraska Power Review Board;

6 (2) Electric supplier or supplier of electricity means any legal
7 entity supplying, producing, or distributing electricity within the state
8 for sale at wholesale or retail;

9 (3) Private electric supplier means an electric supplier producing
10 electricity from a privately developed renewable energy generation
11 facility that is not a public power district, a public power and
12 irrigation district, a municipality, a registered group of
13 municipalities, an electric cooperative, an electric membership
14 association, any other governmental entity, or any combination thereof. A
15 private electric supplier is limited to the development of those
16 facilities as provided in subdivision (4) of this section;

17 (4) Privately developed renewable energy generation facility means
18 and is limited to a facility that (a) generates electricity using solar,
19 wind, geothermal, biomass, landfill gas, or biogas, including all
20 electrically connected equipment used to produce, collect, and store the
21 facility output up to and including the transformer that steps up the
22 voltage to sixty thousand volts or greater, and including supporting
23 structures, buildings, and roads, unless otherwise agreed to in a joint
24 transmission development agreement, (b) is developed, constructed, and
25 owned, in whole or in part, by one or more private electric suppliers,
26 and (c) is not wholly owned by a public power district, a public power
27 and irrigation district, a municipality, a registered group of
28 municipalities, an electric cooperative, an electric membership
29 association, any other governmental entity, or any combination thereof;

30 (5) Regional transmission organization means an entity independent
31 from those entities generating or marketing electricity at wholesale or

1 retail, which has operational control over the electric transmission
2 lines in a designated geographic area in order to reduce constraints in
3 the flow of electricity and ensure that all power suppliers have open
4 access to transmission lines for the transmission of electricity;

5 (6) Reliable or reliability means the ability of an electric
6 supplier to supply the aggregate electric power and energy requirements
7 of its electricity consumers in Nebraska at all times under normal
8 operating conditions, taking into account scheduled and unscheduled
9 outages, including sudden disturbances or unanticipated loss of system
10 components that are to be reasonably expected for any electric utility
11 following prudent utility practices, recognizing certain weather
12 conditions and other contingencies may cause outages at the distribution,
13 transmission, and generation level;

14 (7) Representative organization means an organization designated by
15 the board and organized for the purpose of providing joint planning and
16 encouraging maximum cooperation and coordination among electric
17 suppliers. Such organization shall represent electric suppliers owning a
18 combined electric generation plant accredited capacity of at least ninety
19 percent of the total electric generation plant accredited capacity
20 constructed and in operation within the state;

21 (8) State means the State of Nebraska; and

22 (9) Unbundled retail rates means the separation of utility bills
23 into the individual price components for which an electric supplier
24 charges its retail customers, including, but not limited to, the separate
25 charges for the generation, transmission, and distribution of
26 electricity.

27 Sec. 2. Section 70-1014, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 70-1014 (1) After hearing, the board shall have authority to approve
30 or deny the application. Except as provided in section 70-1014.01 for
31 special generation applications, before approval of an application, the

1 board shall find that:

2 (a) The ~~the~~ application will serve the public convenience and
3 necessity, and that the applicant can most economically and feasibly
4 supply the electric service resulting from the proposed construction or
5 acquisition, without unnecessary duplication of facilities or operations;
6 and -

7 (b)(i) For any proposed electric generation facility that has a
8 generating capacity that is greater than ten megawatts, the applicant has
9 held at least one public meeting with advanced publicized notice in one
10 of the counties in which the proposed facility will be located at which
11 (A) at least fifty percent of the governing body of the electric supplier
12 attends either in person or by videoconference, but with not less than
13 one member of the governing body physically present, (B) the applicant
14 explains the need for the proposed facility and the type of facility, and
15 (C) real property owners in any of the counties in which the proposed
16 facility will be located are provided an opportunity to comment on the
17 proposed facility. The applicant shall provide a report to the board
18 containing the minutes of any such meeting and how many people commented
19 on the proposed facility. Documentation received at any such meeting
20 shall be made available to the board upon its request. A meeting
21 described in this subdivision is not subject to the requirements
22 described in subdivision (2)(b)(iv) of section 84-1411.

23 (ii) This subdivision (b) shall not apply if the proposed facility
24 will be located on real property owned by the applicant at the time of
25 application.

26 (2) If the application involves a transmission line or related
27 facilities planned and approved by a regional transmission organization
28 and the regional transmission organization has issued a notice to
29 construct or similar notice or order to a utility to construct the line
30 or related facilities, the board shall also consider information from the
31 regional transmission organization's planning process and may consider

1 the benefits to the region, which shall include Nebraska, provided by the
2 proposed line or related facilities as part of the board's process in
3 determining whether to approve or deny the application.

4 (3) A privately developed renewable energy generation facility is
5 exempt from this section if it complies with section 70-1014.02.

6 Sec. 3. Section 70-1014.02, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 70-1014.02 (1) The Legislature finds that:

9 (a) Nebraska has the authority as a sovereign state to protect its
10 land, natural resources, and cultural resources for economic and
11 aesthetic purposes for the benefit of its residents and future
12 generations by regulation of energy generation projects;

13 (b) The unique terrain and ecology of the Nebraska Sandhills provide
14 an irreplaceable habitat for millions of migratory birds and other
15 wildlife every year and serve as the home to numerous ranchers and
16 farmers;

17 (c) The grasslands of the Nebraska Sandhills and other natural
18 resources in Nebraska will become increasingly valuable, both
19 economically and strategically, as the demand for food and energy
20 increases; and

21 (d) The Nebraska Sandhills are home to priceless archaeological
22 sites of historical and cultural significance to American Indians.

23 (2)(a) A privately developed renewable energy generation facility
24 that meets the requirements of this section is exempt from sections
25 70-1012 to 70-1014.01 if, no less than thirty days prior to the
26 commencement of construction, the owner of the facility:

27 (i) Notifies the board in writing of its intent to commence
28 construction of a privately developed renewable energy generation
29 facility;

30 (ii) Certifies to the board that the facility will meet the
31 requirements for a privately developed renewable energy generation

1 facility;

2 (iii) Certifies to the board that the private electric supplier will
3 (A) comply with any decommissioning requirements adopted by the local
4 governmental entities having jurisdiction over the privately developed
5 renewable energy generation facility and (B) except as otherwise provided
6 in subdivision (b) of this subsection, submit a decommissioning plan to
7 the board obligating the private electric supplier to bear all costs of
8 decommissioning the privately developed renewable energy generation
9 facility and requiring that the private electric supplier post a security
10 bond or other instrument, no later than the sixth ~~tenth~~ year following
11 commercial operation, securing the costs of decommissioning the facility
12 and provide a copy of the bond or instrument to the board;

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

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

25 (vi) For a proposed privately developed renewable energy generation
26 facility that has a generating capacity that is greater than ten
27 megawatts, certifies to the board that the private electric supplier has
28 held at least one public meeting with advanced publicized notice in one
29 of the counties in which the proposed facility will be located at which
30 (A) the private electric supplier explains the need for the proposed
31 facility and the type of facility and (B) real property owners in any of

1 the counties in which the proposed facility will be located are provided
2 an opportunity to comment on the proposed facility. The private electric
3 supplier shall provide a report to the board containing the minutes of
4 any such meeting and how many people commented on the proposed facility.
5 Documentation received at any such meeting shall be made available to the
6 board upon its request. A meeting described in this subdivision is not
7 subject to the requirements described in subdivision (2)(b)(iv) of
8 section 84-1411.

9 (b) The board may bring an action in the name of the State of
10 Nebraska for failure to comply with subdivision (a)(iii)(B) of this
11 subsection, except that such subdivision ~~Subdivision (a)(iii)(B) of~~
12 ~~this subsection~~ does not apply if a local government entity with the
13 authority to create requirements for decommissioning has enacted
14 decommissioning requirements for the applicable jurisdiction.

15 (c) ~~A~~ The joint transmission development agreement shall be entered
16 into to address construction, ownership, operation, and maintenance of
17 such additions or upgrades to the transmission facilities as required for
18 the privately developed renewable energy generation facility. The joint
19 transmission development agreement shall be negotiated and executed
20 contemporaneously with the generator interconnection agreement or other
21 directives of the applicable regional transmission organization with
22 jurisdiction over the addition or upgrade of transmission, upon terms
23 consistent with prudent electric utility practices for the
24 interconnection of renewable generation facilities, the electric
25 supplier's reasonable transmission interconnection requirements, and
26 applicable transmission design and construction standards. The electric
27 supplier shall have the right to purchase and own transmission facilities
28 as set forth in the joint transmission development agreement. The private
29 electric supplier of the privately developed renewable energy generation
30 facility shall have the right to construct any necessary facilities or
31 improvements set forth in the joint transmission development agreement

1 pursuant to the standards set forth in the agreement at the private
2 electric supplier's cost.

3 (3) Within ten days after receipt of a written notice complying with
4 subsection (2) of this section, the executive director of the board shall
5 issue a written acknowledgment that the privately developed renewable
6 energy generation facility is exempt from sections 70-1012 to 70-1014.01
7 if such facility remains in compliance with the requirements of this
8 section.

9 (4) The exemption allowed under this section for a privately
10 developed renewable energy generation facility shall extend to and exempt
11 all private electric suppliers owning any interest in the facility,
12 including any successor private electric supplier which subsequently
13 acquires any interest in the facility.

14 (5) No property owned, used, or operated as part of a privately
15 developed renewable energy generation facility shall be subject to
16 eminent domain by a consumer-owned electric supplier operating in the
17 State of Nebraska. Nothing in this section shall be construed to grant
18 the power of eminent domain to a private electric supplier or limit the
19 rights of any entity to acquire any public, municipal, or utility right-
20 of-way across property owned, used, or operated as part of a privately
21 developed renewable energy generation facility as long as the right-of-
22 way does not prevent the operation of or access to the privately
23 developed renewable energy generation facility.

24 (6) Only a consumer-owned electric supplier operating in the State
25 of Nebraska may exercise eminent domain authority to acquire the land
26 rights necessary for the construction of transmission lines and related
27 facilities. There is a rebuttable presumption that the exercise of
28 eminent domain to provide needed transmission lines and related
29 facilities for a privately developed renewable energy generation facility
30 is a public use.

31 (7) Nothing in this section shall be construed to authorize a

1 private electric supplier to sell or deliver electricity at retail in
2 Nebraska.

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

8 Sec. 4. Section 84-1411, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 84-1411 (1)(a) Each public body shall give reasonable advance
11 publicized notice of the time and place of each meeting as provided in
12 this subsection. Such notice shall be transmitted to all members of the
13 public body and to the public.

14 (b)(i) Except as provided in subdivision (1)(b)(ii) of this section,
15 in the case of a public body described in subdivision (1)(a)(i) of
16 section 84-1409 or such body's advisory committee, such notice shall be
17 published in a newspaper of general circulation within the public body's
18 jurisdiction and, if available, on such newspaper's website.

19 (ii) In the case of the governing body of a city of the second class
20 or village or such body's advisory committee, such notice shall be
21 published by:

22 (A) Publication in a newspaper of general circulation within the
23 public body's jurisdiction and, if available, on such newspaper's
24 website; or

25 (B) Posting written notice in three conspicuous public places in
26 such city or village. Such notice shall be posted in the same three
27 places for each meeting.

28 (iii) In the case of a public body not described in subdivision (1)
29 (b)(i) or (ii) of this section, such notice shall be given by a method
30 designated by the public body.

31 (c) In addition to a method of notice required by subdivision (1)(b)

1 (i) or (ii) of this section, such notice may also be provided by any
2 other appropriate method designated by such public body or such advisory
3 committee.

4 (d) Each public body shall record the methods and dates of such
5 notice in its minutes.

6 (e) Such notice shall contain an agenda of subjects known at the
7 time of the publicized notice or a statement that the agenda, which shall
8 be kept continually current, shall be readily available for public
9 inspection at the principal office of the public body during normal
10 business hours. Agenda items shall be sufficiently descriptive to give
11 the public reasonable notice of the matters to be considered at the
12 meeting. Except for items of an emergency nature, the agenda shall not be
13 altered later than (i) twenty-four hours before the scheduled
14 commencement of the meeting or (ii) forty-eight hours before the
15 scheduled commencement of a meeting of a city council or village board
16 scheduled outside the corporate limits of the municipality. The public
17 body shall have the right to modify the agenda to include items of an
18 emergency nature only at such public meeting.

19 (2)(a) The following entities may hold a meeting by means of virtual
20 conferencing if the requirements of subdivision (2)(b) of this section
21 are met:

22 (i) A state agency, state board, state commission, state council, or
23 state committee, or an advisory committee of any such state entity;

24 (ii) An organization, including the governing body, created under
25 the Interlocal Cooperation Act, the Joint Public Agency Act, or the
26 Municipal Cooperative Financing Act;

27 (iii) The governing body of a public power district having a
28 chartered territory of more than one county in this state;

29 (iv) The governing body of a public power and irrigation district
30 having a chartered territory of more than one county in this state;

31 (v) An educational service unit;

1 (vi) The Educational Service Unit Coordinating Council;

2 (vii) An organization, including the governing body, of a risk
3 management pool or its advisory committees organized in accordance with
4 the Intergovernmental Risk Management Act;

5 (viii) A community college board of governors;

6 (ix) The Nebraska Brand Committee;

7 (x) A local public health department;

8 (xi) A metropolitan utilities district;

9 (xii) A regional metropolitan transit authority; and

10 (xiii) A natural resources district.

11 (b) The requirements for holding a meeting by means of virtual
12 conferencing are as follows:

13 (i) Reasonable advance publicized notice is given as provided in
14 subsection (1) of this section, including providing access to a dial-in
15 number or link to the virtual conference;

16 (ii) In addition to the public's right to participate by virtual
17 conferencing, reasonable arrangements are made to accommodate the
18 public's right to attend at a physical site and participate as provided
19 in section 84-1412, including reasonable seating, in at least one
20 designated site in a building open to the public and identified in the
21 notice, with: At least one member of the entity holding such meeting, or
22 his or her designee, present at each site; a recording of the hearing by
23 audio or visual recording devices; and a reasonable opportunity for
24 input, such as public comment or questions, is provided to at least the
25 same extent as would be provided if virtual conferencing was not used;

26 (iii) At least one copy of all documents being considered at the
27 meeting is available at any physical site open to the public where
28 individuals may attend the virtual conference. The public body shall also
29 provide links to an electronic copy of the agenda, all documents being
30 considered at the meeting, and the current version of the Open Meetings
31 Act; and

1 (iv) Except as otherwise provided in this subdivision, subsection
2 (1) of section 70-1014, subsection (2) of section 70-1014.02, or
3 subsection (4) of section 79-2204, no more than one-half of the meetings
4 of the state entities, advisory committees, boards, councils,
5 organizations, or governing bodies are held by virtual conferencing in a
6 calendar year. In the case of an organization created under the
7 Interlocal Cooperation Act that sells electricity or natural gas at
8 wholesale on a multistate basis or an organization created under the
9 Municipal Cooperative Financing Act, the organization may hold more than
10 one-half of its meetings by virtual conferencing if such organization
11 holds at least one meeting each calendar year that is not by virtual
12 conferencing. The governing body of a risk management pool that meets at
13 least quarterly and the advisory committees of the governing body may
14 each hold more than one-half of its meetings by virtual conferencing if
15 the governing body's quarterly meetings are not held by virtual
16 conferencing.

17 (3) Virtual conferencing, emails, faxes, or other electronic
18 communication shall not be used to circumvent any of the public
19 government purposes established in the Open Meetings Act.

20 (4) The secretary or other designee of each public body shall
21 maintain a list of the news media requesting notification of meetings and
22 shall make reasonable efforts to provide advance notification to them of
23 the time and place of each meeting and the subjects to be discussed at
24 that meeting.

25 (5) When it is necessary to hold an emergency meeting without
26 reasonable advance public notice, the nature of the emergency shall be
27 stated in the minutes and any formal action taken in such meeting shall
28 pertain only to the emergency. Such emergency meetings may be held by
29 virtual conferencing. The provisions of subsection (4) of this section
30 shall be complied with in conducting emergency meetings. Complete minutes
31 of such emergency meetings specifying the nature of the emergency and any

1 formal action taken at the meeting shall be made available to the public
2 by no later than the end of the next regular business day.

3 (6) A public body may allow a member of the public or any other
4 witness to appear before the public body by means of virtual
5 conferencing.

6 (7)(a) Notwithstanding subsections (2) and (5) of this section, if
7 an emergency is declared by the Governor pursuant to the Emergency
8 Management Act as defined in section 81-829.39, a public body the
9 territorial jurisdiction of which is included in the emergency
10 declaration, in whole or in part, may hold a meeting by virtual
11 conferencing during such emergency if the public body gives reasonable
12 advance publicized notice as described in subsection (1) of this section.
13 The notice shall include information regarding access for the public and
14 news media. In addition to any formal action taken pertaining to the
15 emergency, the public body may hold such meeting for the purpose of
16 briefing, discussion of public business, formation of tentative policy,
17 or the taking of any action by the public body.

18 (b) The public body shall provide access by providing a dial-in
19 number or a link to the virtual conference. The public body shall also
20 provide links to an electronic copy of the agenda, all documents being
21 considered at the meeting, and the current version of the Open Meetings
22 Act. Reasonable arrangements shall be made to accommodate the public's
23 right to hear and speak at the meeting and record the meeting. Subsection
24 (4) of this section shall be complied with in conducting such meetings.

25 (c) The nature of the emergency shall be stated in the minutes.
26 Complete minutes of such meeting specifying the nature of the emergency
27 and any formal action taken at the meeting shall be made available for
28 inspection as provided in subsection (5) of section 84-1413.

29 (8) In addition to any other statutory authorization for virtual
30 conferencing, any public body not listed in subdivision (2)(a) of this
31 section may hold a meeting by virtual conferencing if:

1 (a) The purpose of the virtual meeting is to discuss items that are
2 scheduled to be discussed or acted upon at a subsequent non-virtual open
3 meeting of the public body;

4 (b) No action is taken by the public body at the virtual meeting;
5 and

6 (c) The public body complies with subdivisions (2)(b)(i) and (2)(b)
7 (ii) of this section.

8 Sec. 5. Original section 70-1014, Reissue Revised Statutes of
9 Nebraska, sections 70-1014.02 and 84-1411, Revised Statutes Cumulative
10 Supplement, 2022, and section 70-1001.01, Revised Statutes Supplement,
11 2023, are repealed.