

ENGROSSED LEGISLATIVE BILL 35

Introduced by Brandt, 32.

A BILL FOR AN ACT relating to privately developed renewable energy generation facilities; to amend section 70-1014.02, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to the requirements for certain exemptions; and to repeal the original section.

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

Section 1. Section 70-1014.02, Revised Statutes Cumulative Supplement, 2024, is amended to read:

70-1014.02 (1) The Legislature finds that:

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

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

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

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

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

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

(ii) Certifies to the board that the facility will meet the requirements

for a privately developed renewable energy generation facility;

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

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

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

(vi) Certifies in writing to the board that the facility, if located within a ten-mile radius of a military installation:

(A) Contains no materials, electronics, or other components manufactured by any foreign government or foreign nongovernment person determined to be a foreign adversary pursuant to 15 C.F.R. 791.4, as such regulation existed on January 1, 2025; or

(B) Will, upon reaching commercial operation, be in compliance with the critical infrastructure protection requirements issued by the North American

Electric Reliability Corporation if connected to the transmission grid at one hundred kilovolts or higher voltage and has to have a nameplate rating of twenty megavolt amperes for a single generation unit or injecting at an aggregate of seventy-five megavolt amperes or greater. The private electric supplier shall also submit written notice to the board at any time such private electric supplier is no longer in such compliance; and

(vii) For a proposed privately developed renewable energy generation facility that has a generating capacity that is greater than ten megawatts, certifies to the board that the private electric supplier has held at least one public meeting with advanced publicized notice in one of the counties in which the proposed facility will be located at which (A) the private electric supplier explains the need for the proposed facility and the type of facility and (B) real property owners in any of the counties in which the proposed facility will be located are provided an opportunity to comment on the proposed facility. The private electric supplier shall provide a report to the board containing the minutes of any such meeting and how many people commented on the proposed facility. Documentation received at any such meeting shall be made available to the board upon its request. A meeting described in this subdivision is not subject to the requirements described in subdivision (3)(b)(iv) of section 84-1411.

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

(c) A joint transmission development agreement shall be entered into to address construction, ownership, operation, and maintenance of such additions or upgrades to the transmission facilities as required for the privately developed renewable energy generation facility. The joint transmission development agreement shall be negotiated and executed contemporaneously with the generator interconnection agreement or other directives of the applicable

regional transmission organization with jurisdiction over the addition or upgrade of transmission, upon terms consistent with prudent electric utility practices for the interconnection of renewable generation facilities, the electric supplier's reasonable transmission interconnection requirements, and applicable transmission design and construction standards. The electric supplier shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement. The private electric supplier of the privately developed renewable energy generation facility shall have the right to construct any necessary facilities or improvements set forth in the joint transmission development agreement pursuant to the standards set forth in the agreement at the private electric supplier's cost.

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

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

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

(6) Only a consumer-owned electric supplier operating in the State of

Nebraska may exercise eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities. There is a rebuttable presumption that the exercise of eminent domain to provide needed transmission lines and related facilities for a privately developed renewable energy generation facility is a public use.

(7) Nothing in this section shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska.

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

Sec. 2. Original section 70-1014.02, Revised Statutes Cumulative Supplement, 2024, is repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 35 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR