

ENGROSSED LEGISLATIVE BILL 43

Introduced by DeKay, 40; Hardin, 48.

A BILL FOR AN ACT relating to electricity; to amend sections 70-1001.01, 70-1012, 70-1014.02, and 70-1015, Revised Statutes Cumulative Supplement, 2024; to define and redefine terms; to change provisions relating to notice and certification requirements for electric generation facilities, transmission lines, and privately developed renewable energy generation facilities located near military installations; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 70-1001.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

70-1001.01 For purposes of sections 70-1001 to 70-1028.02, unless the context otherwise requires:

- (1) Board means the Nebraska Power Review Board;
- (2) Commercial electric vehicle charging station means equipment designed to provide electricity for a fee for the charging of an electric vehicle or a plug-in hybrid electric vehicle, including an electric vehicle direct-current charger or a super-fast charger, any successor technology, and all components thereof. Commercial electric vehicle charging station does not include the residence of a person where an electric vehicle or a plug-in hybrid electric vehicle is charged if no customer usage fee is charged;
- (3) Commercial electric vehicle charging station operator means a person, partnership, corporation, or other business entity or political subdivision that operates a commercial electric vehicle charging station;
- (4) Direct-current, fast-charging station means a publicly available charging system capable of delivering at least fifty kilowatts of direct-current electrical power to an electric vehicle's rechargeable battery at a voltage of two hundred volts or greater;

(5) Direct-current, fast-charging station operator means a person, partnership, corporation, or other business entity that operates a direct-current, fast-charging station open to the public. The term does not include an electric supplier or a political subdivision;

(6) Electric supplier or supplier of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail. Electric supplier does not include a commercial electric vehicle charging station operator that is a private person or privately owned partnership, privately owned corporation, or other privately owned business;

(7) Electronic-related means relating to electronic devices, circuits, or similar systems, or the components of such electronic devices, circuits, or similar systems, that require electrical currents or electromagnetism to operate;

(8) Foreign adversary means a 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 February 7, 2025;

(9) Military installation means:

(a) A United States Air Force ballistic missile silo located within the geographic area described in 31 C.F.R. 802.211(b)(3), as such regulation existed on January 1, 2025; or

(b) A United States Air Force base described in 31 C.F.R. 802.227(c), as such regulation existed on January 1, 2025;

(10) Plug-in hybrid electric vehicle has the same meaning as in section 60-345.01;

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

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

(13) 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;

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

(15) Representative organization 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 accredited capacity of at least ninety percent of the total

electric generation plant accredited capacity constructed and in operation within the state;

(16) State means the State of Nebraska; and

(17) 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. 2. Section 70-1012, Revised Statutes Cumulative Supplement, 2024, is amended to read:

70-1012 (1) Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (a) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (b) for any generation facility when the board finds that (i) such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (ii) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (iii) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (c) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (d) for the construction of

a qualified facility as defined in section 70-2002.

(2)(a) Before any electric supplier commences construction of or acquires an electric generation facility or transmission lines or related facilities carrying more than seven hundred volts that will be or are located within a ten-mile radius of a military installation, the owner of such facility, transmission lines, or related facilities shall provide written notice certifying to the board that such facility or facilities contain no electronic-related equipment or electronic-related components manufactured by any foreign adversary.

(b) Any electric supplier supplying, producing, or distributing electricity within the state for sale at retail is exempt from subdivision (a) of this subsection if it is in compliance with the critical infrastructure protection requirements issued by the North American Electric Reliability Corporation. To receive such exemption, the electric supplier shall submit written notice to the board certifying that it is in such compliance. The electric supplier shall also submit written notice to the board at any time such supplier is no longer in such compliance.

(3)(a) Before any electric supplier not exempt from subdivision (2)(a) of this section commences construction of or acquires an electric generation facility or transmission lines or related facilities carrying more than seven hundred volts that will be or are located within a ten-mile radius of a military installation, the electric supplier shall, following consultation with such supplier's vendors, submit a one-time written notice to the board certifying that such facility or facilities continually contain no electronic-related equipment or electronic-related components manufactured by any foreign adversary.

(b) The electric supplier shall also submit written notice to the board at any time such facility or facilities are no longer in compliance with the certification provided under subdivision (a) of this subsection.

(4) Notwithstanding subsections (2) and (3) of this section, an electric supplier required to provide certification under subsection (2) of this section

may use electronic-related equipment or electronic-related components manufactured by a foreign adversary if the board preapproves the use of such equipment or components after finding that:

(a) There is no other reasonable option for procuring such equipment or components; and

(b) Not procuring or using such equipment or components would cause a greater harm to the state or residents of the state than the harm associated with the equipment or components.

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

Sec. 3. 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 (c) 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 (d) 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; and

(vi) 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)(i) No less than thirty days prior to the commencement of construction of a privately developed renewable energy generation facility located within a ten-mile radius of a military installation, the owner of such facility shall:

(A) Provide written notice to the board under subdivision (2)(b)(ii)(A) of this section; or

(B) Certify in writing to the board that the facility will, upon reaching commercial operation, be in compliance with the critical infrastructure protection requirements issued by the North American Electric Reliability Corporation if such facility is connected to the transmission grid at one hundred kilovolts or higher voltage and has a nameplate rating of twenty megavolt amperes for a single generation unit or is injecting at an aggregate of seventy-five megavolt amperes or greater. The owner of such facility shall also submit written notice to the board at any time such facility is no longer in compliance with such requirements.

(ii)(A) An owner of a facility choosing to proceed under subdivision (2)(b)(i)(A) of this section shall, following consultation with such owner's vendors, submit a one-time written notice to the board certifying that the facility continually contains no electronic-related equipment or electronic-related components manufactured by any foreign adversary.

(B) The owner shall also submit written notice to the board at any time such facility is no longer in compliance with the certification provided under subdivision (2)(b)(ii)(A) of this section.

(iii) Notwithstanding subdivisions (2)(b)(i) and (ii) of this section, the owner of a facility required to provide the certification under subsection (2)

(b)(i) may use electronic-related equipment or electronic-related components manufactured by a foreign adversary if the board preapproves the use of such equipment or components after finding that:

(A) There is no other reasonable option for procuring such equipment or components; and

(B) Not procuring or using such equipment or components would cause a greater harm to the state than the harm associated with the equipment or components.

(c) 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.

(d) 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. 4. Section 70-1015, Revised Statutes Cumulative Supplement, 2024, is amended to read:

70-1015 (1) If any supplier violates Chapter 70, article 10, by either (a) commencing the construction or finalizing or attempting to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities without first providing notice or obtaining board approval, whichever is required, or (b) serving or attempting to serve at retail any customers located in Nebraska or any wholesale customers in violation of section 70-1002.02, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska until such supplier has complied with Chapter 70, article 10.

(2) If the executive director of the board determines that a private electric supplier commenced construction of a privately developed renewable energy generation facility less than thirty days prior to providing the notice and certification required in subdivisions (2)(a) and (b) of section 70-1014.02, the executive director shall send notice via certified mail to the private electric supplier, informing it of the determination that the private electric supplier is in violation of such subdivisions and is subject to a fine in the amount of five hundred dollars. The private electric supplier shall have twenty days from the date on which the notice is received in which to submit the notice and certification described in such subdivisions and to pay the fine. Within ten days after the private electric supplier submits a notice and certification compliant with subsection (2) of section 70-1014.02 and payment of the fine, the executive director of the board shall issue the written acknowledgment described in subsection (3) of section 70-1014.02. If the private electric supplier fails to submit a notice and certification compliant with subsection (2) of section 70-1014.02 and pay the fine within twenty days after the date on which the private electric supplier receives the notice from the executive director of the board, the private electric supplier shall immediately cease construction or operation of the privately developed renewable energy generation facility.

(3) If the private electric supplier disputes that construction was commenced less than thirty days prior to submitting the written notice and certification required by subdivisions (2)(a) and (b) of section 70-1014.02, the private electric supplier may request a hearing before the board. Such request shall be submitted within twenty days after the private electric supplier receives the notice sent by the executive director pursuant to subsection (2) of this section. If the private electric supplier does not accept the certified mail sent pursuant to such subsection, the executive director shall send a second notice to the private electric supplier by first-class United States mail. The private electric supplier may submit a request for hearing within twenty days after the date on which the second notice was mailed.

(4) Upon receipt of a request for hearing, the board shall set a hearing date. Such hearing shall be held within sixty days after such receipt. The board shall provide to the private electric supplier written notice of the hearing at least twenty days prior to the date of the hearing. The board or its hearing officer may grant continuances upon good cause shown or upon the request of the private electric supplier. Timely filing of a request for hearing by a private electric supplier shall stay any further enforcement under this section until the board issues an order pursuant to subsection (5) of this section or the request for hearing is withdrawn.

(5) The board shall issue a written decision within sixty days after conclusion of the hearing. All costs of the hearing shall be paid by the private electric supplier if (a) the board determines that the private electric supplier commenced construction of the privately developed renewable energy generation facility less than thirty days prior to submitting the written notice and certification required pursuant to subsection (2) of section 70-1014.02 or (b) the private electric supplier withdraws its request for hearing prior to the board issuing its decision.

(6) A private electric supplier which the board finds to be in violation of the requirements of subsection (2) of section 70-1014.02 shall either (a)

pay the fine described in this section and submit a notice and certification compliant with subsection (2) of section 70-1014.02 or (b) immediately cease construction or operation of the privately developed renewable energy generation facility.

Sec. 5. Original sections 70-1001.01, 70-1012, 70-1014.02, and 70-1015, Revised Statutes Cumulative Supplement, 2024, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 43 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