

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 35

FINAL READING

Introduced by Brandt, 32.

Read first time January 09, 2025

Committee: Natural Resources

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

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

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

3 70-1014.02 (1) The Legislature finds that:

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

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

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

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

18 (2)(a) A privately developed renewable energy generation facility
19 that meets the requirements of this section is exempt from sections
20 70-1012 to 70-1014.01 if, no less than thirty days prior to the
21 commencement of construction, the owner of the facility:

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

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

28 (iii) Certifies to the board that the private electric supplier will
29 (A) comply with any decommissioning requirements adopted by the local
30 governmental entities having jurisdiction over the privately developed
31 renewable energy generation facility and (B) except as otherwise provided

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

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

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

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

22 (A) Contains no materials, electronics, or other components
23 manufactured by any foreign government or foreign nongovernment person
24 determined to be a foreign adversary pursuant to 15 C.F.R. 791.4, as such
25 regulation existed on January 1, 2025 7.4; or

26 (B) Will, upon reaching commercial operation, be ~~is~~ in compliance
27 with the critical infrastructure protection requirements issued by the
28 North American Electric Reliability Corporation if connected to the
29 transmission grid at one hundred kilovolts or higher voltage and has to
30 have a nameplate rating of twenty megavolt amperes for a single
31 generation unit or injecting at an aggregate of seventy-five megavolt

1 amperes or greater. The private electric supplier shall also submit
2 written notice to the board at any time such private electric supplier is
3 no longer in such compliance; and

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

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

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

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

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

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

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

1 way does not prevent the operation of or access to the privately
2 developed renewable energy generation facility.

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

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

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

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