

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 43

FINAL READING

Introduced by DeKay, 40; Hardin, 48.

Read first time January 09, 2025

Committee: Natural Resources

1 A BILL FOR AN ACT relating to electricity; to amend sections 70-1001.01,
2 70-1012, 70-1014.02, and 70-1015, Revised Statutes Cumulative
3 Supplement, 2024; to define and redefine terms; to change provisions
4 relating to notice and certification requirements for electric
5 generation facilities, transmission lines, and privately developed
6 renewable energy generation facilities located near military
7 installations; to harmonize provisions; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

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

3 70-1001.01 For purposes of sections 70-1001 to 70-1028.02, unless
4 the context otherwise requires:

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

6 (2) Commercial electric vehicle charging station means equipment
7 designed to provide electricity for a fee for the charging of an electric
8 vehicle or a plug-in hybrid electric vehicle, including an electric
9 vehicle direct-current charger or a super-fast charger, any successor
10 technology, and all components thereof. Commercial electric vehicle
11 charging station does not include the residence of a person where an
12 electric vehicle or a plug-in hybrid electric vehicle is charged if no
13 customer usage fee is charged;

14 (3) Commercial electric vehicle charging station operator means a
15 person, partnership, corporation, or other business entity or political
16 subdivision that operates a commercial electric vehicle charging station;

17 (4) Direct-current, fast-charging station means a publicly available
18 charging system capable of delivering at least fifty kilowatts of direct-
19 current electrical power to an electric vehicle's rechargeable battery at
20 a voltage of two hundred volts or greater;

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

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

31 (7) Electronic-related means relating to electronic devices,

1 circuits, or similar systems, or the components of such electronic
2 devices, circuits, or similar systems, that require electrical currents
3 or electromagnetism to operate;

4 (8) Foreign adversary means a foreign government or foreign
5 nongovernment person determined to be a foreign adversary pursuant to 15
6 C.F.R. 791.4, as such regulation existed on February 7, 2025;

7 (9) ~~(7)~~ Military installation means: ~~a military base other than a~~
8 ~~National Guard base where fixed-wing aircraft or strategic weapon assets~~
9 ~~are on a permanent or temporary basis assigned, stored, operated from, or~~
10 ~~otherwise located;~~

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

14 (b) A United States Air Force base described in 31 C.F.R.
15 802.227(c), as such regulation existed on January 1, 2025;

16 (10) ~~(8)~~ Plug-in hybrid electric vehicle has the same meaning as in
17 section 60-345.01;

18 (11) ~~(9)~~ Private electric supplier means an electric supplier
19 producing electricity from a privately developed renewable energy
20 generation facility that is not a public power district, a public power
21 and irrigation district, a municipality, a registered group of
22 municipalities, an electric cooperative, an electric membership
23 association, any other governmental entity, or any combination thereof. A
24 private electric supplier is limited to the development of those
25 facilities as provided in subdivision (12) ~~(10)~~ of this section;

26 (12) ~~(10)~~ Privately developed renewable energy generation facility
27 means and is limited to a facility that (a) generates electricity using
28 solar, wind, geothermal, biomass, landfill gas, or biogas, including all
29 electrically connected equipment used to produce, collect, and store the
30 facility output up to and including the transformer that steps up the
31 voltage to sixty thousand volts or greater, and including supporting

1 structures, buildings, and roads, unless otherwise agreed to in a joint
2 transmission development agreement, (b) is developed, constructed, and
3 owned, in whole or in part, by one or more private electric suppliers,
4 and (c) is not wholly owned by a public power district, a public power
5 and irrigation district, a municipality, a registered group of
6 municipalities, an electric cooperative, an electric membership
7 association, any other governmental entity, or any combination thereof;

8 (13) ~~(11)~~ Regional transmission organization means an entity
9 independent from those entities generating or marketing electricity at
10 wholesale or retail, which has operational control over the electric
11 transmission lines in a designated geographic area in order to reduce
12 constraints in the flow of electricity and ensure that all power
13 suppliers have open access to transmission lines for the transmission of
14 electricity;

15 (14) ~~(12)~~ Reliable or reliability means the ability of an electric
16 supplier to supply the aggregate electric power and energy requirements
17 of its electricity consumers in Nebraska at all times under normal
18 operating conditions, taking into account scheduled and unscheduled
19 outages, including sudden disturbances or unanticipated loss of system
20 components that are to be reasonably expected for any electric utility
21 following prudent utility practices, recognizing certain weather
22 conditions and other contingencies may cause outages at the distribution,
23 transmission, and generation level;

24 (15) ~~(13)~~ Representative organization means an organization
25 designated by the board and organized for the purpose of providing joint
26 planning and encouraging maximum cooperation and coordination among
27 electric suppliers. Such organization shall represent electric suppliers
28 owning a combined electric generation plant accredited capacity of at
29 least ninety percent of the total electric generation plant accredited
30 capacity constructed and in operation within the state;

31 (16) ~~(14)~~ State means the State of Nebraska; and

1 (17) ~~(15)~~ Unbundled retail rates means the separation of utility
2 bills into the individual price components for which an electric supplier
3 charges its retail customers, including, but not limited to, the separate
4 charges for the generation, transmission, and distribution of
5 electricity.

6 **Sec. 2.** Section 70-1012, Revised Statutes Cumulative Supplement,
7 2024, is amended to read:

8 70-1012 (1) Before any electric generation facilities or any
9 transmission lines or related facilities carrying more than seven hundred
10 volts are constructed or acquired by any supplier, an application, filed
11 with the board and containing such information as the board shall
12 prescribe, shall be approved by the board, except that such approval
13 shall not be required (a) for the construction or acquisition of a
14 transmission line extension or related facilities within a supplier's own
15 service area or for the construction or acquisition of a line not
16 exceeding one-half mile outside its own service area when all owners of
17 electric lines located within one-half mile of the extension consent
18 thereto in writing and such consents are filed with the board, (b) for
19 any generation facility when the board finds that (i) such facility is
20 being constructed or acquired to replace a generating plant owned by an
21 individual municipality or registered group of municipalities with a
22 capacity not greater than that of the plant being replaced, (ii) such
23 facility will generate less than twenty-five thousand kilowatts of
24 electric energy at rated capacity, and (iii) the applicant will not use
25 the plant or transmission capacity to supply wholesale power to customers
26 outside the applicant's existing retail service area or chartered
27 territory, (c) for acquisition of transmission lines or related
28 facilities, within the state, carrying one hundred fifteen thousand volts
29 or less, if the current owner of the transmission lines or related
30 facilities notifies the board of the lines or facilities involved in the
31 transaction and the parties to the transaction, or (d) for the

1 construction of a qualified facility as defined in section 70-2002.

2 (2)(a) Before any electric supplier commences construction of or
3 acquires an electric generation facility or transmission lines or related
4 facilities carrying more than seven hundred volts that will be or are
5 located within a ten-mile radius of a military installation, the owner of
6 such ~~proposed~~ facility, transmission lines, or related facilities shall
7 provide written notice certifying to the board that such facility or
8 facilities contain no electronic-related equipment or electronic-related
9 ~~materials, electronics, or other~~ components manufactured by any foreign
10 ~~government or foreign nongovernment person determined to be a foreign~~
11 ~~adversary pursuant to 15 C.F.R. 7.4.~~

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

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

30 (b) The electric supplier shall also submit written notice to the
31 board at any time such facility or facilities are no longer in compliance

1 with the certification provided under subdivision (a) of this subsection.

2 (4) Notwithstanding subsections (2) and (3) of this section, an
3 electric supplier required to provide certification under subsection (2)
4 of this section may use electronic-related equipment or electronic-
5 related components manufactured by a foreign adversary if the board
6 preapproves the use of such equipment or components after finding that:

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

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

12 (5) ~~(3)~~ A privately developed renewable energy generation facility
13 is exempt from this section if it complies with section 70-1014.02.

14 **Sec. 3.** Section 70-1014.02, Revised Statutes Cumulative Supplement,
15 2024, is amended to read:

16 70-1014.02 (1) The Legislature finds that:

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

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

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

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

31 (2)(a) A privately developed renewable energy generation facility

1 that meets the requirements of this section is exempt from sections
2 70-1012 to 70-1014.01 if, no less than thirty days prior to the
3 commencement of construction, the owner of the facility:

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

7 (ii) Certifies to the board that the facility will meet the
8 requirements for a privately developed renewable energy generation
9 facility;

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

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

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

1 commencement of construction; and

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

4 ~~(A) Contains no materials, electronics, or other components~~
5 ~~manufactured by any foreign government or foreign nongovernment person~~
6 ~~determined to be a foreign adversary pursuant to 15 C.F.R. 7.4; or~~

7 ~~(B) Is in compliance with the critical infrastructure protection~~
8 ~~requirements issued by the North American Electric Reliability~~
9 ~~Corporation if connected to the transmission grid at one hundred~~
10 ~~kilovolts or higher voltage and has to have a nameplate rating of twenty~~
11 ~~megavolt amperes for a single generation unit or injecting at an~~
12 ~~aggregate of seventy-five megavolt amperes or greater. The private~~
13 ~~electric supplier shall also submit written notice to the board at any~~
14 ~~time such private electric supplier is no longer in such compliance; and~~

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

30 (b)(i) No less than thirty days prior to the commencement of
31 construction of a privately developed renewable energy generation

1 facility located within a ten-mile radius of a military installation, the
2 owner of such facility shall:

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

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

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

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

23 (iii) Notwithstanding subdivisions (2)(b)(i) and (ii) of this
24 section, the owner of a facility required to provide the certification
25 under subsection (2)(b)(i) may use electronic-related equipment or
26 electronic-related components manufactured by a foreign adversary if the
27 board preapproves the use of such equipment or components after finding
28 that:

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

31 (B) Not procuring or using such equipment or components would cause

1 a greater harm to the state than the harm associated with the equipment
2 or components.

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

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

28 (3) Within ten days after receipt of a written notice complying with
29 subsection (2) of this section, the executive director of the board shall
30 issue a written acknowledgment that the privately developed renewable
31 energy generation facility is exempt from sections 70-1012 to 70-1014.01

1 if such facility remains in compliance with the requirements of this
2 section.

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

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

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

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

28 (8) Nothing in this section shall be construed to limit the
29 authority of or require a consumer-owned electric supplier operating in
30 the State of Nebraska to enter into a joint agreement with a private
31 electric supplier to develop, construct, and jointly own a privately

1 developed renewable energy generation facility.

2 **Sec. 4.** Section 70-1015, Revised Statutes Cumulative Supplement,
3 2024, is amended to read:

4 70-1015 (1) If any supplier violates Chapter 70, article 10, by
5 either (a) commencing the construction or finalizing or attempting to
6 finalize the acquisition of any generation facilities, any transmission
7 lines, or any related facilities without first providing notice or
8 obtaining board approval, whichever is required, or (b) serving or
9 attempting to serve at retail any customers located in Nebraska or any
10 wholesale customers in violation of section 70-1002.02, such
11 construction, acquisition, or service of such customers shall be enjoined
12 in an action brought in the name of the State of Nebraska until such
13 supplier has complied with Chapter 70, article 10.

14 (2) If the executive director of the board determines that a private
15 electric supplier commenced construction of a privately developed
16 renewable energy generation facility less than thirty days prior to
17 providing the notice and certification required in subdivisions
18 ~~subdivision~~ (2)(a) and (b) of section 70-1014.02, the executive director
19 shall send notice via certified mail to the private electric supplier,
20 informing it of the determination that the private electric supplier is
21 in violation of such subdivisions ~~subdivision~~ and is subject to a fine in
22 the amount of five hundred dollars. The private electric supplier shall
23 have twenty days from the date on which the notice is received in which
24 to submit the notice and certification described in such subdivisions
25 ~~subdivision~~ and to pay the fine. Within ten days after the private
26 electric supplier submits a notice and certification compliant with
27 subsection (2) of section 70-1014.02 and payment of the fine, the
28 executive director of the board shall issue the written acknowledgment
29 described in subsection (3) of section 70-1014.02. If the private
30 electric supplier fails to submit a notice and certification compliant
31 with subsection (2) of section 70-1014.02 and pay the fine within twenty

1 days after the date on which the private electric supplier receives the
2 notice from the executive director of the board, the private electric
3 supplier shall immediately cease construction or operation of the
4 privately developed renewable energy generation facility.

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

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

27 (5) The board shall issue a written decision within sixty days after
28 conclusion of the hearing. All costs of the hearing shall be paid by the
29 private electric supplier if (a) the board determines that the private
30 electric supplier commenced construction of the privately developed
31 renewable energy generation facility less than thirty days prior to

1 submitting the written notice and certification required pursuant to
2 subsection (2) of section 70-1014.02 or (b) the private electric supplier
3 withdraws its request for hearing prior to the board issuing its
4 decision.

5 (6) A private electric supplier which the board finds to be in
6 violation of the requirements of subsection (2) of section 70-1014.02
7 shall either (a) pay the fine described in this section and submit a
8 notice and certification compliant with subsection (2) of section
9 70-1014.02 or (b) immediately cease construction or operation of the
10 privately developed renewable energy generation facility.

11 **Sec. 5.** Original sections 70-1001.01, 70-1012, 70-1014.02, and
12 70-1015, Revised Statutes Cumulative Supplement, 2024, are repealed.

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