

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 155

Introduced by Brewer, 43; Bostelman, 23.

Read first time January 11, 2019

Committee:

- 1 A BILL FOR AN ACT relating to privately developed renewable energy
- 2 generation facilities; to amend section 70-1014.02, Reissue Revised
- 3 Statutes of Nebraska; to eliminate provisions relating to eminent
- 4 domain; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1014.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 70-1014.02 (1)(a) A privately developed renewable energy generation
4 facility that meets the requirements of this section is exempt from
5 sections 70-1012 to 70-1014.01 if no less than thirty days prior to the
6 commencement of construction the owner of the facility:

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

10 (ii) Certifies to the board that the facility will meet the
11 requirements for a privately developed renewable energy generation
12 facility;

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

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

30 (v) Certifies to the board that the private electric supplier has
31 consulted with the Game and Parks Commission to identify potential

1 measures to avoid, minimize, and mitigate impacts to species identified
2 under subsection (1) or (2) of section 37-806 during the project planning
3 and design phases, if possible, but in no event later than the
4 commencement of construction.

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

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

29 (2) Within ten days after receipt of a written notice complying with
30 subsection (1) of this section, the executive director of the board shall
31 issue a written acknowledgment that the privately developed renewable

1 energy generation facility is exempt from sections 70-1012 to 70-1014.01.

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

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

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

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

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

31 Sec. 2. Original section 70-1014.02, Reissue Revised Statutes of

1 Nebraska, is repealed.