

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 255

Introduced by Brewer, 43; Erdman, 47.

Read first time January 10, 2023

Committee:

1 A BILL FOR AN ACT relating to public power; to amend sections 15-229,
2 70-670, 70-1001.01, 70-1014.01, 70-1906, and 70-1909, Reissue
3 Revised Statutes of Nebraska; to change eminent domain and renewable
4 energy generation provisions relating to certain power suppliers; to
5 redefine a term; to harmonize provisions; and to repeal the original
6 sections.

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

1 Section 1. Section 15-229, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 15-229 (1) A city of the primary class shall have the power to
4 acquire, either temporarily or permanently, lands, real or personal
5 property, or any interests therein, or any easements deemed to be
6 necessary or desirable for any present or future necessary or authorized
7 public purpose within or without the city by gift, agreement, purchase,
8 condemnation, or otherwise. In all such cases the city shall make the
9 person or persons whose property shall be taken or injured thereby
10 adequate compensation therefor. The procedure to condemn property shall
11 be exercised in the manner set forth in sections 76-704 to 76-724. A city
12 of the primary class shall have authority to enter upon any property to
13 make surveys, examinations, investigations, and tests, and to acquire
14 other necessary and relevant data in contemplation of establishing a
15 location of a necessary or authorized public purpose, acquiring property
16 therefor, or performing other operations incident to construction,
17 reconstruction, or maintenance of such public purpose, and entry upon any
18 property pursuant to this authority shall not be considered to be a legal
19 trespass and no damages shall be recovered on that account alone. In case
20 of any actual or demonstrable damages to the premises, the city shall pay
21 the owner of the premises the amount of the damages. Upon the failure of
22 the landowner and the city to agree upon the amount of damages, the
23 landowner, in addition to any other available remedy, may file a petition
24 as provided for in section 76-705. The entry by the city or its
25 representatives shall be made only after notice of the entry and its
26 purpose.

27 (2) Beginning on the effective date of this act, no city of the
28 primary class which owns or operates a municipal electric system shall
29 exercise its power of eminent domain to acquire any property for the
30 purpose of constructing or operating a renewable energy generation
31 facility producing electricity with wind or solar energy.

1 Sec. 2. Section 70-670, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 70-670 (1) Except as otherwise provided in this section, in In
4 addition to any other rights and powers conferred upon any district
5 organized under or subject to Chapter 70, article 6, each such district
6 shall have and exercise the power of eminent domain to acquire from any
7 person, firm, association, or private corporation any and all property
8 owned, used, or operated, or useful for operation, in the generation,
9 transmission, or distribution of electrical energy, including an existing
10 electric utility system or any part thereof. The procedure to condemn
11 property shall be exercised in the manner set forth in Chapter 76,
12 article 7.

13 (2) In the case of the acquisition through the exercise of the power
14 of eminent domain of an existing electric utility system or part thereof,
15 the Attorney General shall, upon request of any district, represent such
16 district in the institution and prosecution of condemnation proceedings.
17 After acquisition of an existing electric utility system through the
18 exercise of the power of eminent domain, the district shall reimburse the
19 state for all costs and expenses incurred in the condemnation proceedings
20 by the Attorney General.

21 (3) A district may agree to limit its exercise of the power of
22 eminent domain to acquire a project which is a renewable energy
23 generation facility producing electricity with wind and any related
24 facilities.

25 (4) No property owned, used, or operated as part of a privately
26 developed renewable energy generation facility meeting the requirements
27 of section 70-1014.02 shall be subject to eminent domain by any consumer-
28 owned electric supplier operating in the State of Nebraska.

29 (5) Beginning on the effective date of this act, no district whose
30 chartered territory comprises more than one-half of the counties in
31 Nebraska or whose service area contains a city of the metropolitan class

1 shall exercise its power of eminent domain to acquire any property for
2 the purpose of constructing or operating a renewable energy generation
3 facility producing electricity with wind or solar energy.

4 Sec. 3. Section 70-1001.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 70-1001.01 For purposes of sections 70-1001 to 70-1028, unless the
7 context otherwise requires:

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

9 (2) Electric suppliers or suppliers of electricity means any legal
10 entity supplying, producing, or distributing electricity within the state
11 for sale at wholesale or retail;

12 (3) Private electric supplier means an electric supplier producing
13 electricity from a privately developed renewable energy generation
14 facility that is not a public power district, a public power and
15 irrigation district, a municipality, a registered group of
16 municipalities, an electric cooperative, an electric membership
17 association, any other governmental entity, or any combination thereof;

18 (4) Privately developed renewable energy generation facility means a
19 facility that (a) generates electricity using solar, wind, geothermal,
20 biomass, landfill gas, or biogas, including all electrically connected
21 equipment used to produce, collect, and store the facility output up to
22 and including the transformer that steps up the voltage to sixty thousand
23 volts or greater, and including supporting structures, buildings, and
24 roads, unless otherwise agreed to in a joint transmission development
25 agreement, (b) is developed, constructed, and owned, in whole or in part,
26 by one or more private electric suppliers, and (c) is not wholly owned by
27 a public power district, a public power and irrigation district, a
28 municipality, a registered group of municipalities, an electric
29 cooperative, an electric membership association, any other governmental
30 entity, or any combination thereof. Privately developed renewable energy
31 generation facility does not include any such facility constructed on or

1 after the effective date of this act if the ownership of such facility
2 includes a public power district whose chartered territory comprises more
3 than one-half of the counties in Nebraska, a public power district whose
4 service area contains a city of the metropolitan class, or a municipal
5 electric system whose service area contains a city of the primary class;

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

12 (6) Representative organization means an organization designated by
13 the board and organized for the purpose of providing joint planning and
14 encouraging maximum cooperation and coordination among electric
15 suppliers. Such organization shall represent electric suppliers owning a
16 combined electric generation plant capacity of at least ninety percent of
17 the total electric generation plant capacity constructed and in operation
18 within the state;

19 (7) State means the State of Nebraska; and

20 (8) Unbundled retail rates means the separation of utility bills
21 into the individual price components for which an electric supplier
22 charges its retail customers, including, but not limited to, the separate
23 charges for the generation, transmission, and distribution of
24 electricity.

25 Sec. 4. Section 70-1014.01, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 70-1014.01 (1) Except as provided in subsection (4) ~~(2)~~ of this
28 section:

29 (a) An ~~an~~ application by a municipality, a registered group of
30 municipalities, a public power district, a public power and irrigation
31 district, an electric cooperative, an electric membership association, or

1 any other governmental entity, for a facility that will generate not more
2 than ten thousand kilowatts of electric energy at rated capacity and will
3 generate electricity using solar, wind, biomass, landfill gas, methane
4 gas, or hydropower generation technology or an emerging generation
5 technology, including, but not limited to, fuel cells and micro-turbines,
6 shall be deemed a special generation application. Such application shall
7 be approved by the board if the board finds that (i) ~~(a)~~ the application
8 qualifies as a special generation application, (ii) ~~(b)~~ the application
9 will provide public benefits sufficient to warrant approval of the
10 application, although it may not constitute the most economically
11 feasible generation option, and (iii) ~~(c)~~ the application under
12 consideration represents a separate and distinct project from any
13 previous special generation application the applicant may have filed.

14 (b) ~~(2)(a)~~ An application by a municipality, a registered group of
15 municipalities, a public power district, a public power and irrigation
16 district, an electric cooperative, an electric membership association, or
17 any other governmental entity for a facility that will generate more than
18 ten thousand kilowatts of electric energy at rated capacity and will
19 generate electricity using renewable energy sources such as solar, wind,
20 biomass, landfill gas, methane gas, or new hydropower generation
21 technology or an emerging technology, including, but not limited to, fuel
22 cells and micro-turbines, may be filed with the board if (i) the total
23 production from all such renewable projects, excluding sales from such
24 projects to other electric-generating entities, does not exceed ten
25 percent of total energy sales as shown in the producer's Annual Electric
26 Power Industry Report to the United States Department of Energy and (ii)
27 the applicant's governing body conducts at least one advertised public
28 hearing which affords the ratepayers of the applicant a chance to review
29 and comment on the subject of the application.

30 (c) ~~(b)~~ The application filed under subdivision (1)(b) ~~(2)(a)~~ of
31 this section shall be approved by the board if the board finds that (i)

1 the applicant is using renewable energy sources described in this
2 subsection, (ii) total production from all renewable projects of the
3 applicant does not exceed ten percent of the producer's total energy
4 sales as described in subdivision ~~(1)(b)~~ ~~(2)(a)~~ of this section, and
5 (iii) the applicant's governing body has conducted at least one
6 advertised public hearing which affords its ratepayers a chance to review
7 and comment on the subject of the application.

8 ~~(d)~~ ~~(3)(a)~~ A community-based energy development project organized
9 pursuant to the Rural Community-Based Energy Development Act or any
10 privately developed project which intends to develop renewable energy
11 sources for sale to one or more Nebraska electric utilities described in
12 this section may also make an application to the board pursuant to this
13 ~~subdivision~~ ~~subsection~~ if (i) the purchasing electric utilities conduct a
14 public hearing described in subdivision ~~(1)(b)~~ ~~(2)(a)~~ of this section,
15 (ii) the power and energy from the renewable energy sources is sold
16 exclusively to such electric utilities for a term of at least twenty
17 years, and (iii) the total production from all such renewable projects,
18 excluding sales from such projects to other electric-generation entities,
19 does not exceed ten percent of total energy sales of such purchasing
20 electric utilities as shown in such utilities' Annual Electric Power
21 Industry Report to the United States Department of Energy or the
22 successor to such report.~~(b)~~ The application filed under this subdivision
23 ~~(3)(a)~~ ~~of this section~~ shall be approved by the board if the board finds
24 that the purchasing electric utilities have met the conditions described
25 in this subdivision ~~(3)(a)~~ ~~of this section~~.

26 ~~(2)~~ ~~(4)~~ No facility or part of a facility which is approved pursuant
27 to this section is subject to eminent domain by any electric supplier, or
28 by any other entity if the purpose of the eminent domain proceeding is to
29 acquire the facility for electric generation or transmission.

30 ~~(3)~~ ~~(5)~~ A privately developed renewable energy generation facility
31 is exempt from this section if it complies with section 70-1014.02.

1 (4) Beginning on the effective date of this act, no application
2 shall be made under this section by a public power district whose
3 chartered territory comprises more than one-half of the counties in
4 Nebraska, a public power district whose service area contains a city of
5 the metropolitan class, or a municipal electric system whose service area
6 contains a city of the primary class for a facility described under
7 subdivisions (1)(a) or (b) of this section or for a project described
8 under subdivision (1)(d) of this section that generates electricity using
9 solar or wind energy.

10 Sec. 5. Section 70-1906, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 70-1906 (1) The governing body of an electric supplier that has
13 determined a need to construct new renewable generation facilities shall
14 take reasonable steps to determine if one or more C-BED projects are
15 available and are technically, economically, and operationally feasible
16 to provide some or all of the identified generation need.

17 (2) No electric supplier that is a public power district whose
18 chartered territory comprises more than one-half of the counties in
19 Nebraska, a public power district whose service area contains a city of
20 the metropolitan class, or a municipal electric system whose service area
21 contains a city of the primary class shall become a qualified owner in
22 any C-BED project developed on or after the effective date of this act
23 that generates electricity using solar or wind energy.

24 Sec. 6. Section 70-1909, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 70-1909 (1) An electric supplier as defined in section 70-1001.01
27 may agree to limit its exercise of the power of eminent domain to acquire
28 a C-BED project and any related facilities if such electric supplier
29 enters into a contract to purchase output from such C-BED project for a
30 term of ten years or more.

31 (2) Beginning on the effective date of this act, no electric

1 supplier that is a public power district whose chartered territory
2 comprises more than one-half of the counties in Nebraska, a public power
3 district whose service area contains a city of the metropolitan class, or
4 a municipal electric system whose service area contains a city of the
5 primary class shall exercise its power of eminent domain to acquire any
6 C-BED project or related facilities.

7 Sec. 7. Original sections 15-229, 70-670, 70-1001.01, 70-1014.01,
8 70-1906, and 70-1909, Reissue Revised Statutes of Nebraska, are repealed.