

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 824

FINAL READING

Introduced by McCollister, 20; Baker, 30; Brasch, 16; Davis, 43; Haar, 21; Kolowski, 31; Lindstrom, 18; Watermeier, 1; Schilz, 47; Pansing Brooks, 28.

Read first time January 08, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to power generation; to amend sections 70-670,
2 70-1012, and 70-1012.01, Reissue Revised Statutes of Nebraska,
3 sections 70-1001, 70-1001.01, 70-1003, 70-1013, 70-1014, 70-1014.01,
4 70-1014.02, 70-1015, and 70-1028, Revised Statutes Cumulative
5 Supplement, 2014, and sections 70-1903 and 77-6203, Revised Statutes
6 Supplement, 2015; to prohibit the use of eminent domain as
7 prescribed; to change provisions relating to private developers; to
8 provide, change, and eliminate definitions; to change provisions
9 relating to compensation for certain members of the Nebraska Power
10 Review Board as prescribed; to exempt certain privately developed
11 renewable energy generation facilities from regulation as
12 prescribed; to eliminate provisions related to certified renewable
13 export facilities; to harmonize provisions; to appropriate funds to
14 aid in carrying out the provisions of this legislative bill; and to
15 repeal the original sections.
16 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

28 Sec. 2. Section 70-1001, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 70-1001 In order to provide the citizens of the state with adequate
31 electric service at as low overall cost as possible, consistent with

1 sound business practices, it is the policy of this state to avoid and
2 eliminate conflict and competition between public power districts, public
3 power and irrigation districts, individual municipalities, registered
4 groups of municipalities, electric membership associations, and
5 cooperatives in furnishing electric energy to retail and wholesale
6 customers, to avoid and eliminate the duplication of facilities and
7 resources which result therefrom, and to facilitate the settlement of
8 rate disputes between suppliers of electricity.

9 It is also the policy of the state to prepare for an evolving retail
10 electricity market if certain conditions are met which indicate that
11 retail competition is in the best interests of the citizens of the state.
12 The determination on the timing and form of competitive markets is a
13 matter properly left to the states as each state must evaluate the costs
14 and benefits of a competitive retail market based on its own unique
15 conditions. Consequently, there is a need for the state to monitor
16 whether the conditions necessary for its citizens to benefit from retail
17 competition exist.

18 It is also the policy of the state to encourage and allow
19 opportunities for private developers to develop, own, and operate
20 renewable energy facilities intended ~~primarily~~ for sale at wholesale
21 ~~export from the state~~ under a statutory framework which protects the
22 ratepayers of consumer-owned utility systems operating in the state from
23 subsidizing the costs of such export facilities through their rates.

24 Sec. 3. Section 70-1001.01, Revised Statutes Cumulative Supplement,
25 2014, is amended to read:

26 70-1001.01 For purposes of sections 70-1001 to 70-1028 ~~70-1027~~,
27 unless the context otherwise requires:

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

29 ~~(2) Certified renewable export facility means a facility approved~~
30 ~~under section 70-1014.02 that (a) will generate electricity using solar,~~
31 ~~wind, biomass, or landfill gas, (b) will be constructed and owned by an~~

1 ~~entity other than a municipality, a registered group of municipalities, a~~
2 ~~public power district, a public power and irrigation district, an~~
3 ~~electric cooperative, an electric membership association, or any other~~
4 ~~governmental entity, and (c) has a power purchase or similar agreement or~~
5 ~~agreements with an initial term of ten years or more for the sale of at~~
6 ~~least ninety percent of the output of the facility with a customer or~~
7 ~~customers located outside the State of Nebraska and maintains such an~~
8 ~~agreement or agreements for the life of the facility. Output sold~~
9 ~~pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be~~
10 ~~included when calculating such ninety percent. Certified renewable export~~
11 ~~facility includes all generating equipment, easements, and~~
12 ~~interconnection equipment within the facility and connecting the facility~~
13 ~~to the transmission grid;~~

14 ~~(2) Electric~~ (3) Except as expressly provided in section 70-1014.02,
15 electric suppliers or suppliers of electricity means any legal entity
16 supplying, producing, or distributing electricity within the state for
17 sale at wholesale or retail;

18 (3) Private electric supplier means an electric supplier producing
19 electricity from a privately developed renewable energy generation
20 facility that is not a public power district, a public power and
21 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;

24 (4) Privately developed renewable energy generation facility means a
25 facility that (a) generates electricity using solar, wind, geothermal,
26 biomass, landfill gas, or biogas, including all electrically connected
27 equipment used to produce, collect, and store the facility output up to
28 and including the transformer that steps up the voltage to sixty thousand
29 volts or greater, and including supporting structures, buildings, and
30 roads, unless otherwise agreed to in a joint transmission development
31 agreement, (b) is developed, constructed, and owned, in whole or in part,

1 by one or more private electric suppliers, and (c) is not wholly owned by
2 a public power district, a public power and irrigation district, a
3 municipality, a registered group of municipalities, an electric
4 cooperative, an electric membership association, any other governmental
5 entity, or any combination thereof;

6 (5 4) 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 5) Representative organization means an organization designated
13 by the board and organized for the purpose of providing joint planning
14 and 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 6) State means the State of Nebraska; and

20 ~~(7) Stranded asset means a generation or transmission facility owned~~
21 ~~by an electric supplier as defined in subsection (1) of section~~
22 ~~70-1014.02 which cannot earn a favorable economic return due to~~
23 ~~regulatory or legislative actions or changes in the market and, at the~~
24 ~~time an application is filed with the board under such section, either~~
25 ~~exists or has been approved by the board or the governing body of an~~
26 ~~electric supplier as defined in such subsection; and~~

27 (8) Unbundled retail rates means the separation of utility bills
28 into the individual price components for which an electric supplier
29 charges its retail customers, including, but not limited to, the separate
30 charges for the generation, transmission, and distribution of
31 electricity.

1 Sec. 4. Section 70-1003, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 70-1003 (1) There is hereby established an independent board to be
4 known as the Nebraska Power Review Board to consist of five members, one
5 of whom shall be an engineer, one an attorney, one an accountant, and two
6 laypersons. No person who is or who has within four years preceding his
7 or her appointment been either a director, officer, or employee of any
8 electric utility or an elective state officer shall be eligible for
9 membership on the board. Members of the board shall be appointed by the
10 Governor subject to the approval of the Legislature. Upon expiration of
11 the terms of the members first appointed, the successors shall be
12 appointed for terms of four years. No member of the board shall serve
13 more than two consecutive terms. Any vacancy on the board arising other
14 than from the expiration of a term shall be filled by appointment for the
15 unexpired portion of the term, and any person appointed to fill a vacancy
16 on the board shall be eligible for reappointment for two more consecutive
17 terms. No more than three members of the board shall be registered
18 members of that political party represented by the Governor.

19 (2) Each member of the board shall receive sixty dollars per day for
20 each day actually and necessarily engaged in the performance of his or
21 her duties, but not to exceed six thousand dollars in any one year,
22 except for the member designated to represent the board on the Southwest
23 Power Pool Regional State Committee or its equivalent successor, who
24 shall receive two hundred fifty dollars for each day actually and
25 necessarily engaged in the performance of his or her duties, not to
26 exceed twenty thousand dollars in any one year. If the member designated
27 to represent the board on the Southwest Power Pool Regional State
28 Committee should for any reason no longer serve in that capacity during a
29 year, the pay received while serving in such capacity shall not be used
30 for purposes of calculating the six-thousand-dollar limitation for board
31 members not serving in that capacity. When another board member acts as

1 the proxy for the designated Southwest Power Pool Regional State
2 Committee member, he or she shall receive the same pay as the designated
3 member would have for that activity. Pay received while serving as proxy
4 for such designated member shall not be used for purposes of determining
5 whether the six-thousand-dollar limitation has been met for board members
6 not serving as such designated member. Total pay to board members for
7 activities related to the Southwest Power Pool shall not exceed an
8 aggregate total of twenty-five thousand dollars in any one year. Each
9 member and shall be reimbursed for his or her actual and necessary
10 expenses while so engaged as provided in sections 81-1174 to 81-1177. The
11 board shall have jurisdiction as provided in Chapter 70, article 10.

12 (3 2) The board shall ~~meet promptly after its members have been~~
13 ~~appointed.~~ They shall elect from their members a chairperson and a vice-
14 chairperson. Decisions of the board shall require the approval of a
15 majority of the members of the board.

16 (4 3) The board shall employ an executive director and may employ
17 such other staff necessary to carry out the duties pursuant to Chapter
18 70, article 10. The executive director shall serve at the pleasure of the
19 board and shall be solely responsible to the board. The executive
20 director shall be responsible for the administrative operations of the
21 board and shall perform such other duties as may be delegated or assigned
22 to him or her by the board. The board may obtain the services of experts
23 and consultants necessary to carry out the board's duties pursuant to
24 Chapter 70, article 10.

25 (5 4) The board shall publish and submit a biennial report with
26 annual data to the Governor, with copies to be filed with the Clerk of
27 the Legislature and with the State Energy Office. The report submitted to
28 the Clerk of the Legislature shall be submitted electronically. The State
29 Energy Office shall consider the information in the Nebraska Power Review
30 Board's report when the State Energy Office prepares its own reports
31 pursuant to sections 81-1606 and 81-1607. The report of the board shall

1 include:

2 (a) The assessments for the fiscal year imposed pursuant to section
3 70-1020;

4 (b) The gross income totals for each category of the industry and
5 the industry total;

6 (c) The number of suppliers against whom the assessment is levied,
7 by category and in total;

8 (d) The projected dollar costs of generation, transmission, and
9 microwave applications, approved and denied;

10 (e) The actual dollar costs of approved applications upon
11 completion, and a summary of an informational hearing concerning any
12 significant divergence between the projected and actual costs;

13 (f) A description of Nebraska's current electric system and
14 information on additions to and retirements from the system during the
15 fiscal year, including microwave facilities;

16 (g) A statistical summary of board activities and an expenditure
17 summary;

18 (h) A roster of power suppliers in Nebraska and the assessment each
19 paid; and

20 (i) Appropriately detailed historical and projected electric supply
21 and demand statistics, including information on the total generating
22 capacity owned by Nebraska suppliers and the total peak load demand of
23 the previous year, along with an indication of how the industry will
24 respond to the projected situation.

25 (6 5) The board may, in its discretion, hold public hearings
26 concerning the conditions that may indicate that retail competition in
27 the electric industry would benefit Nebraska's citizens and what steps,
28 if any, should be taken to prepare for retail competition in Nebraska's
29 electricity market. In determining whether to hold such hearings, the
30 board shall consider the sufficiency of public interest.

31 (7 6) The board may, at any time deemed beneficial by the board,

1 submit a report to the Governor with copies to be filed with the Clerk of
2 the Legislature and the Natural Resources Committee of the Legislature.
3 The report filed with the Clerk of the Legislature and the committee
4 shall be filed electronically. The report may include:

5 (a) Whether or not a viable regional transmission organization and
6 adequate transmission exist in Nebraska or in a region which includes
7 Nebraska;

8 (b) Whether or not a viable wholesale electricity market exists in a
9 region which includes Nebraska;

10 (c) To what extent retail rates have been unbundled in Nebraska;

11 (d) A comparison of Nebraska's wholesale electricity prices to the
12 prices in the region; and

13 (e) Any other information the board believes to be beneficial to the
14 Governor, the Legislature, and Nebraska's citizens when considering
15 whether retail electric competition would be beneficial, such as, but not
16 limited to, an update on deregulation activities in other states and an
17 update on federal deregulation legislation.

18 (8 7) The board may establish working groups of interested parties
19 to assist the board in carrying out the powers set forth in subsections
20 (6 5) and (7 6) of this section.

21 Sec. 5. Section 70-1012, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 70-1012 (1) Before any electric generation facilities or any
24 transmission lines or related facilities carrying more than seven hundred
25 volts are constructed or acquired by any supplier, an application, filed
26 with the board and containing such information as the board shall
27 prescribe, shall be approved by the board, except that such approval
28 shall not be required (a ±) for the construction or acquisition of a
29 transmission line extension or related facilities within a supplier's own
30 service area or for the construction or acquisition of a line not
31 exceeding one-half mile outside its own service area when all owners of

1 electric lines located within one-half mile of the extension consent
2 thereto in writing and such consents are filed with the board, (b 2) for
3 any generation facility when the board finds that (i) such : ~~(a) Such~~
4 facility is being constructed or acquired to replace a generating plant
5 owned by an individual municipality or registered group of municipalities
6 with a capacity not greater than that of the plant being replaced, (ii b)
7 such facility will generate less than twenty-five thousand kilowatts of
8 electric energy at rated capacity, and (iii e) the applicant will not use
9 the plant or transmission capacity to supply wholesale power to customers
10 outside the applicant's existing retail service area or chartered
11 territory, (c 3) for acquisition of transmission lines or related
12 facilities, within the state, carrying one hundred fifteen thousand volts
13 or less, if the current owner of the transmission lines or related
14 facilities notifies the board of the lines or facilities involved in the
15 transaction and the parties to the transaction, or (d 4) for the
16 construction of a qualified facility as defined in section 70-2002.

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

19 Sec. 6. Section 70-1012.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 70-1012.01 (1) If In the event a supplier terminates construction
22 or acquisition of electric generation or transmission facilities after
23 receiving approval for the facilities from the board ~~Nebraska Power~~
24 ~~Review Board~~, the supplier shall file with the board, within thirty days
25 after ~~of~~ the action taken to terminate construction or acquisition, a
26 statement of the factors or reasons relied upon by the supplier in taking
27 such action. Within ten days after receipt of such a filing, the board
28 shall give notice of the filing to such other suppliers as it deems
29 interested or affected by such action and it shall hold a hearing for the
30 purpose of obtaining such additional information as the board deems
31 advisable or necessary to inform other suppliers and the public of the

1 reasons for such termination. Notice of any such hearing shall be given
2 to those suppliers previously given notice of the filing and to any other
3 parties expressing interest in the approved application.

4 (2) The board shall not have authority to approve or deny the action
5 of a supplier terminating construction or acquisition, and any such
6 filing or hearing shall be advisory and solely for the purpose of
7 informing the board, other suppliers, interested parties, and the
8 ratepayers of this state of the factors or reasons relied upon in taking
9 action to terminate construction or acquisition.

10 (3) Nothing in this section shall constitute or be construed as a
11 defense to any cause of action, including a claim for breach of contract,
12 resulting from such termination.

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

15 Sec. 7. Section 70-1013, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 70-1013 (1) Upon application being filed under section 70-1012, the
18 board shall fix a time and place for hearing and shall give ten days'
19 notice by mail to such power suppliers as it deems to be affected by the
20 application. The hearing shall be held within sixty days unless for good
21 cause shown the applicant requests in writing that such hearing not be
22 scheduled until a later time, but in any event such hearing shall be held
23 not more than one hundred twenty days after the filing of the application
24 and the board shall give its decision within sixty days after the
25 conclusion of the hearing. Any parties interested may appear, file
26 objections, and offer evidence. The board may grant the application
27 without notice or hearing, upon the filing of such waivers as it may
28 require, if in its judgment the finding required by section 70-1014 or
29 70-1014.01 or ~~subdivision (2)(a) of section 70-1014.02~~ can be made
30 without a hearing. Such hearing shall be conducted as provided in section
31 70-1006. The board may allow amendments to the application, in the

1 interests of justice.

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

4 Sec. 8. Section 70-1014, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 70-1014 (1) After hearing, the board shall have authority to
7 approve or deny the application. Except as provided in section 70-1014.01
8 for special generation applications ~~and except as provided in section~~
9 ~~70-1014.02~~, before approval of an application, the board shall find that
10 the application will serve the public convenience and necessity, and that
11 the applicant can most economically and feasibly supply the electric
12 service resulting from the proposed construction or acquisition, without
13 unnecessary duplication of facilities or operations.

14 (2) If the application involves a transmission line or related
15 facilities planned and approved by a regional transmission organization
16 and the regional transmission organization has issued a notice to
17 construct or similar notice or order to a utility to construct the line
18 or related facilities, the board shall also consider information from the
19 regional transmission organization's planning process and may consider
20 the benefits to the region, which shall include Nebraska, provided by the
21 proposed line or related facilities as part of the board's process in
22 determining whether to approve or deny the application.

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

25 Sec. 9. Section 70-1014.01, Revised Statutes Cumulative Supplement,
26 2014, is amended to read:

27 70-1014.01 (1) Except as provided in subsection (2) of this section,
28 an application by a municipality, a registered group of municipalities, a
29 public power district, a public power and irrigation district, an
30 electric cooperative, an electric membership association, or any other
31 governmental entity, for a facility that will generate not more than ten

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

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

29 (b) The application filed under subdivision (2)(a) of this section
30 shall be approved by the board if the board finds that (i) the applicant
31 is using renewable energy sources described in this subsection, (ii)

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

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

21 (b) The application filed under subdivision (3)(a) of this section
22 shall be approved by the board if the board finds that the purchasing
23 electric utilities have met the conditions described in subdivision (3)
24 (a) of this section.

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

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

31 Sec. 10. Section 70-1014.02, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 70-1014.02 ~~(1) For purposes of this section:~~

3 (1)(a) A privately developed renewable energy generation facility
4 that meets the requirements of this section is exempt from sections
5 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 acknowledgement 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 (a) Electric supplier means a public power district, a public power

1 ~~and irrigation district, an individual municipality, a registered group~~
2 ~~of municipalities, an electric membership association, or a cooperative;~~
3 ~~and~~

4 ~~(b) Electric supplier does not have the same meaning as in section~~
5 ~~70-1001.01.~~

6 ~~(2)(a) The board shall conditionally approve an application for a~~
7 ~~certified renewable export facility if it finds that only the criteria~~
8 ~~described in subdivisions (a)(i) through (iv) of this subsection are met:~~
9 ~~(i) The facility will provide reasonably identifiable and quantifiable~~
10 ~~public benefits, including economic development, to the residents of~~
11 ~~Nebraska or the local area where the facility will be located; (ii) the~~
12 ~~facility meets the requirements of subdivisions (2)(a) and (b) of section~~
13 ~~70-1001.01; (iii) the facility has a memorandum of understanding or other~~
14 ~~written evidence of mutual intent to negotiate a power purchase agreement~~
15 ~~or agreements with a purchaser or purchasers outside the State of~~
16 ~~Nebraska for at least ninety percent of the output of the facility for~~
17 ~~ten years or more; and (iv) the applicant offers electric suppliers~~
18 ~~serving loads greater than fifty megawatts at the time the initial~~
19 ~~application is filed an option to purchase in the aggregate an amount of~~
20 ~~power up to ten percent of the output of any facility with greater than~~
21 ~~eighty megawatts of nameplate capacity contingent upon the applicant and~~
22 ~~electric suppliers negotiating in good faith a power purchase agreement~~
23 ~~and any other necessary agreements. Such electric suppliers shall be~~
24 ~~entitled to a minimum of their pro rata share based on the load ratio~~
25 ~~share of Nebraska electric load served among those electric suppliers~~
26 ~~eligible under this subdivision (iv). If an electric supplier declines to~~
27 ~~contract for some or all of its pro rata share, the remaining eligible~~
28 ~~electric suppliers may share the balance on a pro rata basis. The ten~~
29 ~~percent may be above the total generation amount proposed in the~~
30 ~~application for a certified renewable export facility and shall require~~
31 ~~no separate approval by the board. Any transmission studies, additions,~~

1 ~~or upgrades due to participation by electric suppliers serving loads~~
2 ~~greater than fifty megawatts shall be the responsibility of the~~
3 ~~participating electric supplier. Upon receiving the initial application~~
4 ~~under this section, the board shall notify electric suppliers identified~~
5 ~~in this subdivision (iv) of a pending application with a nameplate~~
6 ~~capacity greater than eighty megawatts. Such suppliers shall have forty-~~
7 ~~five days following the date of the board's notice to notify the~~
8 ~~applicant of an interest in exercising the option to purchase power,~~
9 ~~except that such suppliers may withdraw their option to purchase power~~
10 ~~once the costs of the transmission additions and upgrades are determined.~~
11 ~~Electric suppliers withdrawing their option to purchase power are~~
12 ~~responsible for their pro rata share of any costs resulting from their~~
13 ~~participation in and withdrawal from the generation interconnection and~~
14 ~~transmission delivery studies.~~

15 ~~(b) Following the board's conditional approval of an application~~
16 ~~under subdivision (a) of this subsection, the applicant shall notify the~~
17 ~~board within eighteen months that it is prepared to proceed to~~
18 ~~consideration of the criteria in subdivision (c) of this subsection. The~~
19 ~~board may extend such eighteen-month deadline not more than twelve~~
20 ~~additional months for good cause shown. If the applicant fails to notify~~
21 ~~the board within such time that it is so prepared, the conditional~~
22 ~~approval granted under this subdivision is void.~~

23 ~~(c) Upon finding that the criteria described in subdivisions (c)(i)~~
24 ~~through (viii) of this subsection have also been met by the applicant and~~
25 ~~after the board has fulfilled the requirements of subsection (3) of~~
26 ~~section 37-807, the board shall grant final approval of an application~~
27 ~~for a certified renewable export facility:~~

28 ~~(i) The facility will not have a materially detrimental effect on~~
29 ~~the retail electric rates paid by any Nebraska ratepayers, except that,~~
30 ~~notwithstanding subdivisions (c)(v) and (vi) of this subsection, the~~
31 ~~determination of a materially detrimental effect on rates shall not~~

1 ~~include regional transmission improvements dictated by a regional~~
2 ~~transmission operator or transmission improvements required due to~~
3 ~~participation by an eligible entity pursuant to subdivision (2)(a)(iv) of~~
4 ~~this section;~~

5 ~~(ii) The applicant has obtained the necessary generation~~
6 ~~interconnection and transmission service approvals from and has executed~~
7 ~~agreements for such generation interconnection and transmission service~~
8 ~~with the appropriate regional transmission organization, transmission~~
9 ~~owner, or transmission provider;~~

10 ~~(iii) There has been no demonstration that the proposed facility~~
11 ~~will result in a substantial risk of creating stranded assets;~~

12 ~~(iv) The applicant has certified that it has applied for and is~~
13 ~~actively pursuing the required approvals from any other federal, state,~~
14 ~~or local entities with jurisdiction or permitting authority over the~~
15 ~~certified renewable export facility;~~

16 ~~(v) The applicant and the electric supplier owning the transmission~~
17 ~~facilities to which the certified renewable export facility will be~~
18 ~~interconnected, along with any electric supplier which owns transmission~~
19 ~~facilities of one hundred fifteen thousand volts or more and is required~~
20 ~~to receive notice pursuant to section 70-1013, have entered into a joint~~
21 ~~transmission development agreement on reasonable terms and conditions~~
22 ~~consistent with and subject to the notice to construct or other~~
23 ~~directives of any regional transmission organization with jurisdiction~~
24 ~~over the addition or upgrade to transmission facilities or, for any~~
25 ~~electric supplier that is not a member of a regional transmission~~
26 ~~organization with which the facility will interconnect, covers the~~
27 ~~addition or upgrade to transmission facilities required as a result of~~
28 ~~the certified renewable export facility. Such joint transmission~~
29 ~~development agreement shall include provisions addressing construction,~~
30 ~~ownership, operation, and maintenance of such additions or upgrades to~~
31 ~~transmission facilities. The electric supplier or suppliers shall have~~

1 the right to purchase and own transmission facilities as set forth in the
2 joint transmission development agreement;

3 (vi) The applicant agrees to reimburse any costs that are not
4 covered by a regional transmission organization tariff or that are
5 allocated through the tariff to the electric suppliers as a result of the
6 certified renewable export facility or not covered by the tariff of a
7 transmission owner or transmission provider that is not a member of a
8 regional transmission organization, costs incurred by any electric
9 supplier as a result of adding the certified renewable export facility,
10 including, but not limited to, renewable integration costs, and costs
11 which allow the interconnected electric supplier to operate and maintain
12 the transmission facilities under reasonable terms and conditions agreed
13 to by the parties within the joint transmission development agreement;

14 (vii) The applicant shall submit a decommissioning plan. The
15 applicant or owner of the facility shall establish decommissioning
16 security by posting an instrument, a copy of which is given to the board,
17 no later than the tenth year following final approval of the facility to
18 ensure sufficient funding is available for removal of the facility and
19 reclamation at the end of the useful life of such facility pursuant to
20 the decommissioning plan. The owner of the certified renewable export
21 facility shall be solely responsible for decommissioning. If the
22 applicant or any subsequent owner of the facility intends to transfer
23 ownership of the facility, the proposed new owner shall provide the board
24 with adequate evidence demonstrating that substitute decommissioning
25 security has been posted or given prior to transfer of ownership. The
26 requirements of this subdivision (vii) shall be waived if a local
27 governmental entity with authority to create requirements for
28 decommissioning has enacted decommissioning requirements for the
29 applicable jurisdiction; and

30 (viii) The facility meets the requirements of subdivisions (2)(a)
31 through (c) of section 70-1001.01.

1 ~~(3) If the applicant does not commence construction of the certified~~
2 ~~renewable export facility within eighteen months after receiving final~~
3 ~~approval from the board under subsection (2) of this section, the~~
4 ~~approval is void. Upon written request filed by the applicant, the board~~
5 ~~may, for good cause shown, extend the time period during which an~~
6 ~~approval will remain valid. Good cause includes, but is not limited to,~~
7 ~~national or regional economic conditions, lack of transmission~~
8 ~~infrastructure, or an applicant's inability to obtain authorization from~~
9 ~~other required governmental regulatory authorities despite the~~
10 ~~applicant's exercise of a good-faith effort to obtain such approvals.~~

11 ~~(4) The applicant shall remit an application fee of five thousand~~
12 ~~dollars with the application. The fee shall be remitted to the State~~
13 ~~Treasurer for credit to the Nebraska Power Review Fund. The board shall~~
14 ~~use the application fee to defray the board's reasonable expenses~~
15 ~~associated with reviewing and acting upon the application, including the~~
16 ~~costs of the hearing. If the board incurs expenses of more than five~~
17 ~~thousand dollars associated with the application, the board shall provide~~
18 ~~written notification to the applicant of the additional sum needed or~~
19 ~~already expended, after which the applicant shall promptly submit an~~
20 ~~additional sum sufficient to cover the board's anticipated or incurred~~
21 ~~expenses or shall file an objection with the board. If, after completion~~
22 ~~of the application process and any subsequent legal action, including~~
23 ~~appeal of the board's decision, the board's expenses associated with~~
24 ~~processing and acting upon the application do not equal the amount~~
25 ~~submitted by the applicant, the board shall return the unused funds to~~
26 ~~the applicant if the amount is fifty dollars or more. The applicant shall~~
27 ~~reimburse the board for any reasonable expenses the board incurs as a~~
28 ~~result of an appeal of the board's decision or shall file an objection~~
29 ~~with the board. The board shall rule on any objection brought pursuant to~~
30 ~~this subsection within thirty days. The applicant may request a hearing~~
31 ~~on its objection, in which case the board shall hold such hearing within~~

1 ~~thirty days after the request and shall rule within forty-five days after~~
2 ~~the hearing.~~

3 ~~(5) No facility or part of a facility which is a certified renewable~~
4 ~~export facility is subject to eminent domain by an electric supplier or~~
5 ~~by any other entity if the purpose of the eminent domain proceeding is to~~
6 ~~acquire the facility for electric generation or transmission.~~

7 ~~(6) Except as provided in subsection (5) of this section, only an~~
8 ~~electric supplier may exercise its eminent domain authority to acquire~~
9 ~~the land rights necessary for the construction of transmission lines and~~
10 ~~related facilities to provide transmission services for a certified~~
11 ~~renewable export facility. The exercise of eminent domain to provide~~
12 ~~needed transmission lines and related facilities for a certified~~
13 ~~renewable export facility is a public use. Nothing in this section shall~~
14 ~~be construed to grant the power of eminent domain to a private entity.~~

15 ~~(7) If any transmission facilities serving a certified renewable~~
16 ~~export facility are proposed to cross the service area of any electric~~
17 ~~supplier which owns transmission facilities of one hundred fifteen~~
18 ~~thousand volts or more and is required to receive notice pursuant to~~
19 ~~section 70-1013, then such electric supplier may elect to be a party to a~~
20 ~~joint transmission development agreement for such transmission~~
21 ~~facilities.~~

22 ~~(8) If a certified renewable export facility no longer meets the~~
23 ~~requirements of subdivisions (2)(a) through (c) of section 70-1001.01,~~
24 ~~the owner of the facility shall notify the board. An electric supplier or~~
25 ~~a governmental entity with regulatory jurisdiction over the certified~~
26 ~~renewable export facility may apply to the board or the board may file~~
27 ~~its own motion to have the certification of a certified renewable export~~
28 ~~facility revoked upon a showing by the applicant for decertification that~~
29 ~~the facility no longer meets the requirements of such subdivisions. Upon~~
30 ~~the filing of such application and making of a prima facie showing by the~~
31 ~~applicant for decertification that the facility no longer meets the~~

1 ~~requirements of such subdivisions, the board shall set the matter for~~
2 ~~hearing. The hearing shall be held within forty five days unless an~~
3 ~~extension is necessary for good cause shown. The applicant for~~
4 ~~decertification shall have the burden of proof. Within forty five days~~
5 ~~after the conclusion of the hearing, the board shall enter an order to~~
6 ~~either reaffirm the facility's status as a certified renewable export~~
7 ~~facility or to revoke the certification. During the pendency of the~~
8 ~~application for decertification and before the board's final order on~~
9 ~~decertification, the facility may continue to operate if the electricity~~
10 ~~generated at the facility is sold to customers outside the State of~~
11 ~~Nebraska, or to an electric supplier pursuant to a power purchase~~
12 ~~agreement or similar agreement. The board shall retain jurisdiction over~~
13 ~~the decertification action for at least thirty days after entry of such~~
14 ~~an order. Within thirty days after a final order revoking certification,~~
15 ~~the owner of the facility may apply for recertification, with the time~~
16 ~~period for recertification being no longer than one year unless the board~~
17 ~~extends the time period for good cause shown. Such application for~~
18 ~~recertification shall extend the board's jurisdiction over the~~
19 ~~decertification action until the board completes its review of the~~
20 ~~application for recertification and enters an order granting or denying~~
21 ~~the application. If the applicant for recertification demonstrates to the~~
22 ~~board that it is working diligently and in good faith to restore its~~
23 ~~compliance with subdivisions (2)(a) through (c) of section 70-1001.01,~~
24 ~~the board shall not terminate the application for recertification. During~~
25 ~~the pendency of the application for recertification and before the~~
26 ~~board's final order on recertification, the facility may continue to~~
27 ~~operate if the electricity generated at the facility is sold to customers~~
28 ~~outside the state, or to an electric supplier pursuant to a power~~
29 ~~purchase agreement or similar agreement. If the board retains~~
30 ~~jurisdiction over the decertification action, the prohibition on eminent~~
31 ~~domain set forth in subsection (5) of this section shall remain in full~~

1 ~~force and effect. If the board enters an order decertifying a certified~~
2 ~~renewable export facility and such order becomes final due to a failure~~
3 ~~to timely seek recertification or judicial review, the prohibition on~~
4 ~~eminent domain set forth in subsection (5) of this section shall no~~
5 ~~longer apply. Nothing in this section shall prohibit a decertified~~
6 ~~facility from being recertified in the same manner as a new facility.~~

7 Sec. 11. Section 70-1015, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

9 70-1015 ~~(1)~~ If any supplier violates Chapter 70, article 10, by
10 either (1) commencing the construction or finalizing or attempting
11 commences the construction or finalizes or attempts to finalize the
12 acquisition of any generation facilities, any transmission lines, or any
13 related facilities without first providing notice or obtaining board
14 approval, whichever is required, or (2) serving or attempting to serve at
15 retail any customers located in Nebraska or any wholesale customers in
16 violation of section 70-1002.02, or any customers are served in violation
17 of the provisions of Chapter 70, article 10, such construction,
18 acquisition, or service of such customers shall be enjoined in an action
19 brought in the name of the State of Nebraska until such supplier has
20 complied with the provisions of Chapter 70, article 10.

21 ~~(2) If any person owning or operating a certified renewable export~~
22 ~~facility violates any provision of Chapter 70, article 10, or violates or~~
23 ~~disobeys any requirement imposed by the board pursuant to the board's~~
24 ~~jurisdiction established in section 70-1014.02 or the board enters an~~
25 ~~order decertifying the facility and the order becomes final, further~~
26 ~~operation of the facility may be enjoined or otherwise limited or have~~
27 ~~conditions put upon it in an action brought in the name of the State of~~
28 ~~Nebraska until such person rectifies the violation or disobedience of the~~
29 ~~order or the facility becomes recertified.~~

30 Sec. 12. Section 70-1028, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

1 70-1028 (1) If an electric transmission line has been approved for
2 construction in a regional transmission organization transmission plan,
3 the incumbent electric transmission owner of the existing electric
4 transmission facilities to which the electric transmission line will
5 connect shall give notice to the board ~~Nebraska Power Review Board~~, in
6 writing, within ninety days after such approval, if it intends to
7 construct, own, and maintain the electric transmission line. If no notice
8 is provided, the incumbent electric transmission owner shall surrender
9 its first right to construct, own, and maintain the electric transmission
10 line and any other incumbent electric transmission owner may file an
11 application for the electric transmission line under section 70-1012.
12 Within twenty-four months after such notice, the incumbent electric
13 transmission owner shall file an application with the board pursuant to
14 section 70-1012.

15 (2) For purposes of this section:

16 (a) Electric transmission line means any line and related facilities
17 connecting to existing electric transmission facilities for transmitting
18 electric energy at a voltage of one hundred kilovolts or greater, other
19 than a line solely for connecting an electric generation facility to
20 facilities owned by an electric supplier; and

21 (b) Incumbent ~~incumbent~~ electric transmission owner means an entity
22 that: (i) Is an electric supplier; (ii) is a member of a regional
23 transmission organization; and (iii) owns and operates electric
24 transmission lines at a voltage of one hundred kilovolts or greater; ~~and~~
25 ~~(c) regional transmission organization has the meaning provided in~~
26 ~~section 70-1001.01.~~

27 Sec. 13. Section 70-1903, Revised Statutes Supplement, 2015, is
28 amended to read:

29 70-1903 For purposes of the Rural Community-Based Energy Development
30 Act:

31 (1) C-BED project or community-based energy development project

1 means a new energy generation project using wind, solar, biomass, or
2 landfill gas as the fuel source that:

3 (a) Has at least twenty-five percent of the gross power purchase
4 agreement payments flowing to the qualified owner or owners or as
5 payments to the local community; and

6 (b) Has a resolution of support or zoning approval adopted:

7 (i) By the county board of each county in which the C-BED project is
8 to be located and which has adopted zoning regulations that require
9 planning commission, county board, or county commission approval for the
10 C-BED project; or

11 (ii) By the tribal council for a C-BED project located within the
12 boundaries of an Indian reservation;

13 (2) Electric utility means an electric supplier that:

14 (a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt
15 or larger transmission lines in the State of Nebraska;

16 (b) Owns more than two hundred megawatts of electric generating
17 facilities; and

18 (c) Has the obligation to directly serve more than two hundred
19 megawatts of wholesale or retail electric load in the State of Nebraska;

20 (3) Gross power purchase agreement payments means the total amount
21 of payments during the first twenty years of the agreement;

22 (4) Payments to the local community include, but are not limited to:

23 (a) Lease and easement payments to property owners made as part of a
24 C-BED project;

25 (b) Contract payments for concrete, steel, gravel, towers, turbines,
26 blades, wire, or engineering, procurement, construction, geotechnical,
27 environmental, meteorological, or legal services or payments for other
28 components, equipment, materials, or services that are necessary to
29 permit or construct the C-BED project and that are provided by a company
30 that has been organized or incorporated in Nebraska under Nebraska law
31 and has employed at least five Nebraska residents for at least eighteen

1 months prior to the date of the project application for certification as
2 a C-BED project; and

3 (c) Payments that are for physical parts, materials, or components
4 that are manufactured, assembled, or fabricated in Nebraska and that are
5 not described in subdivision (a) or (b) of this subdivision.

6 Such payments need not be made directly from power purchase
7 agreement revenue and may be made from other funds in advance of
8 receiving power purchase agreement revenue; and

9 (5) Qualified owner means:

10 (a) A Nebraska resident;

11 (b) A limited liability company that is organized under the Nebraska
12 Uniform Limited Liability Company Act and that is made up of members who
13 are Nebraska residents;

14 (c) A Nebraska nonprofit corporation organized under the Nebraska
15 Nonprofit Corporation Act;

16 (d) A public power district, a public power and irrigation district,
17 a municipality, a registered group of municipalities, an electric
18 cooperative, or an electric membership association ~~An electric supplier~~
19 ~~as defined in section 70-1014.02~~, except that qualified ownership in a
20 single C-BED project is limited to no more than:

21 (i) Fifteen percent either directly or indirectly by a single
22 electric supplier; and

23 (ii) A combined total of twenty-five percent either directly or
24 indirectly by multiple electric suppliers;

25 (e) A tribal council;

26 (f) A domestic corporation organized in Nebraska under the Nebraska
27 Model Business Corporation Act and domiciled in Nebraska; or

28 (g) A cooperative corporation organized under sections 21-1301 to
29 21-1306 and domiciled in Nebraska.

30 Sec. 14. Section 77-6203, Revised Statutes Supplement, 2015, is
31 amended to read:

1 77-6203 (1) The owner of a renewable energy generation facility
2 annually shall pay a nameplate capacity tax equal to the total nameplate
3 capacity of the commissioned renewable energy generation facility
4 multiplied by a tax rate of three thousand five hundred eighteen dollars
5 per megawatt.

6 (2) No tax shall be imposed on a renewable energy generation
7 facility:

8 (a) Owned or operated by the federal government, the State of
9 Nebraska, a public power district, a public power and irrigation
10 district, an individual municipality, a registered group of
11 municipalities, an electric membership association, or a cooperative; or

12 (b) That is a customer-generator as defined in section 70-2002.

13 (3) No tax levied pursuant to this section shall be construed to
14 constitute restricted funds as defined in section 13-518 for the first
15 five years after the renewable energy generation facility is
16 commissioned.

17 (4) The presence of one or more renewable energy generation
18 facilities or supporting infrastructure shall not be a factor in the
19 assessment, determination of actual value, or classification under
20 section 77-201 of the real property underlying or adjacent to such
21 facilities or infrastructure.

22 (5)(a) The Department of Revenue shall collect the tax due under
23 this section.

24 (b) The tax shall be imposed beginning the first calendar year the
25 renewable energy generation facility is commissioned. A renewable energy
26 generation facility that uses wind as the fuel source which was
27 commissioned prior to July 15, 2010, shall be subject to the tax levied
28 pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The
29 amount of property tax on depreciable tangible personal property
30 previously paid on a renewable energy generation facility that uses wind
31 as the fuel source which was commissioned prior to July 15, 2010, which

1 is greater than the amount that would have been paid pursuant to sections
2 77-6201 to 77-6204 from the date of commissioning until January 1, 2010,
3 shall be credited against any tax due under Chapter 77, and any amount so
4 credited that is unused in any tax year shall be carried over to
5 subsequent tax years until fully utilized.

6 (c)(i) The tax for the first calendar year shall be prorated based
7 upon the number of days remaining in the calendar year after the
8 renewable energy generation facility is commissioned.

9 (ii) In the first year in which a renewable energy generation
10 facility is taxed or in any year in which additional commissioned
11 nameplate capacity is added to a renewable energy generation facility,
12 the taxes on the initial or additional nameplate capacity shall be
13 prorated for the number of days remaining in the calendar year.

14 (iii) When a renewable energy generation facility is decommissioned
15 or made nonoperational by a change in law ~~or decertification from its~~
16 ~~status as a certified renewable export facility~~ during a tax year, the
17 taxes shall be prorated for the number of days during which the renewable
18 energy generation facility was not decommissioned or was operational.

19 (iv) When the capacity of a renewable energy generation facility to
20 produce electricity is reduced but the renewable energy generation
21 facility is not decommissioned, the nameplate capacity of the renewable
22 energy generation facility is deemed to be unchanged.

23 (6)(a) On March 1 of each year, the owner of a renewable energy
24 generation facility shall file with the Department of Revenue a report on
25 the nameplate capacity of the facility for the previous year from January
26 1 through December 31. All taxes shall be due on April 1 and shall be
27 delinquent if not paid on a quarterly basis on April 1 and each quarter
28 thereafter. Delinquent quarterly payments shall draw interest at the rate
29 provided for in section 45-104.02, as such rate may from time to time be
30 adjusted.

31 (b) The owner of a renewable energy generation facility is liable

1 for the taxes under this section with respect to the facility, whether or
2 not the owner of the facility is the owner of the land on which the
3 facility is situated.

4 (7) Failure to file a report required by subsection (6) of this
5 section, filing such report late, failure to pay taxes due, or
6 underpayment of such taxes shall result in a penalty of five percent of
7 the amount due being imposed for each quarter the report is overdue or
8 the payment is delinquent, except that the penalty shall not exceed ten
9 thousand dollars.

10 (8) The Department of Revenue shall enforce the provisions of this
11 section. The department shall adopt and promulgate rules and regulations
12 necessary for the implementation and enforcement of this section.

13 (9) The Department of Revenue shall separately identify the proceeds
14 from the tax imposed by this section and shall pay all such proceeds over
15 to the county treasurer of the county where the renewable energy
16 generation facility is located within thirty days after receipt of such
17 proceeds.

18 Sec. 15. There is hereby appropriated (1) \$19,000 from the Nebraska
19 Power Review Fund for FY2016-17 and (2) \$19,000 from the Nebraska Power
20 Review Fund for FY2017-18 to the Nebraska Power Review Board, for Program
21 72, to aid in carrying out the provisions of this act.

22 Total expenditures for permanent and temporary salaries and per
23 diems from funds appropriated in this section shall not exceed \$19,000
24 for FY2016-17 or \$19,000 for FY2017-18.

25 Sec. 16. Original sections 70-670, 70-1012, and 70-1012.01, Reissue
26 Revised Statutes of Nebraska, sections 70-1001, 70-1001.01, 70-1003,
27 70-1013, 70-1014, 70-1014.01, 70-1014.02, 70-1015, and 70-1028, Revised
28 Statutes Cumulative Supplement, 2014, and sections 70-1903 and 77-6203,
29 Revised Statutes Supplement, 2015, are repealed.