

AMENDMENTS TO LB120

Introduced by Bostelman, 23.

1 1. Strike the original section and insert the following new
2 sections:

3 Section 1. Section 70-1001.01, Revised Statutes Supplement, 2023, is
4 amended to read:

5 70-1001.01 For purposes of sections 70-1001 to 70-1028, unless the
6 context otherwise requires:

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

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

11 (3) Military installation means a military base where fixed-wing
12 aircraft or strategic weapon assets are on a permanent or temporary basis
13 assigned, stored, operated from, or otherwise located;

14 (4) ~~(3)~~ Private electric supplier means an electric supplier
15 producing electricity from a privately developed renewable energy
16 generation facility that is not a public power district, a public power
17 and irrigation district, a municipality, a registered group of
18 municipalities, an electric cooperative, an electric membership
19 association, any other governmental entity, or any combination thereof;

20 (5) ~~(4)~~ Privately developed renewable energy generation facility
21 means a facility that (a) generates electricity using solar, wind,
22 geothermal, biomass, landfill gas, or biogas, including all electrically
23 connected equipment used to produce, collect, and store the facility
24 output up to and including the transformer that steps up the voltage to
25 sixty thousand volts or greater, and including supporting structures,
26 buildings, and roads, unless otherwise agreed to in a joint transmission
27 development agreement, (b) is developed, constructed, and owned, in whole

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

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

13 (7) ~~(6)~~ Reliable or reliability means the ability of an electric
14 supplier to supply the aggregate electric power and energy requirements
15 of its electricity consumers in Nebraska at all times under normal
16 operating conditions, taking into account scheduled and unscheduled
17 outages, including sudden disturbances or unanticipated loss of system
18 components that are to be reasonably expected for any electric utility
19 following prudent utility practices, recognizing certain weather
20 conditions and other contingencies may cause outages at the distribution,
21 transmission, and generation level;

22 (8) ~~(7)~~ Representative organization means an organization designated
23 by the board and organized for the purpose of providing joint planning
24 and encouraging maximum cooperation and coordination among electric
25 suppliers. Such organization shall represent electric suppliers owning a
26 combined electric generation plant accredited capacity of at least ninety
27 percent of the total electric generation plant accredited capacity
28 constructed and in operation within the state;

29 (9) ~~(8)~~ State means the State of Nebraska; and

30 (10) ~~(9)~~ Unbundled retail rates means the separation of utility
31 bills into the individual price components for which an electric supplier

1 charges its retail customers, including, but not limited to, the separate
2 charges for the generation, transmission, and distribution of
3 electricity.

4 Sec. 2. Section 70-1012, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 70-1012 (1) Before any electric generation facilities or any
7 transmission lines or related facilities carrying more than seven hundred
8 volts are constructed or acquired by any supplier, an application, filed
9 with the board and containing such information as the board shall
10 prescribe, shall be approved by the board, except that such approval
11 shall not be required (a) for the construction or acquisition of a
12 transmission line extension or related facilities within a supplier's own
13 service area or for the construction or acquisition of a line not
14 exceeding one-half mile outside its own service area when all owners of
15 electric lines located within one-half mile of the extension consent
16 thereto in writing and such consents are filed with the board, (b) for
17 any generation facility when the board finds that (i) such facility is
18 being constructed or acquired to replace a generating plant owned by an
19 individual municipality or registered group of municipalities with a
20 capacity not greater than that of the plant being replaced, (ii) such
21 facility will generate less than twenty-five thousand kilowatts of
22 electric energy at rated capacity, and (iii) the applicant will not use
23 the plant or transmission capacity to supply wholesale power to customers
24 outside the applicant's existing retail service area or chartered
25 territory, (c) for acquisition of transmission lines or related
26 facilities, within the state, carrying one hundred fifteen thousand volts
27 or less, if the current owner of the transmission lines or related
28 facilities notifies the board of the lines or facilities involved in the
29 transaction and the parties to the transaction, or (d) for the
30 construction of a qualified facility as defined in section 70-2002.

31 (2) Before any electric supplier commences construction of or

1 acquires an electric generation facility or transmission lines or related
2 facilities of any voltage that will be located within a ten-mile radius
3 of a military installation, the owner of such proposed facility,
4 transmission lines, or related facilities shall provide written notice
5 certifying to the board that such facility or facilities contain no
6 materials, electronics, or other components manufactured by any foreign
7 government or foreign nongovernment person determined to be a foreign
8 adversary pursuant to 15 C.F.R. 7.4.

9 (3) ~~(2)~~ A privately developed renewable energy generation facility
10 is exempt from this section if it complies with section 70-1014.02.

11 Sec. 3. Section 70-1014.02, Revised Statutes Cumulative Supplement,
12 2022, is amended to read:

13 70-1014.02 (1) The Legislature finds that:

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

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

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

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

28 (2)(a) A privately developed renewable energy generation facility
29 that meets the requirements of this section is exempt from sections
30 70-1012 to 70-1014.01 if no less than thirty days prior to the
31 commencement of construction the owner of the facility:

1 (i) Notifies the board in writing of its intent to commence
2 construction of a privately developed renewable energy generation
3 facility;

4 (ii) Certifies to the board that the facility will meet the
5 requirements for a privately developed renewable energy generation
6 facility;

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

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

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

30 (vi) Certifies in writing to the board that the facility, if located
31 within a ten-mile radius of a military installation, contains no

1 materials, electronics, or other components manufactured by any foreign
2 government or foreign nongovernment person determined to be a foreign
3 adversary pursuant to 15 C.F.R. 7.4.

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

10 (c) The joint transmission development agreement shall address
11 construction, ownership, operation, and maintenance of such additions or
12 upgrades to the transmission facilities as required for the privately
13 developed renewable energy generation facility. The joint transmission
14 development agreement shall be negotiated and executed contemporaneously
15 with the generator interconnection agreement or other directives of the
16 applicable regional transmission organization with jurisdiction over the
17 addition or upgrade of transmission, upon terms consistent with prudent
18 electric utility practices for the interconnection of renewable
19 generation facilities, the electric supplier's reasonable transmission
20 interconnection requirements, and applicable transmission design and
21 construction standards. The electric supplier shall have the right to
22 purchase and own transmission facilities as set forth in the joint
23 transmission development agreement. The private electric supplier of the
24 privately developed renewable energy generation facility shall have the
25 right to construct any necessary facilities or improvements set forth in
26 the joint transmission development agreement pursuant to the standards
27 set forth in the agreement at the private 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 (4) The exemption allowed under this section for a privately
2 developed renewable energy generation facility shall extend to and exempt
3 all private electric suppliers owning any interest in the facility,
4 including any successor private electric supplier which subsequently
5 acquires any interest in the facility.

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

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

23 (7) 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 (8) 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. 4. Original section 70-1012, Reissue Revised Statutes of

1 Nebraska, section 70-1014.02, Revised Statutes Cumulative Supplement,
2 2022, and section 70-1001.01, Revised Statutes Supplement, 2023, are
3 repealed.

4 Sec. 5. The following sections are outright repealed: Sections
5 70-1029, 70-1030, 70-1031, and 70-1033, Reissue Revised Statutes of
6 Nebraska, and section 70-1032, Revised Statutes Cumulative Supplement,
7 2022.

8 Sec. 6. Since an emergency exists, this act takes effect when passed
9 and approved according to law.