

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 399**

Introduced by Brewer, 43; Erdman, 47.

Read first time January 12, 2023

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Nebraska Power Review Board; to amend  
2 sections 70-1014.02 and 70-1015, Revised Statutes Cumulative  
3 Supplement, 2022; to eliminate legislative findings; to change and  
4 provide procedures relating to board approval of an application for  
5 construction of a privately developed renewable energy generation  
6 facility; to change provisions relating to unauthorized construction  
7 of certain facilities; to harmonize provisions; and to repeal the  
8 original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1014.02, Revised Statutes Cumulative  
2 Supplement, 2022, is amended to read:

3 70-1014.02 ~~(1) The Legislature finds that:~~

4 ~~(a) Nebraska has the authority as a sovereign state to protect its~~  
5 ~~land, natural resources, and cultural resources for economic and~~  
6 ~~aesthetic purposes for the benefit of its residents and future~~  
7 ~~generations by regulation of energy generation projects;~~

8 ~~(b) The unique terrain and ecology of the Nebraska Sandhills provide~~  
9 ~~an irreplaceable habitat for millions of migratory birds and other~~  
10 ~~wildlife every year and serve as the home to numerous ranchers and~~  
11 ~~farmers;~~

12 ~~(c) The grasslands of the Nebraska Sandhills and other natural~~  
13 ~~resources in Nebraska will become increasingly valuable, both~~  
14 ~~economically and strategically, as the demand for food and energy~~  
15 ~~increases; and~~

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

18 (1) ~~(2)(a)~~ A privately developed renewable energy generation  
19 facility that meets the requirements of this section is exempt from  
20 sections 70-1012 to 70-1014.01.

21 (2)(a) ~~Prior if no less than thirty days prior to the commencement~~  
22 ~~of construction of a privately developed renewable energy generation~~  
23 ~~facility, the owner of such the facility shall file an application with :~~  
24 ~~(i) Notifies the board seeking approval in writing of its intent to~~  
25 ~~commence construction and certify to the board in the application that:~~  
26 ~~of a privately developed renewable energy generation facility;~~

27 (i) ~~The (ii) Certifies to the board that the facility will meet the~~  
28 ~~requirements for a privately developed renewable energy generation~~  
29 ~~facility;~~

30 (ii) ~~The (iii) Certifies to the board that the private electric~~  
31 ~~supplier will (A) comply with any decommissioning requirements adopted by~~

1 the local governmental entities having jurisdiction over the privately  
2 developed renewable energy generation facility and (B) except as  
3 otherwise provided in subdivision (b) of this subsection, submit a  
4 decommissioning plan to the board obligating the private electric  
5 supplier to bear all costs of decommissioning the privately developed  
6 renewable energy generation facility and requiring that the private  
7 electric supplier post a security bond or other instrument, no later than  
8 the tenth year following commercial operation, securing the costs of  
9 decommissioning the facility and provide a copy of the bond or instrument  
10 to the board;

11 (iii) ~~The (iv) Certifies to the board that the~~ private electric  
12 supplier has entered into or prior to commencing construction will enter  
13 into a joint transmission development agreement pursuant to subdivision  
14 (c) of this subsection with the electric supplier owning the transmission  
15 facilities of sixty thousand volts or greater to which the privately  
16 developed renewable energy generation facility will interconnect; and

17 (iv) ~~The (v) Certifies to the board that the~~ private electric  
18 supplier has consulted with the Game and Parks Commission to identify  
19 potential measures to avoid, minimize, and mitigate impacts to species  
20 identified under subsection (1) or (2) of section 37-806 during the  
21 project planning and design phases, if possible, but in no event later  
22 than the commencement of construction.

23 (b) The board may bring an action in the name of the State of  
24 Nebraska for failure to comply with subdivision (a)(ii)(B) ~~(a)(iii)(B)~~ of  
25 this subsection, except that such subdivision ~~Subdivision (a)(iii)(B)~~  
26 ~~of this subsection~~ does not apply if a local government entity with the  
27 authority to create requirements for decommissioning has enacted  
28 decommissioning requirements for the applicable jurisdiction.

29 (c) The joint transmission development agreement shall address  
30 construction, ownership, operation, and maintenance of such additions or  
31 upgrades to the transmission facilities as required for the privately

1 developed renewable energy generation facility. The joint transmission  
2 development agreement shall be negotiated and executed contemporaneously  
3 with the generator interconnection agreement or other directives of the  
4 applicable regional transmission organization with jurisdiction over the  
5 addition or upgrade of transmission, upon terms consistent with prudent  
6 electric utility practices for the interconnection of renewable  
7 generation facilities, the electric supplier's reasonable transmission  
8 interconnection requirements, and applicable transmission design and  
9 construction standards. The electric supplier shall have the right to  
10 purchase and own transmission facilities as set forth in the joint  
11 transmission development agreement. The private electric supplier of the  
12 privately developed renewable energy generation facility shall have the  
13 right to construct any necessary facilities or improvements set forth in  
14 the joint transmission development agreement pursuant to the standards  
15 set forth in the agreement at the private electric supplier's cost.

16 (3) Within ten days after receipt of an application ~~a written notice~~  
17 complying with subsection (2) of this section, the executive director of  
18 the board shall issue a written acknowledgment that the privately  
19 developed renewable energy generation facility is exempt from sections  
20 70-1012 to 70-1014.01 and is subject to the requirements of this section.

21 ~~(4)~~ The exemption allowed under this section for a privately developed  
22 renewable energy generation facility shall extend to and exempt all  
23 private electric suppliers owning any interest in the facility, including  
24 any successor private electric supplier which subsequently acquires any  
25 interest in the facility.

26 (4) Within ten days after an application is filed pursuant to  
27 subsection (2) of this section, the board shall fix a time and place for  
28 public hearing and give notice by mail to such power suppliers or other  
29 persons as the board deems to be affected by the application and post  
30 public notice of the hearing on the board's website. The hearing shall be  
31 held within sixty days after the date the application is filed unless for

1 good cause shown the applicant requests in writing that such hearing not  
2 be scheduled until a later time, but in any event such hearing shall be  
3 held not more than one hundred twenty days after the date of the  
4 application is filed. The board shall give its decision within sixty days  
5 after the conclusion of the hearing. Power suppliers, other interested  
6 parties, and members of the public may appear, file objections, testify,  
7 and offer evidence. Such hearing shall be conducted as provided in  
8 section 70-1006. The board may allow amendments to the application, in  
9 the interests of justice.

10 (5) After hearing, the board shall approve or deny the application.  
11 Before approval of an application, the board shall find that the  
12 application meets the criteria certified in such application pursuant to  
13 subdivision (2)(a) of this section and is not outweighed by any testimony  
14 or evidence in opposition to the application offered by power suppliers,  
15 other interested parties, or members of the public.

16 (6) ~~(5)~~ No property owned, used, or operated as part of a privately  
17 developed renewable energy generation facility shall be subject to  
18 eminent domain by a consumer-owned electric supplier operating in the  
19 State of Nebraska. Nothing in this section shall be construed to grant  
20 the power of eminent domain to a private electric supplier or limit the  
21 rights of any entity to acquire any public, municipal, or utility right-  
22 of-way across property owned, used, or operated as part of a privately  
23 developed renewable energy generation facility as long as the right-of-  
24 way does not prevent the operation of or access to the privately  
25 developed renewable energy generation facility.

26 (7) ~~(6)~~ Only a consumer-owned electric supplier operating in the  
27 State of Nebraska may exercise eminent domain authority to acquire the  
28 land rights necessary for the construction of transmission lines and  
29 related facilities. There is a rebuttable presumption that the exercise  
30 of eminent domain to provide needed transmission lines and related  
31 facilities for a privately developed renewable energy generation facility

1 is a public use.

2 ~~(8)~~ (7) Nothing in this section shall be construed to authorize a  
3 private electric supplier to sell or deliver electricity at retail in  
4 Nebraska.

5 ~~(9)~~ (8) Nothing in this section shall be construed to limit the  
6 authority of or require a consumer-owned electric supplier operating in  
7 the State of Nebraska to enter into a joint agreement with a private  
8 electric supplier to develop, construct, and jointly own a privately  
9 developed renewable energy generation facility.

10 Sec. 2. Section 70-1015, Revised Statutes Cumulative Supplement,  
11 2022, is amended to read:

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

22 ~~(2) If the executive director of the board determines that a private~~  
23 ~~electric supplier commenced construction of a privately developed~~  
24 ~~renewable energy generation facility less than thirty days prior to~~  
25 ~~providing the notice required in subdivision (2)(a) of section~~  
26 ~~70-1014.02, the executive director shall send notice via certified mail~~  
27 ~~to the private electric supplier, informing it of the determination that~~  
28 ~~the private electric supplier is in violation of such subdivision and is~~  
29 ~~subject to a fine in the amount of five hundred dollars. The private~~  
30 ~~electric supplier shall have twenty days from the date on which the~~  
31 ~~notice is received in which to submit the notice described in such~~

1 ~~subdivision and to pay the fine. Within ten days after the private~~  
2 ~~electric supplier submits a notice compliant with subsection (2) of~~  
3 ~~section 70-1014.02 and payment of the fine, the executive director of the~~  
4 ~~board shall issue the written acknowledgment described in subsection (3)~~  
5 ~~of section 70-1014.02. If the private electric supplier fails to submit a~~  
6 ~~notice compliant with subsection (2) of section 70-1014.02 and pay the~~  
7 ~~fine within twenty days after the date on which the private electric~~  
8 ~~supplier receives the notice from the executive director of the board,~~  
9 ~~the private electric supplier shall immediately cease construction or~~  
10 ~~operation of the privately developed renewable energy generation~~  
11 ~~facility.~~

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

24 ~~(4) Upon receipt of a request for hearing, the board shall set a~~  
25 ~~hearing date. Such hearing shall be held within sixty days after such~~  
26 ~~receipt. The board shall provide to the private electric supplier written~~  
27 ~~notice of the hearing at least twenty days prior to the date of the~~  
28 ~~hearing. The board or its hearing officer may grant continuances upon~~  
29 ~~good cause shown or upon the request of the private electric supplier.~~  
30 ~~Timely filing of a request for hearing by a private electric supplier~~  
31 ~~shall stay any further enforcement under this section until the board~~

1 ~~issues an order pursuant to subsection (5) of this section or the request~~  
2 ~~for hearing is withdrawn.~~

3 ~~(5) The board shall issue a written decision within sixty days after~~  
4 ~~conclusion of the hearing. All costs of the hearing shall be paid by the~~  
5 ~~private electric supplier if (a) the board determines that the private~~  
6 ~~electric supplier commenced construction of the privately developed~~  
7 ~~renewable energy generation facility less than thirty days prior to~~  
8 ~~submitting the written notice required pursuant to subsection (2) of~~  
9 ~~section 70-1014.02 or (b) the private electric supplier withdraws its~~  
10 ~~request for hearing prior to the board issuing its decision.~~

11 ~~(6) A private electric supplier which the board finds to be in~~  
12 ~~violation of the requirements of subsection (2) of section 70-1014.02~~  
13 ~~shall either (a) pay the fine described in this section and submit a~~  
14 ~~notice compliant with subsection (2) of section 70-1014.02 or (b)~~  
15 ~~immediately cease construction or operation of the privately developed~~  
16 ~~renewable energy generation facility.~~

17 ~~Sec. 3. Original sections 70-1014.02 and 70-1015, Revised Statutes~~  
18 ~~Cumulative Supplement, 2022, are repealed.~~