

LEGISLATIVE BILL 104

Approved by the Governor March 7, 1975

Introduced by Executive Board, Mahoney, 5, Chmn.; Savage, 10, Goodrich, 20; Kremer, 34; Stull, 49

AN ACT relating to power districts; to provide legislative intent; to provide powers to contract for the generation or transmission of electric power and energy as prescribed; to eliminate exceptions to the Interlocal Cooperation Act; to amend sections 23-2205 and 70-657, Reissue Revised Statutes of Nebraska, 1943, and sections 23-2203 and 70-646, Revised Statutes Supplement, 1974; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. It is hereby declared to be in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or without this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or without this state jointly and in cooperation with one or more other such districts, cities or villages of this state which own or operate electrical facilities, or municipal corporations or other governmental entities of other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provision of sections 1 to 8 of this act.

Sec. 2. It is hereby declared to be in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this

state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or without this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each district shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities jointly with the powers granted under any other provision of sections 1 to 8 of this act.

Sec. 3. Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to such undivided interest. Such district may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of this act as the board of directors of such district shall deem to be in the interests of such district. The agreement may include, but not be limited to, provision for the construction, operation and maintenance of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, including without limitation the letting of

contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation and maintenance of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In no event shall anything in this act be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such district may be used for any such purpose.

Sec. 4. That section 70-646, Revised Statutes Supplement, 1974, be amended to read as follows:

70-646. Neither by sale under foreclosure, receivership or bankruptcy proceedings, nor by alienation in any other manner, may the property of such a district become the property or come under the control of any private person, firm or corporation engaged in the business of generating, transmitting or distributing electricity for profit, but this restriction shall not apply to joint participation in any electric generation or transmission facility pursuant to sections 1 to 8 of this act or to a nonprofit cooperative corporation that has provided financing for property, projects or undertakings when such property is covered by a mortgage,

pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to a district, and this restriction shall not apply to a sale, transfer or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas and which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska; Provided, that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting or distributing electricity for profit.

Sec. 5. That section 70-657, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-657. Except as provided in section 70-649 or any provision of sections 1 to 8 of this act, the governing body of the district shall never lease or alienate the franchises, plant or physical equipment of the district to any private person, firm, association or corporation for operating, or for any other purpose; Provided, that nothing contained herein shall apply to the exercise by a district of its rights and powers with respect to radioactive material or the energy therefrom; provided further, that this section shall not prohibit a public power district from selling, transferring, or leasing its franchises, plant, or physical equipment to a nonprofit cooperative corporation organized under the laws of the State of Nebraska or domesticated in the State of Nebraska if such cooperative corporation is engaged in the retail distribution of electric energy within established service areas; and provided further, that such property so acquired by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm or corporation engaged in the business of generating, transmitting or distributing electricity for profit.

Sec. 6. It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly or in cooperation with public power districts and public power and irrigation districts and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or without this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of

Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted cities and villages of this state, each city and village which owns or operates electrical facilities shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or without this state jointly and in cooperation with one or more such districts, other cities or villages of this state which own or operate electrical facilities, municipal corporations, or other governmental entities of other states which operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provision of sections 1 to 8 of this act.

Sec. 7. It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such cities and villages of this state, each city or village which owns or operates electrical facilities shall have and may exercise power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each city or village shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provisions of sections 1 to 8 of this act.

Sec. 8. Any city or village participating jointly and in cooperation with others in an electric generation or transmission facility shall own an undivided interest in such facility and be entitled to

the share of the output or capacity therefrom attributable to such undivided interest. Such city or village may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions and provisions consistent with the provisions of this act as the governing body of such city or village shall deem to be in the interests of such city or village. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under such agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and

expedition. In no event shall anything herein be deemed to authorize any city or village to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such city or village may be used for any such purpose.

Sec. 9. That section 23-2203, Revised Statutes Supplement, 1974, be amended to read as follows:

23-2203. (1) For the purposes of sections 23-2201 to 23-2207, the term public agency shall mean any county, city, village, school district or any agency of the state government or of the United States, any drainage district, sanitary and improvement district or any other municipal corporation or political subdivision of this state; and any adjacent political subdivision of another state.

(2) The term state shall mean a state of the United States and the District of Columbia.

Sec. 10. That section 23-2205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2205. In the event that an agreement made pursuant to sections 23-2201 to 23-2207 shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction. ~~---Provided,---no agreement under sections 23-2204 to 23-2207 shall provide for---generation,---transmission---or---distribution---of electricity.~~

Sec. 11. When an electric generation facility is constructed, either within or without the State of Nebraska, and the output of the generation facility would be transmitted over existing transmission facilities of others within this state or transmitted over new transmission facilities to be constructed within this state or through an interconnection with existing facilities of others within this state, and such transmission of the output would substantially affect the reliability, operation, or safety of the transmission system of a generating power agency or a distribution power agency in this state, as defined in section

70-626.01, the party or parties that would jointly or individually receive the output from such electric generation facility and the party or parties whose existing transmission system would be so affected shall determine, pursuant to prudent utility practice, what new transmission facilities or interconnection, if any, should be constructed so that the output of the generation facility will be transmitted in a reliable and safe manner. As used in this section, prudent utility practice shall mean any of the practices, methods and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. If the parties determine that new transmission facilities or interconnection are to be required, the parties will determine what new transmission facilities should be constructed and what interconnection should be provided, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. In the event that the parties are unable to agree, after having made a reasonable effort to reach agreement, upon any of the terms or conditions of (1) what new transmission facilities are to be constructed, (2) who shall construct such new transmission facilities, or (3) agreement for the electrical interconnection of transmission facilities, the matter shall be submitted to the Nebraska Power Review Board for hearing and determination in accordance with prudent utility practice as defined in this section and the provisions of sections 70-626.04 and 70-1014, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. Any determination by such board regarding rates shall be advisory only and not binding upon the parties. Rates, tolls, and charges shall be as provided for in section 70-655.

Sec. 12. The provisions of this act shall be liberally construed to effectuate the purposes thereof and shall be independent of and supplemental and in addition to any other provisions of the laws of the State of Nebraska and shall not be considered amendatory of or limited by any other provisions of the laws of the State of Nebraska.

Sec. 13. If any section in this act or any part of any section shall be declared invalid or

unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 14. That original sections 23-2205 and 70-657, Reissue Revised Statutes of Nebraska, 1943, and sections 23-2203 and 70-646, Revised Statutes Supplement, 1974, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.