

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 672

Introduced by Lathrop, 12; Dierks, 40; Dubas, 34; Erdman, 47;
Karpisek, 32; Preister, 5; Wallman, 30

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to electric utilities; to amend sections
2 14-2116 and 70-667, Revised Statutes Cumulative
3 Supplement, 2006; to change provisions relating to the
4 exercise of the power of eminent domain; to harmonize
5 provisions; and to repeal the original sections.

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

1 Section 1. Section 14-2116, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 14-2116 (1) In addition to any other rights and powers
4 conferred upon metropolitan utilities districts under sections
5 14-2101 to 14-2157, such districts shall have and may exercise the
6 power of eminent domain for the purpose of erecting, constructing,
7 locating, maintaining, or supplying such waterworks, gas works, or
8 mains or the extension of any system of waterworks, water supply,
9 gas works, or gas supply, and any such district may go beyond its
10 territorial limits and may take, hold, or acquire rights, property,
11 and real estate, or either or any of the same, by purchase or
12 otherwise. Such a district may for such purposes take, hold, and
13 condemn any and all necessary property.

14 (2) Any metropolitan utilities district shall have the
15 power to condemn or to exercise the power of eminent domain to
16 acquire parts of an existing utility's facilities only when such
17 facilities are within, annexed to, or otherwise consolidated within
18 the corporate boundary limits of a city of the metropolitan class.
19 The procedure to condemn property shall be exercised in the manner
20 set forth in sections 76-704 to 76-724. Within a municipal county,
21 the power to condemn or to exercise the power of eminent domain
22 for purposes of this subsection may be exercised by a metropolitan
23 utilities district to the extent and in the manner provided by the
24 Legislature as required by section 13-2802.

25 (3) This section does not authorize a metropolitan

1 utilities district to condemn a community-based energy project
2 as defined in section 70-667.

3 Sec. 2. Section 70-667, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 70-667 (1) All power plants and systems, all hydrogen
6 production, storage, or distribution systems, all ethanol
7 production or distribution systems, and all irrigation works
8 constructed, acquired, used, or operated by any district organized
9 under or subject to Chapter 70, article 6, or proposed by such
10 district to be so constructed, acquired, owned, used, or operated
11 are hereby declared to be works of internal improvement. All laws
12 applicable to works of internal improvement and all provisions of
13 law applicable to electric light and power corporations, irrigation
14 districts, or privately owned irrigation corporations, the use
15 and occupation of state and other public lands and highways, the
16 appropriation, acquisition, or use of water, water power, water
17 rights, or water diversion or storage rights, for any of the
18 purposes contemplated in such statutory provisions, the manner or
19 method of construction and physical operation of power plants,
20 systems, transmission lines, and irrigation works, as herein
21 contemplated, shall be applicable, as nearly as may be, to all
22 districts organized under or subject to Chapter 70, article 6,
23 and in the performance of the duties conferred or imposed upon
24 them under such statutory provisions. Such laws, provisions of
25 law, or statutory provisions are hereby made applicable to all

1 irrigation works and facilities operated by irrigation divisions
 2 of public power and irrigation districts organized under Chapter
 3 70, article 6, and shall include, but not be limited to, the right
 4 of such district to exercise the powers conferred upon districts
 5 by Chapters 31 and 46, relating to operation, maintenance,
 6 rehabilitation, construction, reconstruction, repairs, extension,
 7 recharge for ground water, and surface and subsurface drainage
 8 projects and the assessment of the cost thereof to the lands
 9 benefited thereby. The Except as provided in subsection (2) of
 10 this section, the right to exercise the power of eminent domain
 11 is conferred. ~~7 except that this~~

12 (2) This power may not be exercised for the purpose
 13 of condemning property for use by a privately operated ethanol
 14 production or distribution facility or a privately operated
 15 hydrogen production, storage, or distribution facility or for the
 16 purpose of condemning a community-based energy project.

17 (3) The procedure to condemn property shall be exercised
 18 in the manner set forth in Chapter 76, article 7.

19 (4) A municipal electric utility or a municipal power
 20 agency may not exercise the power of eminent domain for the purpose
 21 of condemning a community-based energy project.

22 (5) For purposes of this section:

23 (a) Community-based energy project means a new wind
 24 energy project that:

25 (i) (A) For a community-based energy project that consists

1 of more than two turbines, has no single qualified owner owning
2 more than fifteen percent of the project, and has at least
3 thirty-three percent of the power purchase agreement payments
4 flowing to the qualified owner or (B) for a community-based energy
5 project consisting of one or two turbines, is owned by one or
6 more qualified owners, and has at least thirty-three percent of the
7 power purchase agreement payments flowing to a qualified owner; and

8 (ii) Has a resolution of support adopted by the county
9 board of each county in which the project is to be located,
10 or in the case of a project located within the boundaries of a
11 reservation, the tribal council for that reservation; and

12 (b) Qualified owner means:

13 (i) A Nebraska resident;

14 (ii) A limited liability corporation that is organized
15 under the laws of this state and that is made up of members who are
16 Nebraska residents;

17 (iii) A nonprofit corporation organized under the
18 Nebraska Nonprofit Corporation Act;

19 (iv) A cooperative association other than a rural
20 electric cooperative association or generation and transmission
21 cooperative;

22 (v) A political subdivision or unit of local government,
23 including, but not limited to, a school district or public or
24 private postsecondary educational institution, or any other local
25 or regional governmental organization such as a board, commission,

1 or association, but excluding a municipal electric utility or
2 municipal power agency; or

3 (vi) A tribal council.

4 Sec. 3. Original sections 14-2116 and 70-667, Revised
5 Statutes Cumulative Supplement, 2006, are repealed.