

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 155**

FINAL READING

Introduced by Brewer, 43; Bostelman, 23.

Read first time January 11, 2019

Committee: Natural Resources

1 A BILL FOR AN ACT relating to privately developed renewable energy  
2 generation facilities; to amend sections 70-1014.02 and 70-1015,  
3 Reissue Revised Statutes of Nebraska; to change provisions relating  
4 to eminent domain; to harmonize provisions; and to repeal the  
5 original sections.

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

1 Section 1. Section 70-1014.02, Reissue Revised Statutes of Nebraska,  
2 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 (2)(a) ~~(1)(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 if no less than thirty days prior to the  
21 commencement of construction the owner of the facility:

22 (i) Notifies the board in writing of its intent to commence  
23 construction of a privately developed renewable energy generation  
24 facility;

25 (ii) Certifies to the board that the facility will meet the  
26 requirements for a privately developed renewable energy generation  
27 facility;

28 (iii) Certifies to the board that the private electric supplier will  
29 (A) comply with any decommissioning requirements adopted by the local  
30 governmental entities having jurisdiction over the privately developed  
31 renewable energy generation facility and (B) except as otherwise provided

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

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

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

20 (b) The board may bring an action in the name of the State of  
21 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
22 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if  
23 a local government entity with the authority to create requirements for  
24 decommissioning has enacted decommissioning requirements for the  
25 applicable jurisdiction.

26 (c) The joint transmission development agreement shall address  
27 construction, ownership, operation, and maintenance of such additions or  
28 upgrades to the transmission facilities as required for the privately  
29 developed renewable energy generation facility. The joint transmission  
30 development agreement shall be negotiated and executed contemporaneously  
31 with the generator interconnection agreement or other directives of the

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

13       (3) ~~(2)~~ Within ten days after receipt of a written notice complying  
14 with subsection (2) ~~(1)~~ of this section, the executive director of the  
15 board shall issue a written acknowledgment that the privately developed  
16 renewable energy generation facility is exempt from sections 70-1012 to  
17 70-1014.01.

18       (4) ~~(3)~~ The exemption allowed under this section for a privately  
19 developed renewable energy generation facility shall extend to and exempt  
20 all private electric suppliers owning any interest in the facility,  
21 including any successor private electric supplier which subsequently  
22 acquires any interest in the facility.

23       (5) ~~(4)~~ No property owned, used, or operated as part of a privately  
24 developed renewable energy generation facility shall be subject to  
25 eminent domain by a consumer-owned electric supplier operating in the  
26 State of Nebraska. Nothing in this section shall be construed to grant  
27 the power of eminent domain to a private electric supplier or limit the  
28 rights of any entity to acquire any public, municipal, or utility right-  
29 of-way across property owned, used, or operated as part of a privately  
30 developed renewable energy generation facility as long as the right-of-  
31 way does not prevent the operation of or access to the privately

1 developed renewable energy generation facility.

2 ~~(6)~~ (5) Only a consumer-owned electric supplier operating in the  
3 State of Nebraska may exercise eminent domain authority to acquire the  
4 land rights necessary for the construction of transmission lines and  
5 related facilities. There is a rebuttable presumption that the The  
6 exercise of eminent domain to provide needed transmission lines and  
7 related facilities for a privately developed renewable energy generation  
8 facility is a public use.

9 ~~(7)~~ (6) Nothing in this section shall be construed to authorize a  
10 private electric supplier to sell or deliver electricity at retail in  
11 Nebraska.

12 ~~(8)~~ (7) Nothing in this section shall be construed to limit the  
13 authority of or require a consumer-owned electric supplier operating in  
14 the State of Nebraska to enter into a joint agreement with a private  
15 electric supplier to develop, construct, and jointly own a privately  
16 developed renewable energy generation facility.

17 Sec. 2. Section 70-1015, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

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

29 (2) If the executive director of the board determines that a private  
30 electric supplier commenced construction of a privately developed  
31 renewable energy generation facility less than thirty days prior to

1 providing the notice required in subdivision ~~(2)(a)~~ ~~(1)(a)~~ of section  
2 70-1014.02, the executive director shall send notice via certified mail  
3 to the private electric supplier, informing it of the determination that  
4 the private electric supplier is in violation of such subdivision and is  
5 subject to a fine in the amount of five hundred dollars. The private  
6 electric supplier shall have twenty days from the date on which the  
7 notice is received in which to submit the notice described in such  
8 subdivision and to pay the fine. Within ten days after the private  
9 electric supplier submits a notice compliant with ~~the provisions of~~  
10 subsection ~~(2)~~ ~~(1)~~ of section 70-1014.02 and payment of the fine, the  
11 executive director of the board shall issue the written acknowledgment  
12 described in subsection ~~(3)~~ ~~(2)~~ of section 70-1014.02. If the private  
13 electric supplier fails to submit a notice compliant with ~~the provisions~~  
14 ~~of~~ subsection ~~(2)~~ ~~(1)~~ of section 70-1014.02 and pay the fine within  
15 twenty days after the date on which the private electric supplier  
16 receives the notice from the executive director of the board, the private  
17 electric supplier shall immediately cease construction or operation of  
18 the privately developed renewable energy generation facility.

19 (3) If the private electric supplier disputes that construction was  
20 commenced less than thirty days prior to submitting the written notice  
21 required by subdivision ~~(2)(a)~~ ~~(1)(a)~~ of section 70-1014.02, the private  
22 electric supplier may request a hearing before the board. Such request  
23 shall be submitted within twenty days after the private electric supplier  
24 receives the notice sent by the executive director pursuant to subsection  
25 (2) of this section. If the private electric supplier does not accept the  
26 certified mail sent pursuant to such subsection, the executive director  
27 shall send a second notice to the private electric supplier by first-  
28 class United States mail. The private electric supplier may submit a  
29 request for hearing within twenty days after the date on which the second  
30 notice was mailed.

31 (4) Upon receipt of a request for hearing, the board shall set a

1 hearing date. Such hearing shall be held within sixty days after such  
2 receipt. The board shall provide to the private electric supplier written  
3 notice of the hearing at least twenty days prior to the date of the  
4 hearing. The board or its hearing officer may grant continuances upon  
5 good cause shown or upon the request of the private electric supplier.  
6 Timely filing of a request for hearing by a private electric supplier  
7 shall stay any further enforcement under this section until the board  
8 issues an order pursuant to subsection (5) of this section or the request  
9 for hearing is withdrawn.

10 (5) The board shall issue a written decision within sixty days after  
11 conclusion of the hearing. All costs of the hearing shall be paid by the  
12 private electric supplier if (a) the board determines that the private  
13 electric supplier commenced construction of the privately developed  
14 renewable energy generation facility less than thirty days prior to  
15 submitting the written notice required pursuant to subsection (2) ~~(1)~~ of  
16 section 70-1014.02 or (b) the private electric supplier withdraws its  
17 request for hearing prior to the board issuing its decision.

18 (6) A private electric supplier which the board finds to be in  
19 violation of the requirements of subsection (2) ~~(1)~~ of section 70-1014.02  
20 shall either (a) pay the fine described in this section and submit a  
21 notice compliant with ~~the provisions of~~ subsection (2) ~~(1)~~ of section  
22 70-1014.02 or (b) immediately cease construction or operation of the  
23 privately developed renewable energy generation facility.

24 Sec. 3. Original sections 70-1014.02 and 70-1015, Reissue Revised  
25 Statutes of Nebraska, are repealed.