

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 823

Introduced by Brewer, 43.

Read first time January 08, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to public power; to amend sections 15-229,
2 18-2441, 25-2503, 70-501, 70-667, and 70-670, Reissue Revised
3 Statutes of Nebraska, section 25-2501, Revised Statutes Cumulative
4 Supplement, 2018, and section 19-701, Revised Statutes Supplement,
5 2019; to require a special election prior to the use of eminent
6 domain for transmission lines in certain circumstances; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 15-229, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 15-229 A ~~primary~~ city of the primary class is hereby authorized to
4 acquire, either temporarily or permanently, lands, real or personal
5 property or any interests therein, or any easements deemed to be
6 necessary or desirable for any present or future necessary or authorized
7 public purpose within or without the city by gift, agreement, purchase,
8 condemnation, or otherwise. In all such cases the city shall provide ~~make~~
9 the person or persons whose property is ~~shall be~~ taken or injured thereby
10 adequate compensation therefor. Prior to exercising the power of eminent
11 domain on behalf of an out-of-state third party for purposes of
12 transmission lines for electric power, the city shall submit such
13 proposition to the registered voters of the city at a special election
14 under the Election Act held for that purpose, and if a majority of the
15 votes cast upon such proposition are in favor of exercising the power of
16 eminent domain, the city may proceed with condemnation. The procedure to
17 condemn property shall be exercised in the manner set forth in sections
18 76-704 to 76-724. A ~~primary~~ city of the primary class shall have
19 authority to enter upon any property to make surveys, examinations,
20 investigations, and tests, and to acquire other necessary and relevant
21 data in contemplation of establishing a location of a necessary or
22 authorized public purpose, acquiring property therefor, or performing
23 other operations incident to construction, reconstruction, or maintenance
24 of such public purpose, and entry upon any property pursuant to this
25 authority shall not be considered to be a legal trespass and no damages
26 shall be recovered on that account alone. In case of any actual or
27 demonstrable damages to the premises, the city shall pay the owner of the
28 premises the amount of the damages. Upon the failure of the landowner and
29 the city to agree upon the amount of damages, the landowner, in addition
30 to any other available remedy, may file a petition as provided for in
31 section 76-705. The entry by the city or its representatives shall be

1 made only after notice of the entry and its purpose.

2 Sec. 2. Section 18-2441, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 18-2441 The powers of an agency shall include the power:

5 (1) To plan, develop, construct, reconstruct, operate, manage,
6 dispose of, participate in, maintain, repair, extend, improve, or acquire
7 by purchase, gift, lease, or otherwise, one or more projects within or
8 outside this state and act as agent, or designate one or more other
9 persons to act as its agent, in connection with the planning,
10 acquisition, construction, operation, maintenance, repair, extension, or
11 improvement of such project, except that before any power project is
12 constructed by an agency, approval of the power project shall have been
13 obtained from the Nebraska Power Review Board under sections 70-1012 to
14 70-1016;

15 (2) To produce, acquire, sell, and distribute commodities,
16 including, without limitation, fuels necessary to the ownership, use,
17 operation, or maintenance of one or more projects;

18 (3) To enter into franchises, exchange, interchange, pooling,
19 wheeling, transmission, and other similar agreements;

20 (4) To make and execute contracts and other instruments necessary or
21 convenient to the exercise of the powers of the agency;

22 (5) To employ agents and employees;

23 (6) To contract with any person within or outside this state for the
24 sale or transmission of any service, product, or commodity supplied,
25 transmitted, conveyed, transformed, produced, or generated by any
26 project, or for any interest therein or any right to capacity thereof, on
27 such terms and for such period of time as the agency's board shall
28 determine;

29 (7) To purchase, sell, exchange, produce, generate, transmit, or
30 distribute any service, product, or commodity within and outside the
31 state in such amounts as it shall determine to be necessary and

1 appropriate to make the most effective use of its powers and to meet its
2 responsibilities, and to enter into agreements with any person with
3 respect to such purchase, sale, exchange, production, generation,
4 transmission, or distribution on such terms and for such period of time
5 as the agency's board shall determine;

6 (8) To acquire, own, hold, use, lease, as lessor or lessee, sell, or
7 otherwise dispose of, mortgage, pledge, or grant a security interest in
8 any real or personal property, commodity, product, or service or any
9 interest therein or right thereto;

10 (9) To exercise the power of eminent domain in the manner set forth
11 in Chapter 76, article 7. No real property of the state, any
12 municipality, or any political subdivision of the state, may be so
13 acquired without the consent of the state, such municipality, or such
14 subdivision. Prior to exercising the power of eminent domain on behalf of
15 an out-of-state third party for purposes of transmission lines for
16 electric power, the agency shall submit such proposition to the
17 registered voters of each of the municipalities participating in the
18 creation of such agency at a special election under the Election Act held
19 for that purpose, and if a majority of the votes cast upon such
20 proposition are in favor of exercising the power of eminent domain, the
21 agency may proceed with condemnation;

22 (10) To incur debts, liabilities, or obligations including the
23 borrowing of money and the issuance of bonds, secured or unsecured,
24 pursuant to the Municipal Cooperative Financing Act sections 18-2401 to
25 18-2485;

26 (11) To borrow money or accept contributions, grants, or other
27 financial assistance from a public authority and to comply with such
28 conditions and enter into such contracts, covenants, mortgages, trust
29 indentures, leases, or agreements as may be necessary, convenient, or
30 desirable;

31 (12) To fix, maintain, revise, and collect fees, rates, rents, and

1 charges for functions, services, facilities, or commodities provided by
2 the agency, and it shall be the mandatory duty of each agency to fix,
3 maintain, revise, and collect such fees, rates, rents, and charges as
4 will always be sufficient to pay all operating and maintenance expenses
5 of the agency, to pay for costs of renewals and replacements to a
6 project, to pay interest on and principal of, whether at maturity or upon
7 sinking-fund redemption, any outstanding bonds or other indebtedness of
8 the agency, and to provide, as may be required by a resolution, trust
9 indenture, security instrument, or other agreement of the agency, for any
10 reasonable reserves for any such expenses, costs, or debt service or for
11 any margins or coverages over and above debt service;

12 (13) Subject to any agreements with holders of outstanding bonds, to
13 invest any funds held in reserve or sinking funds, or any funds not
14 required for immediate disbursement, including the proceeds from the sale
15 of any bonds, in such obligations, securities, and other investments as
16 the board shall deem proper;

17 (14) To join and pay dues to organizations, membership in which is
18 deemed by the board to be beneficial to the accomplishment of the
19 agency's purposes; and

20 (15) To exercise any other powers which are deemed necessary and
21 convenient to carry out the Municipal Cooperative Financing Act sections
22 ~~18-2401 to 18-2485~~.

23 Sec. 3. Section 19-701, Revised Statutes Supplement, 2019, is
24 amended to read:

25 19-701 (1) Whenever the qualified electors of any city of the
26 primary class, city of the first class, city of the second class, or
27 village shall vote at any general or special election to acquire and
28 appropriate, by an exercise of the power of eminent domain, any
29 waterworks, waterworks system, electric light plant, electric light and
30 power plant, heating plant, street railway, or street railway system,
31 located or operating within or partly within and partly without such city

1 or village, together with real and personal property needed or useful in
2 connection therewith, if the main part of such works, plant, or system be
3 within such city or village and even though a franchise for the
4 construction and operating of any such works, plant, or system may or may
5 not have expired, then such city or village shall possess and have the
6 power and authority, by an exercise of the power of eminent domain to
7 appropriate and acquire, for the public use of such city or village, any
8 such works, plant, railway, pipelines, or system.

9 (2) If any public utility properties supplying different kinds of
10 service to such city or village are operated as one unit and under one
11 management, the right to acquire and appropriate, as provided in sections
12 19-701 to 19-707, shall cover and extend to the entire property and not
13 to any divided or segregated part thereof, and the duly constituted
14 authorities of such city or village shall have the power to submit such
15 question or proposition, in the usual manner, to the qualified electors
16 of such city or village at any general city or village election or at any
17 special city or village election and may submit the proposition in
18 connection with any city or village special election called for any other
19 purpose, and the votes cast thereon shall be canvassed and the result
20 found and declared as in any other city or village election.

21 (3) Such city or village authorities shall submit such question at
22 any such election whenever a petition asking for such submission, signed
23 by the legal voters of such city or village equaling in number fifteen
24 percent of the votes cast at the last general city or village election,
25 and filed in the city clerk's or village clerk's office at least sixty
26 days before the election at which the submission is presented, but if the
27 question of acquiring any particular plant or system has been submitted
28 once, the same question shall not again be submitted to the voters of
29 such city or village until two years shall have elapsed from and after
30 the date of the findings by the board of appraisers regarding the value
31 of the property and the city's or village's rejection of such question.

1 (4) Prior to exercising the power of eminent domain on behalf of an
2 out-of-state third party for purposes of transmission lines for electric
3 power, the city or village shall submit such proposition to the
4 registered voters of the city or village at a special election under the
5 Election Act held for that purpose, and if a majority of the votes cast
6 upon such proposition are in favor of exercising the power of eminent
7 domain, the city council or village board of trustees may proceed with
8 condemnation.

9 Sec. 4. Section 25-2501, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 25-2501 It is the intent and purpose of sections 25-2501 to 25-2506
12 to establish a uniform procedure to be used in acquiring private property
13 for a public purpose by the State of Nebraska and its political
14 subdivisions and by all privately owned public utility corporations and
15 common carriers which have been granted the power of eminent domain. Such
16 sections shall not apply to:

17 (1) Water transmission and distribution pipelines and their
18 appurtenances and common carrier pipelines and their appurtenances;

19 (2) Public utilities and cities of all classes and villages when
20 acquiring property for a proposed project involving the acquisition of
21 rights or interests in ten or fewer separately owned tracts or when the
22 acquisition is within the corporate limits of any city or village except
23 as otherwise provided in section 25-2503;

24 (3) Sanitary and improvement districts organized under sections
25 31-727 to 31-762 when acquiring easements for a proposed project
26 involving the acquisition of rights or interests in ten or fewer
27 separately owned tracts;

28 (4) Counties and municipalities which acquire property through the
29 process of platting or subdivision or for street or highway construction
30 or improvements;

31 (5) Common carriers subject to regulation by the Federal Railroad

1 Administration of the United States Department of Transportation; or

2 (6) The Nebraska Department of Transportation when acquiring
3 property for highway construction or improvements.

4 Sec. 5. Section 25-2503, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 25-2503 (1) Prior to exercising the power of eminent domain on
7 behalf of an out-of-state third party for purposes of transmission lines
8 for electric power, an agency which is a political subdivision of the
9 state shall submit such proposition to the registered voters of the
10 agency at a special election under the Election Act held for that
11 purpose, and if a majority of the votes cast upon such proposition are in
12 favor of exercising the power of eminent domain, the agency may proceed
13 with condemnation as provided in sections 25-2501 to 25-2506.

14 (2) Any agency which proposes to acquire private property for a
15 public purpose shall give notice of such proposed acquisition at least
16 forty-five days before beginning negotiations for such acquisition. The
17 notice shall be directed to each owner of property over or across which
18 any right or interest is to be acquired and shall be deemed properly
19 given if delivered personally or mailed by registered or certified mail
20 addressed to the property owner and to the address shown on the tax
21 records in the office of the county treasurer, except that such notice
22 shall be sufficient if given to the administrator or executor of the
23 estate of a deceased person, the trustee of a trust estate, the guardian
24 of the estate of a minor or incompetent person, or a conservator.

25 (3) The notice shall (a) ~~(1)~~ describe the property proposed to be
26 acquired and the compensation to be given for such property, (b) ~~(2)~~
27 include a statement of the authority for the acquisition, (c) ~~(3)~~ include
28 the nature of and necessity and purpose for which the land shall be used,
29 (d) ~~(4)~~ include the title, right, or interest in the property to be
30 acquired, (e) ~~(5)~~ specify the amount of property needed for the public
31 purpose, (f) ~~(6)~~ include the reasons for selecting the proposed location

1 or route, and (g) ~~(7)~~ state that if approval of any other agency is
2 required, the condemner shall set forth which other agency's approval
3 shall be necessary and, when the acquisition involves a highway, power
4 line, telephone line, or similar project, shall include a map showing the
5 proposed route to be followed by the project.

6 Sec. 6. Section 70-501, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 70-501 Any city, village, or public electric light and power
9 district within the state, which may own or operate, or hereafter acquire
10 or establish, any electric light and power plant, distribution system,
11 and transmission lines may, at the time of or at any time after such
12 acquisition or establishment, extend the same beyond its boundaries, and
13 for that purpose is hereby authorized and empowered to construct,
14 purchase, lease, or otherwise acquire, and to maintain, improve, extend,
15 and operate, electric light and power plants, distribution systems, and
16 transmission lines, outside of the boundaries of such city, village, or
17 public electric light and power district, for such distance and over such
18 territory within this state as may be deemed expedient. In the exercise
19 of the powers granted by this section, any such city, village, or public
20 electric light and power district may enter into contracts to furnish and
21 sell electrical energy to any person, firm, association, corporation,
22 municipality, or public electric light and power district. However, no
23 such construction, purchase, lease, acquisition, improvement, or
24 extension of any such additional plant, distribution system, or
25 transmission lines shall be paid for except out of the net earnings and
26 profits of one or more or all of the electric light and power plants,
27 distribution systems, and transmission lines of such city, village, or
28 public electric light and power district. The provisions of sections
29 70-501 to 70-515 shall be deemed cumulative, and the authority herein
30 granted to cities, villages, and public electric light and power
31 districts shall not be limited or made inoperative by any existing

1 statute. Prior to exercising the power of eminent domain on behalf of an
2 out-of-state third party for purposes of transmission lines for electric
3 power, the city, village, or district shall submit such proposition to
4 the registered voters of the city, village, or district at a special
5 election under the Election Act held for that purpose, and if a majority
6 of the votes cast upon such proposition are in favor of exercising the
7 power of eminent domain, the city, village, or district may proceed with
8 condemnation.

9 Sec. 7. Section 70-667, Reissue Revised Statutes of Nebraska, is
10 amended to read:

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

1 Chapter 70, article 6, and shall include, but not be limited to, the
2 right of such district to exercise the powers conferred upon districts by
3 Chapters 31 and 46, relating to operation, maintenance, rehabilitation,
4 construction, reconstruction, repairs, extension, recharge for ground
5 water, and surface and subsurface drainage projects and the assessment of
6 the cost thereof to the lands benefited thereby. The right to exercise
7 the power of eminent domain is conferred subject to section 70-670,
8 except that this power may not be exercised for the purpose of condemning
9 property for use by a privately operated ethanol production or
10 distribution facility or a privately operated hydrogen production,
11 storage, or distribution facility. The procedure to condemn property
12 shall be exercised in the manner set forth in Chapter 76, article 7.

13 Sec. 8. Section 70-670, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 70-670 (1) In addition to any other rights and powers conferred upon
16 any district organized under or subject to Chapter 70, article 6, each
17 such district shall have and exercise the power of eminent domain to
18 acquire from any person, firm, association, or private corporation any
19 and all property owned, used, or operated, or useful for operation, in
20 the generation, transmission, or distribution of electrical energy,
21 including an existing electric utility system or any part thereof. Prior
22 to exercising the power of eminent domain on behalf of an out-of-state
23 third party for purposes of transmission lines for electric power, the
24 district shall submit such proposition to the registered voters of the
25 district at a special election under the Election Act held for that
26 purpose, and if a majority of the votes cast upon such proposition are in
27 favor of exercising the power of eminent domain, the district may proceed
28 with condemnation. The procedure to condemn property shall be exercised
29 in the manner set forth in Chapter 76, article 7.

30 (2) In the case of the acquisition through the exercise of the power
31 of eminent domain of an existing electric utility system or part thereof,

1 the Attorney General shall, upon request of any district, represent such
2 district in the institution and prosecution of condemnation proceedings.
3 After acquisition of an existing electric utility system through the
4 exercise of the power of eminent domain, the district shall reimburse the
5 state for all costs and expenses incurred in the condemnation proceedings
6 by the Attorney General.

7 (3) A district may agree to limit its exercise of the power of
8 eminent domain to acquire a project which is a renewable energy
9 generation facility producing electricity with wind and any related
10 facilities.

11 (4) No property owned, used, or operated as part of a privately
12 developed renewable energy generation facility meeting the requirements
13 of section 70-1014.02 shall be subject to eminent domain by any consumer-
14 owned electric supplier operating in the State of Nebraska.

15 Sec. 9. Original sections 15-229, 18-2441, 25-2503, 70-501, 70-667,
16 and 70-670, Reissue Revised Statutes of Nebraska, section 25-2501,
17 Revised Statutes Cumulative Supplement, 2018, and section 19-701, Revised
18 Statutes Supplement, 2019, are repealed.