

LEGISLATIVE BILL 1230

Approved by the Governor April 22, 1986

Introduced by Schmit, 23; Harris, 27; Vickers, 38;
R. Johnson, 34; Higgins, 9; Nelson, 35;
Eret, 32; Smith, 33

AN ACT relating to ethanol; to amend sections 2-2309, 2-4011, 58-201, 58-239, 70-301, 70-604, 70-604.02, 70-626, 70-628.01 to 70-628.04, 70-632, 70-636, 70-646, 70-655, 70-657, 70-667, and 70-802, Reissue Revised Statutes of Nebraska, 1943, sections 70-631, 70-637, 70-1402 to 70-1404, 70-1409, 70-1413, 70-1416, and 70-1417, Revised Statutes Supplement, 1984, and sections 2-3622 and 70-601, Revised Statutes Supplement, 1985; to adopt the Ethanol Authority and Development Act; to provide a penalty; to provide powers and duties relating to the construction of ethanol production and distribution facilities; to redefine terms; to harmonize provisions; 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. Sections 1 to 16 and 20 to 28 of this act shall be known and may be cited as the Ethanol Authority and Development Act.

Sec. 2. The Legislature finds that Nebraska should immediately develop an ethanol development program to provide for:

(1) Expanded use of Nebraska agricultural products;

(2) Efficient and less-polluting energy sources and reserves which will make Nebraska more independent energy-wise and which will retain Nebraska dollars in the Nebraska economy to achieve a pyramid effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars;

(3) Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products; and

(4) Alternative local outlets for Nebraska agricultural products which can be particularly utilized in times of depressed grain prices so as to give

Nebraskans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers. Local outlets may include ethanol and fructose production and distribution plants and facilities.

Sec. 3. As used in the Ethanol Authority and Development Act, unless the context otherwise requires:

(1) Board shall mean the Ethanol Authority and Development Board;

(2) Capital cost shall mean expenditures which include, but are not limited to, expenditures incurred for design and engineering, for land acquisition and related costs, financing fees, plant construction, and such other appropriate costs incurred prior to the commencement of the operation of an ethanol production facility;

(3) Electric supplier shall mean any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail; and

(4) Fund shall mean the Ethanol Authority and Development Cash Fund.

Sec. 4. There is hereby established an independent board to be known as the Ethanol Authority and Development Board, the board shall consist of the Nebraska Gasohol Committee, and the following members to be appointed by the Governor, a representative of the Nebraska Wheat Development, Utilization, and Marketing Board, a representative of the Corn Development, Utilization, and Marketing Board, a representative of the Grain Sorghum Development, Utilization, and Marketing Board, and a representative of the public power industry. Members of the board who are not members of the Nebraska Gasohol Committee shall be appointed within thirty days of the effective date of this act and shall serve until January 1, 1990. A vacancy on the board shall exist in the event of the death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor subject to the approval of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds. Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, and shall be

reimbursed for his or her actual and necessary expenses while so engaged as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 5. The board shall meet promptly after its members have been appointed and at such times thereafter as may be deemed necessary by the board to fulfill its duties and responsibilities under the Ethanol Authority and Development Act. Decisions of the board shall require the approval of a majority of the members of the board.

Sec. 6. The administrator of the Nebraska Gasohol Committee shall provide technical assistance to the board and shall perform all other duties as shall be delegated or assigned to him or her by the board. The board may employ the services of experts and consultants necessary to secure funds pursuant to section 7 of this act, to acquire title to commodities pursuant to section 16 of this act, or to otherwise carry out the board's duties under the Ethanol Authority and Development Act.

Sec. 7. There is hereby created the Ethanol Authority and Development Cash Fund which shall be used by the board to carry out its responsibilities under the Ethanol Authority and Development Act. The fund may be used to defray the expenses of the board, to secure bonds, to make grants pursuant to sections 20 to 28 of this act, to provide equity financing for construction of ethanol production and distribution facilities pursuant to Chapter 70, and as the board may otherwise direct, including the construction or acquisition of ethanol or fructose production facilities. When determining whether to recommend construction of a project for the production and distribution of ethanol or fructose or how funds should be distributed pursuant to the Ethanol Authority and Development Act and sections 32 to 57 of this act, the board's considerations shall include, but not be limited to, job creation, economic return to the state, size of the plant, byproducts or coproducts, if any, date construction would be commenced and completed, the financial stability of the applicant, and the amount of funds needed to commence construction of the plant or facility. The State Treasurer shall credit to the fund such money as shall be (1) appropriated to the fund by the Legislature, (2) received from the tax levied pursuant to section 8 of this act, (3) donated as gifts, bequests, grants, or other contributions to the fund from public or private sources, and (4) received by cities, counties, or villages pursuant to section 27 of this act. Funds made available by any department or

agency of the United States may also be credited to the fund if so directed by the board. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 8. (1) There is hereby levied an ethanol excise tax upon all wheat, corn, and grain sorghum sold through commercial channels in the State of Nebraska. The tax shall be one and one half cents per bushel for corn and wheat and one and one half cents per hundred weight for grain sorghum for the period July 1, 1986, to January 1, 1988. The tax shall be in addition to any tax or fee imposed pursuant to sections 2-2311, 2-3623, 2-3627, and 2-4012. The tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. No wheat, corn, or grain sorghum shall be subject to the tax more than once.

(2) For purposes of this section, corn, wheat, and grain sorghum which are received by a grower pursuant to any federal program shall not be subject to the ethanol excise tax levied and imposed pursuant to this section until sold or delivered by such grower and shall not be construed as having previously been subject to such tax.

Sec. 9. A grower who has sold corn, wheat, or grain sorghum and has an assessment deducted from the sale price may, by written application to the board, secure a refund of two-thirds of the amount deducted pursuant to section 8 of this act. The refund shall be payable by the board upon application within thirty days after the deduction is made. Each application for refund by a grower shall have attached thereto proof of the assessment deducted.

Sec. 10. In the case of a pledge or mortgage of wheat, corn, or grain sorghum as security for a loan under the federal price support program, the ethanol excise tax shall be deducted from the proceeds of such loan at the time the loan is made.

Sec. 11. The ethanol excise tax shall be deducted as provided by sections 8 to 14 of this act whether such wheat, corn, or grain sorghum is stored in this or any other state.

Sec. 12. The ethanol excise tax shall not apply to the sale of wheat, corn, or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted

pursuant thereto.

Sec. 13. (1) The purchaser, at the time of settlement, shall deduct the ethanol excise tax as provided in section 8 of this act and shall maintain the necessary record of the ethanol excise tax for each purchase of wheat, corn, or grain sorghum on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of bushels of wheat, corn, and grain sorghum sold; and (d) the amount of ethanol excise tax collected on each purchase. Such records shall be open for inspection and audit by authorized representatives of the board during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October on forms prescribed by the board a statement of the number of bushels of wheat, corn, and grain sorghum purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the tax as provided for in section 11 of this act.

Sec. 14. Any person violating any of the provisions of sections 8 to 13 of this act shall be guilty of a Class III misdemeanor.

Sec. 15. The board is encouraged to solicit and authorized to expend any federally distributed funds from the Energy Settlement Fund, account number 6071, or any other federal funds which may become available to the board for ethanol development. Not more than twenty-five per cent of the amount available, if any, shall be used to fund ethanol research and development programs, and the remaining amount, if any, shall be used as provided in section 7 of this act.

Sec. 16. The board may accept gifts, donations, money, and services, including in-kind resources such as grain owned by the Commodity Credit Corporation and the United States Department of Agriculture. The board may take title to the Commodity Credit Corporation's inventories and use such commodities to carry out the provisions of the Ethanol Authority and Development Act. The board may accept commodities in connection with section 1024 of the Food Security Act of 1985 or in connection with any other section of state or federal law.

Sec. 17. That section 2-2309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

2-2309. It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection ~~therewith~~ with and in furtherance ~~thereof~~ of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of ~~sections 2-2301 to 2-2320~~, the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the ~~provisions of sections 2-2301 to 2-2320~~ Nebraska Wheat Resources Act;

(5) Conduct, in addition to the things enumerated, any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research, accumulation of data, and ~~pretotype development for the production of alcohol~~ construction of ethanol production facilities;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the board; and

(7) ~~Employ~~ To employ personnel and contract for services which are necessary for the proper operation of the program.

Sec. 18. That section 2-3622, Revised Statutes Supplement, 1985, be amended to read as follows:

2-3622. The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn

development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and prototype development for the production of alcohol construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the corn commodity program;

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the provisions of sections 2-3601 to 2-3635 Nebraska Corn Resources Act in accordance with Chapter 84, article 9;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the corn commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of corn has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the upcoming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings, and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five per cent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted and promulgated by the board.

Sec. 19. That section 2-4011, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4011. The duties and responsibilities of the board shall be to implement and carry out the grain sorghum program and to the extent applicable shall include the following:

(1) To develop and direct any grain sorghum development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and prototype development for the production of alcohol construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the grain sorghum commodity program;

(3) To adopt and promulgate reasonable rules and regulations;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the grain sorghum commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of grain sorghum has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the coming year;

(7) To authorize the expenditure of funds and contracting for expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings, and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence legislation; and

(11) To make refunds for overpayments of fees according to rules and regulations which may be adopted and promulgated by the board Director of Agriculture pursuant to this section.

Sec. 20. Any city, county, or village may apply for a grant from the board to facilitate the construction or acquisition of an ethanol plant or a facility related to the processing or storage of ethanol or any coproducts or byproducts from an ethanol plant. The grant shall be in an amount up to but not more than five million dollars or ten per cent of the total capital cost of the plant or facility, whichever is less.

Sec. 21. Any city, county, or village which has received a grant pursuant to sections 20 to 28 of this act shall give or loan such grant to any person on whose behalf an application is made. No city, county, or village shall have any financial interest, operational oversight, or power of eminent domain with respect to any ethanol plant or facility for which a loan or grant was made. This section shall not be construed to prevent a city, county, or village from taking action necessary to collect upon any loan made pursuant to sections 20 to 28 of this act.

Sec. 22. The board shall establish the criteria or guidelines for the applications to be submitted for the grants available under sections 20 to 28 of this act within thirty days after August 1, 1986. Applications for such grants may be submitted after the criteria or guidelines have been publicly announced.

Sec. 23. Any application made under section 22 of this act shall be filed with the board. The board shall establish application review procedures.

Sec. 24. A resource statement shall be filed with the application. The resource statement, as prescribed by the board, shall show in summary form plans, working drawings, and specifications prepared for the construction and equipping of the ethanol plant or a facility related to the processing or storage of ethanol or any coproduct or byproduct. The resource statement shall provide the total project cost, the amount and source of any local funds, the ability to repay any debts incurred in the construction of the plant or a facility related to the processing or storage of ethanol or any coproduct or byproduct, and financing available from other sources. The resource statement shall also include projections of costs and profits, the manner in which the project will be accomplished, and a proposed marketing program for the finished product. In projecting profits the applicant may take into account any available subsidies.

Sec. 25. In determining which applicants shall receive grants, the board shall examine the proposed plans for the plant or a facility related to the processing or storage of ethanol or any coproduct or byproduct. The plans shall show an ability to complete construction and be in operation within twenty-four months from the date of approval.

Sec. 26. Within sixty days of the receipt of an application, the board shall determine whether a city, county, or village shall receive a grant. If there are more qualified applicants than grants

available, priority shall be given to those applicants which the board deems to be most qualified. When determining qualified applicants, the board's considerations shall include, but not be limited to, job creation, economic return to the state, size of the plant, byproducts or coproducts, if any, dates construction would be commenced and completed, financial stability of the applicant, and size of the grant needed to commence construction of the plant or facility. For purposes of sections 20 to 28 of this act preference shall be given to those applicants which show the ability to repay all or any portion of such grant.

Sec. 27. Any repayment of a loan or grant made by the owner or operator of an ethanol plant or facility, upon receipt by a city, county, or village, shall be remitted to the State Treasurer and shall be placed in the Ethanol Authority and Development Fund.

Sec. 28. The board shall adopt and promulgate rules and regulations to carry out sections 20 to 28 of this act and shall provide necessary assistance to applicants to properly and rapidly process grants.

Sec. 29. That section 58-201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

58-201. Sections 58-201 to 58-272 and section 31 of this act shall be known and may be cited as the Nebraska Investment Finance Authority Act.

Sec. 30. That section 58-239, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

58-239. The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including, but not limited to, the following:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Nebraska Investment Finance Authority Act, to regulate its affairs, to carry into effect the powers and purposes of the authority, and to conduct its business;

(3) To sue and be sued in its own name;

(4) To have an official seal and alter it at will;

(5) To maintain an office at such place or places within the state as it may designate;

(6) To make and execute contracts and all other instruments as necessary or convenient for the

performance of its duties and the exercise of its powers and functions under the Nebraska Investment Finance Authority Act;

(7) To employ architects, engineers, attorneys, inspectors, accountants, building contractors, financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment; and to fix their compensation;

(8) To procure insurance against any loss in connection with its bonds, property, and other assets in such amounts and from such insurers as it may deem advisable;

(9) To borrow money and issue bonds as provided by the Nebraska Investment Finance Authority Act;

(10) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the Nebraska Investment Finance Authority Act subject to the conditions upon which the grants or contributions are made; including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the Nebraska Investment Finance Authority Act;

(11) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders for the purpose of carrying out projects authorized under the Nebraska Investment Finance Authority Act;

(12) To enter into contracts or agreements with lenders for the servicing and processing of mortgages or loans pursuant to the Nebraska Investment Finance Authority Act;

(13) To provide technical assistance to local public bodies and to profit and nonprofit entities in the areas of housing for low and moderate income persons, agricultural enterprises, and community or economic development, and to distribute data and information concerning the needs of the state in these areas, and, at the discretion of the authority, to charge reasonable fees for such assistance;

(14) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest; or any other term of any contract, loan, loan note, loan note commitment, mortgage, mortgage loan, mortgage loan commitment,

lease, or agreement of any kind to which the authority is a party;

(15) To the extent permitted under its contract with the holders of bonds of the authority, ~~to~~ enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the project being financed;

(16) To acquire, whether by construction, purchase, devise, gift, lease, or any one or more of such methods, one or more projects, which shall be located within this state, except that the authority shall not have the power to acquire any projects or parts of such projects by condemnation;

(17) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the authority may deem advisable and as shall not conflict with ~~the provisions of~~ the Nebraska Investment Finance Authority Act;

(18) To issue bonds for the purpose of paying the cost of financing any project or projects, and to secure the payment of such bonds as provided in the Nebraska Investment Finance Authority Act;

(19) To issue bonds for the purpose of financing the costs of construction of ethanol production facilities;

~~(19)~~ (20) To sell and convey any real or personal property and make such order respecting the same as may be deemed conducive to the best interest of the authority;

~~(20)~~ (21) To make and undertake commitments to make loans to lenders under the terms and conditions requiring the proceeds ~~thereof of the loans~~ to be used by such lenders to make loans for projects. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in this state;

~~(21)~~ (22) To invest in, purchase, make commitments to invest in or purchase, and take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of projects. No loan shall be eligible for investment in, purchase, or assignment

by the authority if the loan was made more than one year prior to the date of investment, purchase, or assignment by the authority; and

~~(22)~~ (23) To enter into financing agreements with others with respect to one or more projects to provide financing for such projects upon such terms and conditions as the authority may deem advisable to effectuate the public purposes of the Nebraska Investment Finance Authority Act, which projects shall be located within the state. The authority shall not have the power to operate any project referred to in this section as a business or in any manner except as the lessor or seller of such project.

Sec. 31. (1) The authority may use an amount not to exceed ten million dollars to construct ethanol production and distribution facilities.

(2) The Ethanol Authority and Development Board may disburse money in the Ethanol Authority and Development Cash Fund to the authority for the purpose of securing any bonds sold to raise money to make the purchases prescribed in this section.

(3) The authority shall adopt and promulgate rules and regulations necessary to carry out the purposes of this section.

Sec. 32. The Legislature finds and declares that:

(1) Nebraska has been and will continue to be a state which is dependent on a stable, income-producing farm sector;

(2) When agriculture fails to produce adequate income for farmers, ranchers, and agricultural business interests within this state, the economic well-being of the state and its citizens will be threatened;

(3) There currently exists a chronic grain surplus within the state because of underutilization of grain products, and prices for grain remain unreasonably low because of such surplus and underutilization;

(4) Enlargement of the ethanol industry within the state would result in additional utilization of surplus grain;

(5) Ethanol will be increasingly in demand in the marketplace because of its efficacy as an octane enhancer and fuel extender;

(6) The public power industry within the state is experienced in the production and transmission of electrical power; and

(7) The experience of the public power industry could be used in the development of the production and distribution of ethanol and in the

enhancement of the economic well-being of this state.

Sec. 33. That section 70-301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-301. Any public power district, corporation, or municipality that is now or may hereafter be engaged in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes or the production or distribution, or both, of ethanol for use as fuel; may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business; and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes; and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with ~~the provisions of~~ sections 86-301 to 86-332 86-331, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 34. That section 70-601, Revised Statutes Supplement, 1985, be amended to read as follows:

70-601. As used in Chapter 70, article 6, unless the context otherwise requires:

(1) Public power district, public irrigation district, public power and irrigation district, or district shall mean a district organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended; and shall include, when applicable, rural public power

districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6;

(2) Municipality, when used in relation to the organization of a public power district, shall mean any county, city, incorporated village, or voting precinct in this state, but when used in relation to the election of successors to the board of directors of a public power district, as provided in sections 70-610 to 70-617, municipality or municipalities, comprising such public power district, shall be deemed automatically to be extended so as to include each incorporated city or village to which the public power district shall furnish or sell electrical energy either at retail to the inhabitants of such city or village or at wholesale to the city or village to be resold by it if the sale at wholesale is for more than fifty per cent of the power requirements of the city or village. When the public power district ceases to sell electrical energy at retail to the inhabitants of the city or village, or at wholesale to the city or village, for more than fifty per cent of the power requirements, such city or village shall cease to be a part of the public power district;

(3) Governing body, whenever used in relation to any municipality, shall mean the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body shall mean the county board of the county in which the precinct is located;

(4) Irrigation works shall mean any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water for irrigation purposes, or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power shall include any and all electrical energy generated, produced, distributed, bought, or sold and ethanol produced for purposes of lighting, heating, power, and any and every other useful purpose whatsoever; and

(6) Plant or system shall include any and all property owned, used, ~~or~~ operated, or useful for operation, in the generation by means of water power, steam, or other means, or in the transmission, distribution, sale, or purchase of electrical energy or

ethanol for any and every useful purpose, including any and all irrigation works, as defined herein, which may be owned, used, or operated in conjunction with such power plant or system.

Sec. 35. That section 70-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-604. The petition shall be addressed to the Nebraska Power Review Board, and state in substance that it is the intent and purpose of the petitioners by such petition to create a district under the provisions of Chapter 70, article 6, subject to approval by the Nebraska Power Review Board. The petition must shall state and contain:

(1) The name of the proposed district, which name shall contain, if the district is to engage in the electric light and power business or ethanol production and distribution, the words public power district. If the proposed district is to engage in the business of owning and operating irrigation works, the name shall include the words public irrigation district, except that, PROVIDED, if electric light and power are the major business of such district, it need not include these words in its name. A district may be organized to engage only in the electric light and power business and the production and distribution of ethanol, only in the business of owning and operating irrigation works, or ~~to~~ engage in all both of such businesses;

(2) The names of the municipalities constituting the proposed district, and the boundaries thereof of such district;

(3) A general description of the nature of the business which the district intends to engage in, and the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the proposed district;

(5) A statement that the proposed district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) When the Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable, such subdivisions shall be of substantially equal population; and

(7) Except in a public power district having within its proposed boundaries twenty-five or more cities or villages, the names and addresses of the

members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve until their successors are elected and qualified. In any proposed district having within its boundaries twenty-five or more cities and villages, the petition shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within thirty days after the approval of the formation of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first general state election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second general state election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third general state election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, in case the district has within its proposed boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Sec. 36. That section 70-604.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-604.02. The operating area of a district, for purposes of ~~this act~~ establishing its chartered territory, is the geographical area in this state comprising:

(1) The district's retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district's wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity from the district for resale either directly or indirectly to their retail customers if the selling district has the responsibility, in whole or in part, of charging for, and delivery of, the electricity, by transmission lines, to the retail public electric utility distribution lines at one or more points of delivery pursuant to a power contract to deliver firm power and energy and having a term of five years or more. To the extent that a selling district

leases its plant or systems to another district to be operated by such other district, or produces electricity or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Sec. 37. That section 70-626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-626. Subject to the limitations of the petition for its creation and all amendments thereto, a district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, or ethanol production or distribution systems, either within or beyond, or partly within and partly beyond, the boundaries of the district, and may engage in, or transact business, or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or agency, ~~or~~ with the government of the United States, the Rural Electrification Administration, the Public Works Administration, or ~~with~~ any officer, department, bureau, or agency thereof, ~~or~~ with any corporation organized by federal law, including the Reconstruction Finance Corporation, or any successor thereof, or with any body politic or corporate, for any of the purposes above mentioned, ~~or~~ for or incident to the exercise of any one or more of the foregoing powers, or for the generation, distribution, transmission, sale, or purchase of electrical energy or ethanol for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of, electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system or ethanol production or distribution system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation, of an existing electric light and power plant, lines, or system, or ethanol production or distribution system from any person, firm, association, or private corporation by any

such district, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise thereunder until after such period of thirty days has expired.

Sec. 38. That section 70-628.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628.01. (1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other ~~such district districts~~. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities or ethanol production or distribution facilities, each district shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility or ethanol production or distribution facility with the other district or districts participating therein, and ~~any~~ such agreement shall contain such terms, conditions, and provisions consistent with ~~the provisions of~~ this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as may be determined by the participating districts; and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, 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 participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the 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 section 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 district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines or ethanol production or distribution facilities, either alone or in association with another district or districts, in thirteen or more counties in the state may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or districts.

Sec. 39. That section 70-628.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628.02. 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 or for the production and distribution of ethanol located within 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 or ethanol production or distribution facilities within 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 or ethanol production or distribution facility jointly with the powers granted under any other provision of sections ~~18-412-03 to 18-412-05~~ 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, 70-646, and 70-657.

Sec. 40. That section 70-628.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628.03. 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 or for the production and distribution of ethanol located within 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 or ethanol production or

distribution 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 or ethanol production or distribution facilities jointly with the powers granted under any other provision of sections ~~18-412-03 to 18-412-05~~ 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, 70-646, and 70-657.

Sec. 41. That section 70-628.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-628.04. Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility or ethanol production or distribution 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 or ethanol production or distribution 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 or ethanol production or distribution 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 or ethanol production 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. 42. That section 70-631, Revised Statutes Supplement, 1984, be amended to read as follows:

70-631. Any district organized under or subject to Chapter 70, article 6, shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability, or obligation of such district

for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) from revenue, income, receipts, and profits derived by the district from its operation and management of power plants, systems, irrigation works, ethanol producing systems, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom; or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it. Any district may arrange for, or put up as security for notes or other evidences of indebtedness of such district, the credit of any bank or other financial institution which has been approved by the directors of such district.

Sec. 43. That section 70-632, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-632. Any district issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness; is hereby specifically authorized and empowered to pledge all or any part of the revenue which the district may derive from the sale of electrical energy, ethanol produced for fuel, storage of water, water for irrigation, radioactive material or the energy therefrom, or other service; as security for the payment of the principal and interest thereon. Any such pledge of revenue shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness.

Sec. 44. That section 70-636, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-636. The directors of any district organized under or subject to the provisions of Chapter 70, article 6, are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness; as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, ethanol, or other service; sold by the district.

Sec. 45. That section 70-637, Revised Statutes Supplement, 1984, be amended to read as follows:

70-637. Before any district enters into any contract for the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any power plant or system, any ethanol producing or distributing system, any irrigation works, or any part or section thereof for the use of the district or for the purchase of any materials, machinery, or apparatus to be used in such construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, such district shall cause estimates of the cost thereof to be made by some competent engineer or engineers. If such estimated cost exceeds the sum of fifty thousand dollars, no such contract shall be entered into without advertising for sealed bids, except that (1) the board may negotiate directly with sheltered workshops pursuant to section 48-1503 and (2) with respect to contracts entered into by a district in the exercise of its rights and powers relating to radioactive material or the energy therefrom or to any maintenance or repair contracts, if the engineer or engineers certify that by reason of the nature of the subject matter of the contract compliance with this section would be impractical and not in the public interest and the engineer's certification is approved by a two-thirds vote of the board, the provisions of sections 70-637 to 70-639 relating to sealed bids shall not apply and the district shall advertise notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work. Any contract for which the board has approved such engineer's certificate shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement. With respect to contracts in excess of fifty thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any

power plant or system, any ethanol producing or distributing system, any irrigation works, or any part or section thereof when the contract does not include onsite labor for the installation thereof, if, after advertising for sealed bids, no responsive bids are received or if the board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids, the provisions of sections 70-637 to 70-639 shall not apply.

Notwithstanding any other provision of sections 70-637 to 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board for its approval at the next scheduled meeting of the board by the engineer or engineers certifying the purchase. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

Sec. 46. That section 70-646, Reissue Revised Statutes of Nebraska, 1943, 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 sales of ethanol production or distribution facilities or to joint participation in any electric generation or transmission facility pursuant to sections 18-412.03 to 18-412.05 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, 70-646,

and 70-657 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, except ; ~~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. 47. That section 70-655, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-655. The board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges, for electrical energy, water service, water storage, and for any and all other commodities, including ethanol, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

Sec. 48. 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 ~~18-412.03 to 18-412.05~~ 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, 70-646, and 70-657, 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. This section ; ~~PROVIDED~~; that ~~nothing contained herein~~ shall not apply to the exercise

by a district of its rights and powers with respect to radioactive material or the energy therefrom. This section shall not apply to the exercise by a district of its right to sell or lease ethanol production or distribution facilities. This ~~;~~ 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, except ~~;~~ 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. 49. That section 70-667, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-667. All power plants and systems, all ethanol production or distribution systems, and all irrigation works, constructed, or otherwise acquired, or used, or operated by any district organized under or subject to ~~the provisions of~~ Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated, are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement, and all provisions of law applicable to electric light and power corporations, or to irrigation districts, or to privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, or other acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall

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

Sec. 50. That section 70-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-802. As used in Chapter 70, article 8, unless the context otherwise requires:

(1) Board shall mean the Nebraska Power Review Board;

(2) The terms public power district and district as used in Chapter 70, article 8, shall each mean the same and also have the same meaning as the term public power district as applied to public corporations created under the provisions of article 6, Chapter 70, article 6, and amendments thereof;

(3) Petitioner shall mean the corporation or association which presents a petition to the Nebraska Power Review Board for the creation of a public power district pursuant to the provisions of Chapter 70, article 8;

(4) Electric utility shall mean the business of conducting or carrying on, in service to the public, any one or more of the functions or operations of generation, transmission, distribution, sale, and purchase of electrical energy or ethanol for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;

(5) Electric cooperative corporation shall mean a corporation organized under Chapter 70, article 7; and

(6) Rural area shall mean any area not included within the boundaries of any incorporated city or village.

Sec. 51. That section 70-1402, Revised Statutes Supplement, 1984, be amended to read as

follows:

70-1402. As used in sections 70-1401 to 70-1423 the Joint Public Power Authority Act, unless the context otherwise requires:

(1) Agency shall mean any public body, authority, or commission which is engaged in the generation, transmission, or distribution of electric power and energy, and which issues indebtedness, ~~the interest of which is exempt from federal income taxes,~~

(2) Bonds shall mean electric revenue bonds, notes, warrants, certificates, or other obligations of indebtedness of a joint authority issued under sections 70-1401 to 70-1423 the Joint Public Power Authority Act and shall include refunding bonds and notes issued pending permanent revenue bond financing;

(3) Cost or cost of a project shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of related costs and revenue; the cost of land, land rights, rights-of-way, and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint authority; establishment of reserves; and all other expenditures of the joint authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of such project in operation;

(4) Governing body shall mean the board of directors of a public power district;

(5) Joint authority shall mean a public body and body corporate and politic organized in accordance with sections 70-1401 to 70-1423 the Joint Public Power Authority Act;

(6) Public power district shall mean a public power district organized under or subject to Chapter 70, article 6; and

(7) Project shall mean any system or facilities for the generation, transmission, and transformation, or any combination thereof, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating

units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use, or services of such units or any system or facilities for the production or distribution of ethanol.

Sec. 52. That section 70-1403, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1403. The Legislature hereby finds and determines that:

(1) Certain public power districts in this state which are empowered severally to engage in the generation, transmission, and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and have the resources and ability to facilitate the development of an ethanol production and distribution industry;

(2) Such public power districts owning electric distribution systems have an obligation to provide the inhabitants and customers of the district an adequate, reliable, and economical source of electric power and energy in the future;

(3) In order to enhance the economy within the state, to achieve the economies and efficiencies made possible by the proper planning, financing, and location of facilities for the generation and transmission of electric power and energy and the production and distribution of ethanol which are not practical for any public power district acting alone, and to ensure an adequate, reliable, and economical supply of electric power and energy and ethanol to the people of this state, it is desirable for the state to authorize public power districts to jointly plan, finance, develop, own, and operate electric generation and transmission facilities and ethanol production and distribution facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this state;

(4) In order for public power districts of this state to secure long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes, it is also desirable to authorize public power districts to join together to create joint authorities which can issue revenue bonds and other obligations and make loans to its member

public power districts at less cost than if the individual public power district secured its own financing; and

(5) The creation of joint authorities by public power districts which own electric distribution systems and ethanol production and distribution facilities for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities and ethanol production and distribution facilities and the issuance of revenue bonds by such joint authorities for such purposes as provided by ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act is for a public use and for public purposes and is a means of achieving economies, adequacy, and reliability in the generation or transmission of electric power and energy and in the meeting of future needs of this state and its inhabitants.

Sec. 53. That section 70-1404, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1404. (1) A public power district may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more public power districts in this state owning electric distribution facilities; or ethanol production or distribution facilities or with any political subdivision or agency of this state or of any other state; and may make such plans and enter into such contracts not inconsistent with the provisions of sections 70-1401 to 70-1423 Joint Public Power Authority Act as are necessary or appropriate, except that membership of public power districts in a joint authority shall consist only of public power districts located within this state.

(2) Nothing in ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act shall prevent public power districts from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Sec. 54. That section 70-1409, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1409. Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of ~~sections 70-1401 to 70-1423;~~ the Joint Public Power

Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, or with any political subdivisions or agencies of this state or any other state or, with other joint authorities created

pursuant to ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only; electric power or energy; or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, ~~or with~~ any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy or ethanol with any joint authority, electric cooperative, ~~or any~~ political subdivision or agency or any public or private electric utility of this state or any other state, ~~and~~ any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state; and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary; ~~and~~ to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority, and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper; and

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary, and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Sec. 55. That section 70-1413, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1413. Excess capacity or output of a project not then required by any of the members of a joint authority shall be first offered for sale or exchange pursuant to section 70-626.01. Any sale of available capacity and energy from the joint authority's project shall only be for the period required for the joint authority to fully utilize the amount of capacity and energy originally purchased in the project. The limitations provided in this section shall not apply to the temporary sale of excess capacity and energy without the state in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements, except that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. This section shall not apply to sales of ethanol.

Sec. 56. That section 70-1416, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1416. In the discretion of the board of directors of the joint authority, any bonds issued under ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act may be secured by a trust agreement by and between the joint authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law; and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

- (1) The pledge of all or any part of the revenue derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities or ethanol production or distribution facilities of a joint authority;
- (2) The rents, rates, fees, and charges to be established, maintained, and collected; and the use and disposal of revenue, gifts, grants, and funds received or to be received by the joint authority;
- (3) The setting aside of reserves and the investment, regulation, and disposition of such reserves;
- (4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds;
- (5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds to be issued may be applied;
- (6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;
- (7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the holders of which must consent to, and the manner in which such consent may be given;
- (8) Events of default and the rights and liabilities arising from such default, the terms and conditions upon which bonds issued under ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act

shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants;

(11) Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

(12) The acquisition and disposal of property, except that no project or part of such project shall be mortgaged by such trust agreement or resolution, except that the same may be mortgaged in the same manner as provided for a public power district by section 70-644;

(13) Provisions for insurance and for accounting reports and the inspection and audit of such reports; and

(14) The continuing operation and maintenance of the project.

Sec. 57. That section 70-1417, Revised Statutes Supplement, 1984, be amended to read as follows:

70-1417. A two-thirds majority vote of the directors of the joint authority present, with each member casting the number of votes to which he or she is entitled, is authorized to fix, charge, and collect rents, rates, fees, and charges for electric power and energy, ethanol, and other services, related to the generation, transmission, and sale of electric energy or to the production or distribution of ethanol. For so long as any bonds of a joint authority are outstanding and unpaid, the rents, rates, fees, and charges shall be so fixed as to provide revenue at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements, or renewals of such projects, to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenue, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint authority may be obligated to pay from such revenue by law or contract.

Any pledge made by a joint authority pursuant to ~~sections 70-1401 to 70-1423~~ the Joint Public Power Authority Act shall be valid and binding from the date

the pledge is made. The revenue, securities, and other money so pledged and then held or thereafter received by the joint authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery of such pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the member district or joint authority without regard to whether such parties have notice of such lien.

Sec. 58. 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. 59. That original sections 2-2309, 2-4011, 58-201, 58-239, 70-301, 70-604, 70-604.02, 70-626, 70-628.01 to 70-628.04, 70-632, 70-636, 70-646, 70-655, 70-657, 70-667, and 70-802, Reissue Revised Statutes of Nebraska, 1943, sections 70-631, 70-637, 70-1402 to 70-1404, 70-1409, 70-1413, 70-1416, and 70-1417, Revised Statutes Supplement, 1984, and sections 2-3622 and 70-601, Revised Statutes Supplement, 1985, are repealed.

Sec. 60. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.