

AMENDMENTS TO LB61
(Amendments to AM2296)

Introduced by DeBoer, 10.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 18-419, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 18-419 In addition to the powers authorized by sections 18-401 to
6 18-418 and any ordinances or resolutions relating to the provision of
7 electric service, any city or village owning or operating electric
8 generation or transmission facilities may sell, ~~or~~ lease, or license its
9 dark fiber pursuant to sections 86-574 to 86-578.

10 Sec. 2. Section 70-625, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 70-625 (1) Subject to the limitations of the petition for its
13 creation and all amendments to such petition, a public power district has
14 all the usual powers of a corporation for public purposes and may
15 purchase, hold, sell, and lease personal property and real property
16 reasonably necessary for the conduct of its business. No district may
17 sell household appliances at retail if the retail price of any such
18 appliance exceeds fifty dollars, except that newly developed electrical
19 appliances may be merchandised and sold during the period of time in
20 which any such appliances are being introduced to the public. New models
21 of existing appliances shall not be deemed to be newly developed
22 appliances. An electrical appliance shall be considered to be in such
23 introductory period of time until the particular type of appliance is
24 used by twenty-five percent of all the electrical customers served by
25 such district, but such period shall in no event exceed five years from
26 the date of introduction by the manufacturer of the new appliance to the

1 local market.

2 (2) In addition to its powers authorized by Chapter 70 and specified
3 in its petition for creation, as amended, a public power district may
4 sell, lease, and service satellite television signal descrambling or
5 decoding devices, satellite television programming, and equipment and
6 services associated with such devices and programming, except that this
7 section does not authorize public power districts (a) to provide signal
8 descrambling or decoding devices or satellite programming to any location
9 (i) being furnished such devices or programming on April 24, 1987, or
10 (ii) where community antenna television service is available from any
11 person, firm, or corporation holding a franchise pursuant to sections
12 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on
13 April 24, 1987, or (b) to sell, service, or lease C-band satellite dish
14 systems or repair parts.

15 (3) In addition to the powers authorized by Chapter 70 and specified
16 in its petition for creation as amended, the board of directors of a
17 public power district may apply for and use funds available from the
18 United States Department of Agriculture or other federal agencies for
19 grants or loans to promote economic development and job creation projects
20 in rural areas as permitted under the rules and regulations of the
21 federal agency from which the funds are received. Any loan to be made by
22 a district shall only be made in participation with a bank pursuant to a
23 contract. The district and the participating bank shall determine the
24 terms and conditions of the contract. In addition, in rural areas of the
25 district, the board of directors of such district may provide technical
26 or management assistance to prospective, new, or expanding businesses,
27 including home-based businesses, provide assistance to a local or
28 regional industrial or economic development corporation or foundation
29 located within or contiguous to the district's service area, and provide
30 youth and adult community leadership training.

31 (4) In addition to the powers authorized by Chapter 70 and specified

1 in its petition for creation as amended, a public power district may
2 sell, ~~or lease,~~ or license its dark fiber pursuant to sections 86-574 to
3 86-578.

4 (5) In addition to the powers authorized by Chapter 70 and specified
5 in its petition for creation as amended, a public power district may
6 develop, manufacture, use, purchase, or sell at wholesale advanced
7 biofuels and biofuel byproducts and other fuels and fuel byproducts so
8 long as the development, manufacture, use, purchase, or sale of such
9 biofuels and biofuel byproducts and other fuels and fuel byproducts is
10 done to help offset greenhouse gas emissions.

11 (6) Notwithstanding any law, ordinance, resolution, or regulation of
12 any political subdivision to the contrary, each public power district may
13 receive funds and extend loans pursuant to the Nebraska Investment
14 Finance Authority Act or pursuant to this section. In addition to the
15 powers authorized by Chapter 70 and specified in its petition for
16 creation, as amended, and without the need for further amendment thereto,
17 a public power district may own and operate, contract to operate, or
18 lease energy equipment and provide billing, meter reading, surveys, or
19 evaluations and other administrative services, but not to include natural
20 gas services, of public utility systems within a district's service
21 territory.

22 Sec. 3. Section 70-704, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 70-704 Each corporation shall have power: (1) To sue and be sued,
25 complain, and defend, in its corporate name; (2) to have perpetual
26 succession unless a limited period of duration is stated in its articles
27 of incorporation; (3) to adopt a corporate seal, which may be altered at
28 pleasure, and to use it or a facsimile thereof, as required by law; (4)
29 to generate, manufacture, purchase, acquire, and accumulate electric
30 energy and to transmit, distribute, sell, furnish, and dispose of such
31 electric energy; (5) to acquire, own, hold, use, exercise and, to the

1 extent permitted by law, to sell, mortgage, pledge, hypothecate, and in
2 any manner dispose of franchises, rights, privileges, licenses, rights-
3 of-way, and easements necessary, useful, or appropriate; (6) to purchase,
4 receive, lease as lessee, or in any other manner acquire, own, hold,
5 maintain, sell, exchange, and use any and all real and personal property
6 or any interest therein for the purposes expressed herein; (7) to borrow
7 money and otherwise contract indebtedness, to issue its obligations
8 therefor, and to secure the payment thereof by mortgage, pledge, or deed
9 of trust of all or any of its property, assets, franchises, revenue, or
10 income; (8) to sell and convey, mortgage, pledge, lease as lessor, and
11 otherwise dispose of all or any part of its property and assets; (9) to
12 have the same powers now exercised by law by public light and power
13 districts or private corporations to use any of the streets, highways, or
14 public lands of the state or its political subdivisions in the manner
15 provided by law; (10) to have and exercise the power of eminent domain
16 for the purposes expressed in section 70-703 in the manner set forth in
17 sections 76-704 to 76-724 and to have the powers and be subject to the
18 restrictions of electric light and power corporations and districts as
19 regards the use and occupation of public highways and the manner or
20 method of construction and physical operation of plants, systems, and
21 transmission lines; (11) to accept gifts or grants of money, services, or
22 property, real or personal; (12) to make any and all contracts necessary
23 or convenient for the exercise of the powers granted herein; (13) to fix,
24 regulate, and collect rates, fees, rents, or other charges for electric
25 energy furnished by the corporation; (14) to elect or appoint officers,
26 agents, and employees of the corporation and to define their duties and
27 fix their compensation; (15) to make and alter bylaws not inconsistent
28 with the articles of incorporation or with the laws of this state for the
29 administration and regulation of the affairs of the corporation; (16) to
30 sell, or lease, or license its dark fiber pursuant to sections 86-574 to
31 86-578; and (17) to do and perform, either for itself or its members or

1 for any other corporation organized under the Electric Cooperative
2 Corporation Act or for the members thereof, any and all acts and things
3 and to have and exercise any and all powers as may be necessary,
4 convenient, or appropriate to effectuate the purpose for which the
5 corporation is organized. Notwithstanding any law, ordinance, resolution,
6 or regulation of any political subdivision to the contrary, each
7 corporation may receive funds and extend loans pursuant to the Nebraska
8 Investment Finance Authority Act.

9 Sec. 4. Section 70-1409, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 70-1409 Each joint authority shall have all the rights and powers
12 necessary or convenient to carry out and effectuate the purposes and
13 provisions of the Joint Public Power Authority Act including, but not
14 limited to, the right and power:

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

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

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

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

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

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

30 (7) To sell, lease, exchange, transfer, or otherwise dispose of, or
31 to grant options for any such purposes with respect to, any real or

1 personal property or interest in such property;

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

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

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

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

16 (12) To dispose of by negotiated sale or lease an existing project,
17 a project under construction, or other property, either individually or
18 jointly, with one or more public power districts in this state, with any
19 political subdivisions or agencies of this state or any other state or,
20 with other joint authorities created pursuant to the Joint Public Power
21 Authority Act, except that no such sale or lease of any project located
22 in this state shall be made to any private person, firm, or corporation
23 engaged in the business of generating, transmitting, or distributing
24 electricity for profit;

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

29 (14) To generate, produce, transmit, deliver, exchange, purchase, or
30 sell for resale only electric power or energy, to produce, store,
31 deliver, or distribute hydrogen for use in fuel processes, or to produce,

1 deliver, or distribute ethanol and to enter into contracts for any or all
2 such purposes, subject to sections 70-1410 and 70-1413;

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

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

17 (17) To make and execute contracts and other instruments necessary
18 or convenient in the exercise of the powers and functions of the joint
19 authority under the Joint Public Power Authority Act, including contracts
20 with persons, firms, corporations, and others;

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

29 (19) To employ engineers, architects, attorneys, appraisers,
30 financial advisors, and such other consultants and employees as may be
31 required in the judgment of the joint authority and to fix and pay their

1 compensation from funds available to the joint authority. The joint
2 authority may employ technical experts and such other officers, agents,
3 and employees as it may require and shall assess their qualifications,
4 duties, compensation, and term of office. The board may delegate to one
5 or more of the joint authority's employees or agents such powers and
6 duties as the board may deem proper;

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

14 (21) To sell, ~~or~~ lease, or license its dark fiber pursuant to
15 sections 86-574 to 86-578.

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

18 Sec. 5. Section 86-416, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 86-416 (1) Notwithstanding any other provision of Nebraska law, any
21 city, county, village, public power district, or fire protection district
22 may enter into a service agreement with any joint entity created pursuant
23 to the Interlocal Cooperation Act or any joint public agency created
24 pursuant to the Joint Public Agency Act which owns or operates or
25 proposes to own or operate any public safety communication project for
26 obtaining communication services, including the use or right to use real
27 or personal property included in any such project. This subsection shall
28 not be construed to authorize any service agreements that conflict with
29 the provisions for the sale, ~~or~~ lease, or license of dark fiber pursuant
30 to sections 86-574 to 86-578.

31 (2) Any such service agreement may provide for the following:

1 (a) The payment of fixed or variable periodic amounts for service or
2 the right to obtain service, including the use or right to use real or
3 personal property;

4 (b) That such service agreement may extend for a term of years as
5 determined by the governing body of the city, county, village, public
6 power district, or fire protection district and be binding upon such
7 city, county, village, public power district, or fire protection district
8 over such term of years;

9 (c) That fixed or variable periodic amounts payable may be
10 determined based upon any of the following factors:

11 (i) Operating, maintenance, and management expenses, including
12 renewals and replacements for facilities and equipment;

13 (ii) Amounts payable with respect to debt service on bonds or other
14 obligations, including margins of coverage if deemed appropriate; and

15 (iii) Amounts necessary to build or maintain operating reserves,
16 capital reserves, and debt service reserves;

17 (d) That any such service agreement may require payment to be made
18 in the agreed fixed or variable periodic amounts irrespective of whether
19 such public safety communication project or regional communication system
20 is completed or operational and notwithstanding any suspension,
21 interruption, interference, reduction, or curtailment of the services of
22 such project or system; and

23 (e) Such other provisions as the parties to the service agreement
24 deem appropriate in connection with providing and obtaining public safety
25 communication service, including the acquisition of real and personal
26 property, the construction of facilities, and the operation, maintenance,
27 and management of services, property, and facilities.

28 (3) In order to provide for the payments due under such service
29 agreement:

30 (a) Any city, county, village, or fire protection district may
31 provide that payments may be made from a special tax levied for such

1 purpose upon all taxable property within such city, county, village, or
2 fire protection district, if determined appropriate by the governing body
3 by a vote of three-fourths of the members of the governing body, if there
4 are four or more members of such body, or by a vote of two-thirds of the
5 members of the governing body, if there are less than four members of
6 such body. The special tax shall for all purposes of Nebraska law,
7 including limitations upon tax levies, budgets, revenue, and expenditures
8 of public funds, have the same status as a tax levied for the purpose of
9 paying the bonded indebtedness of such city, county, village, or fire
10 protection district; and

11 (b) Any public power district may pledge the revenue of the
12 district, subject to any existing pledges made for bonded indebtedness or
13 borrowings from the United States or any other party and existing
14 conditions relating to issuance of additional bonds or other
15 indebtedness, and, if deemed appropriate by the governing body, the
16 service agreement may have the status of revenue bond indebtedness issued
17 pursuant to sections 70-631 to 70-635.

18 Sec. 6. Section 86-575, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 86-575 (1) Any agency or political subdivision of the state may:

- 21 (a) Own dark fiber;
22 (b) Sell dark fiber pursuant to section 86-576; and
23 (c) Lease or license dark fiber pursuant to section 86-577.

24 (2) Any agency or political subdivision which sells, ~~or leases,~~ or
25 licenses its dark fiber pursuant to sections 86-574 to 86-578 shall not
26 be deemed to be providing telecommunications services as defined in
27 section 86-593.

28 Sec. 7. Section 86-577, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 86-577 (1) For purposes of this section:

31 (a) Enforceable commitment means a binding legal agreement between

1 an Internet service provider and the federal government or this state by
2 which the Internet service provider receives a grant of federal or state
3 funds in exchange for the Internet service provider deploying broadband
4 service infrastructure to one or more underserved locations or unserved
5 locations and which includes administrative or other penalties if the
6 Internet service provider fails to meet the terms of such agreement;

7 (b) Underserved location means a location, as determined in
8 accordance with the broadband data maps created under section 802(c)(1)
9 of the federal Communications Act of 1934, 47 U.S.C. 642(c)(1), where:

10 (i) Broadband is not available by fiber-optic technology, cable
11 modem or hybrid fiber-coaxial technology, or terrestrial fixed wireless
12 technology and at speeds of at least one hundred megabits per second for
13 downloading and at least twenty megabits per second for uploading with a
14 latency sufficient to support real-time, interactive applications; and

15 (ii) No Internet service provider has an enforceable commitment to
16 make broadband service available at speeds of at least one hundred
17 megabits per second for downloading and at least twenty megabits per
18 second for uploading with a latency sufficient to support real-time,
19 interactive applications; and

20 (c) Unserved location means a location, as determined in accordance
21 with the broadband data maps created under section 802(c)(1) of the
22 federal Communications Act of 1934, 47 U.S.C. 642(c)(1), where:

23 (i) Broadband is not available by fiber-optic technology, cable
24 modem or hybrid fiber-coaxial technology, or terrestrial fixed wireless
25 technology and at speeds of at least twenty-five megabits per second for
26 downloading and at least three megabits per second for uploading with a
27 latency sufficient to support real-time, interactive applications; and

28 (ii) No Internet service provider has an enforceable commitment to
29 make broadband service available at speeds of at least twenty-five
30 megabits per second for downloading and at least three megabits per
31 second for uploading with a latency sufficient to support real-time,

1 interactive applications.

2 ~~(a) Served location means a location receiving, or at the time the~~
3 ~~lease is filed with the Public Service Commission able to receive,~~
4 ~~communications service at a minimum download speed of twenty-five~~
5 ~~megabits per second and a minimum upload speed of three megabits per~~
6 ~~second or higher speeds, as determined by the Public Service Commission;~~
7 ~~and~~

8 ~~(b) Unserved location means a location not receiving, and at the~~
9 ~~time the lease is filed with the Public Service Commission not able to~~
10 ~~receive, communications service at a minimum download speed of twenty-~~
11 ~~five megabits per second and a minimum upload speed of three megabits per~~
12 ~~second or higher speeds, as determined by the Public Service Commission.~~

13 (2) Any agency or political subdivision of the state may lease or
14 license its dark fiber and related infrastructure under such terms as
15 determined by such agency or political subdivision pursuant to its duly
16 adopted and promulgated rules and regulations, issued orders, written
17 policies, enacted ordinances, or adopted resolutions if:

18 (a) The lessee or licensee is a certificated telecommunications
19 common carrier or a permitted telecommunications contract carrier
20 pursuant to section 86-128 or an Internet service provider;

21 (b) The lease or license terms are fair, reasonable, and
22 nondiscriminatory;~~and~~

23 (c) All locations where service will be made available pursuant to
24 the lease or license are, at the time the lease or license is filed
25 pursuant to subsection (3) of this section, underserved locations or
26 unserved locations; and

27 ~~(d) (e)~~ The lease or license complies with this section.

28 (3)(a) Before a lease or license of dark fiber under this section
29 becomes effective, it shall be filed by the lessee or licensee with the
30 commission, and the which shall expeditiously cause notice of the lease,
31 including lease rates, to be published. ~~(b)(i) The lease or license shall~~

1 ~~become effective upon such filing. The lease or license rate shall be~~
2 ~~within or above the safe harbor range of market rates established~~
3 ~~pursuant to subdivision (4)(a) of this section fourteen business days~~
4 ~~after the date of the published notice unless a protest is filed with the~~
5 ~~commission, in which event the commission shall consider the lease as a~~
6 ~~contested matter and consider the contested lease according to the~~
7 ~~commission's rules of procedure.~~

8 (b) Within five days after a lease or license is filed, the
9 commission shall provide notice of the lease or license to all Internet
10 service providers providing service in the counties where any underserved
11 locations or unserved locations subject to the lease or license are
12 located.

13 ~~(ii) If the allocation of served location and unserved location in~~
14 ~~the lease is contested, the commission shall determine such allocation~~
15 ~~under the lease as a contested matter and consider the contested lease~~
16 ~~according to the commission's rules of procedure.~~

17 (4)(a) (4) For the lease or license of dark fiber under this
18 section, the ~~:(a) The commission shall establish a safe harbor range of~~
19 ~~market rates for all dark fiber leases or licenses using a competitive~~
20 ~~price determination comparison. When conducting a competitive price~~
21 ~~determination comparison, the commission, in its discretion, shall use~~
22 ~~rate schedules, interconnection agreements, or other documents within its~~
23 ~~regulatory oversight and shall gather other market rate information as~~
24 ~~deemed necessary. If a lease or license utilizes rates within or above~~
25 ~~the safe harbor range, such rates shall be deemed approved.—Any other~~
26 ~~term of the lease may be contested pursuant to subdivision (3)(b) of this~~
27 ~~section; and~~

28 (b) Revenue obtained by any agency or political subdivision from the
29 lease or license of dark fiber under this section shall only be used for
30 billing, construction, operation, and maintenance costs associated with
31 the lease or license of such dark fiber or for any existing dark fiber or

1 fiber-related infrastructure.

2 (c) Revenue obtained by any agency or political subdivision from the
3 sale or delivery of electricity shall not be used for billing,
4 construction, operation, or maintenance costs associated with the lease
5 or license of dark fiber under this section.

6 ~~Fifty percent of the profit earned by the agency or political~~
7 ~~subdivision under a lease of dark fiber leased to serve a served location~~
8 ~~shall be remitted to the State Treasurer for credit to the Nebraska~~
9 ~~Telecommunications Universal Service Fund. For purposes of this~~
10 ~~subdivision, profit earned by the agency or political subdivision means~~
11 ~~the lease price less the cost of infrastructure deployment. This~~
12 ~~subdivision does not apply to a lease or portion of a lease of dark fiber~~
13 ~~leased to exclusively serve unserved locations.~~

14 (5)(a) If a dispute arises between an Internet service provider
15 claiming an enforceable commitment for a location and an Internet service
16 provider seeking to utilize a dark fiber lease or license to serve such
17 location, either party may file a request with the state entity with
18 which there is an enforceable commitment to verify the enforceable
19 commitment. Upon the filing of the request, such state entity shall
20 require, and the Internet service provider claiming the enforceable
21 commitment shall provide, documentation related to the enforceable
22 commitment. The state entity shall review the documentation and make a
23 finding as to the Internet service provider's compliance with the
24 enforceable commitment and the reasonable likelihood of meeting its
25 deployment obligations under the enforceable commitment. All
26 documentation submitted to the state entity under this subdivision shall
27 be deemed confidential and not subject to public disclosure pursuant to
28 sections 84-712 to 84-712.09.

29 (b) There is no enforceable commitment and a location is considered
30 an underserved location or an unserved location when:

31 (i) A grant of federal or state funds is forfeited by the Internet

1 service provider for such location;

2 (ii) The Internet service provider is disqualified by the granting
3 governmental entity from receiving a grant of federal or state funds to
4 deploy broadband service infrastructure to such location; or

5 (iii) After reviewing documentation submitted pursuant to this
6 subsection, the state entity verifying the enforceable commitment finds
7 that the Internet service provider is not in compliance with the
8 enforceable commitment or will fail to meet the terms of the enforceable
9 commitment for such location.

10 ~~(5) The lessee shall make every reasonable effort to activate the~~
11 ~~maximum amount of the leased fiber as is possible, within one year after~~
12 ~~entering into the lease, unless good cause is shown.~~

13 Sec. 8. Original sections 18-419, 70-704, 70-1409, 86-416, and
14 86-575, Reissue Revised Statutes of Nebraska, and sections 70-625 and
15 86-577, Revised Statutes Cumulative Supplement, 2022, are repealed.