

AMENDMENTS TO LB399

(Amendments to Standing Committee amendments, AM2702)

Introduced by Dungan, 26.

1 1. Strike section 3 and insert the following new section:

2 Sec. 3. Section 70-1014.02, Revised Statutes Cumulative Supplement,  
3 2022, is amended to read:

4 70-1014.02 (1)(a) ~~(1)~~ The Legislature finds that:

5 (i) ~~(a)~~ Nebraska has the authority as a sovereign state to protect  
6 its land, natural resources, and cultural resources for economic and  
7 aesthetic purposes for the benefit of its residents and future  
8 generations by regulation of energy generation projects;

9 (ii) ~~(b)~~ The unique terrain and ecology of the Nebraska Sandhills  
10 provide an irreplaceable habitat for millions of migratory birds and  
11 other wildlife every year and serve as the home to numerous ranchers and  
12 farmers;

13 (iii) ~~(c)~~ The grasslands of the Nebraska Sandhills and other natural  
14 resources in Nebraska will become increasingly valuable, both  
15 economically and strategically, as the demand for food and energy  
16 increases; and

17 (iv) ~~(d)~~ The Nebraska Sandhills are home to priceless archaeological  
18 sites of historical and cultural significance to American Indians.

19 (b) The Legislature further finds that local governmental entities  
20 in Nebraska best understand local needs and should have the right to  
21 determine if they want privately developed renewable energy generation  
22 facilities within their boundaries.

23 (2)(a) A privately developed renewable energy generation facility  
24 that meets the requirements of this section is exempt from sections  
25 70-1012 to 70-1014.01. Prior if no less than thirty days prior to the  
26 commencement of construction of a privately developed renewable energy

1 generation facility, the owner of such the facility shall either file an  
2 application and receive a conditional use permit or special exception to  
3 commence construction from the local governmental entity having  
4 jurisdiction or file an application with : ~~(i) Notifies the board and~~  
5 ~~receive the board's approval in writing of its intent to commence~~  
6 ~~construction. Whichever application the owner elects to file shall be~~  
7 ~~exclusive. If the owner elects to file an application for a conditional~~  
8 ~~use permit or special exception, the owner shall comply with the local~~  
9 ~~governmental entity's application requirements and the board shall not~~  
10 ~~impose additional requirements. If the owner elects to file an~~  
11 ~~application with the board, the local governmental entity shall not~~  
12 ~~impose additional requirements. The owner shall certify in an application~~  
13 ~~to the board that: of a privately developed renewable energy generation~~  
14 ~~facility;~~

15 (i) The ~~(ii) Certifies to the board that the facility will meet the~~  
16 ~~requirements for a privately developed renewable energy generation~~  
17 ~~facility;~~

18 (ii) The ~~(iii) Certifies to the board that the private electric~~  
19 ~~supplier will (A) comply with any decommissioning requirements adopted by~~  
20 ~~the local governmental entities having jurisdiction over the privately~~  
21 ~~developed renewable energy generation facility and (B) except as~~  
22 ~~otherwise provided in subdivision (b) of this subsection, submit a~~  
23 ~~decommissioning plan to the board obligating the private electric~~  
24 ~~supplier to bear all costs of decommissioning the privately developed~~  
25 ~~renewable energy generation facility and requiring that the private~~  
26 ~~electric supplier post a security bond or other instrument, no later than~~  
27 ~~the third ~~tenth~~ year following commercial operation, securing the costs~~  
28 ~~of decommissioning the facility and provide a copy of the bond or~~  
29 ~~instrument to the board;~~

30 (iii) The ~~(iv) Certifies to the board that the private electric~~  
31 ~~supplier has entered into or prior to commencing construction will enter~~

1 into a joint transmission development agreement pursuant to subdivision  
2 (c) of this subsection with the electric supplier owning the transmission  
3 facilities of sixty thousand volts or greater to which the privately  
4 developed renewable energy generation facility will interconnect; ~~and~~

5 (iv) The ~~(v)~~ Certifies to the board that the private electric  
6 supplier has consulted with the Game and Parks Commission to identify  
7 potential measures to avoid, minimize, and mitigate impacts to species  
8 identified under subsection (1) or (2) of section 37-806 during the  
9 project planning and design phases, if possible, but in no event later  
10 than the commencement of construction; -

11 (v) The applicant has entered into a power purchase agreement for  
12 the output of the privately developed renewable energy generation  
13 facility; and

14 (vi) For a proposed privately developed renewable energy generation  
15 facility that has a generating capacity that is greater than ten  
16 megawatts, the entity with whom the applicant has entered into a power  
17 purchase agreement has held at least one public meeting with advanced  
18 publicized notice in one of the counties in which the proposed facility  
19 will be located at which (A) at least fifty percent of the governing body  
20 of such entity attends either in person or by videoconference, but with  
21 not less than one member of the governing body physically present, (B)  
22 the applicant explains the need for the proposed facility and the type of  
23 facility, and (C) real property owners in any of the counties in which  
24 the proposed facility will be located are provided an opportunity to  
25 comment on the proposed facility. The applicant shall provide a report to  
26 the board containing the minutes of any such meeting and how many people  
27 commented on the proposed facility. Documentation received at any such  
28 meeting may be made available to the board upon its request. A meeting  
29 described in this subdivision is not subject to the requirements  
30 described in subdivision (2)(b)(iv) of section 84-1411.

31 (b) The board may bring an action in the name of the State of

1 Nebraska for failure to comply with subdivision (a)(ii)(B) ~~(a)(iii)(B)~~ of  
2 this subsection, except that such subdivision ~~Subdivision (a)(iii)(B)~~  
3 ~~of this subsection~~ does not apply if a local government entity with the  
4 authority to create requirements for decommissioning has enacted  
5 decommissioning requirements for the applicable jurisdiction.

6 (c) A ~~The~~ joint transmission development agreement shall be entered  
7 into to address construction, ownership, operation, and maintenance of  
8 such additions or upgrades to the transmission facilities as required for  
9 the privately developed renewable energy generation facility. The joint  
10 transmission development agreement shall be negotiated and executed  
11 contemporaneously with the generator interconnection agreement or other  
12 directives of the applicable regional transmission organization with  
13 jurisdiction over the addition or upgrade of transmission, upon terms  
14 consistent with prudent electric utility practices for the  
15 interconnection of renewable generation facilities, the electric  
16 supplier's reasonable transmission interconnection requirements, and  
17 applicable transmission design and construction standards. The electric  
18 supplier shall have the right to purchase and own transmission facilities  
19 as set forth in the joint transmission development agreement. The private  
20 electric supplier of the privately developed renewable energy generation  
21 facility shall have the right to construct any necessary facilities or  
22 improvements set forth in the joint transmission development agreement  
23 pursuant to the standards set forth in the agreement at the private  
24 electric supplier's cost.

25 (3)(a) ~~(3)~~ Within ten days after receipt of an application to the  
26 board a written notice complying with subsection (2) of this section,  
27 including the holding of at least one public meeting pursuant to  
28 subdivision (2)(a)(vi) of this section, if applicable, the board shall  
29 approve the application if the board finds that (i) the application meets  
30 the criteria certified in such application pursuant to subsection (2) of  
31 this section, (ii) the application will serve the public convenience and

1 necessity, and (iii) the applicant can most economically and feasibly  
2 supply the electric service resulting from the proposed construction or  
3 acquisition without unnecessary duplication of facilities or operations.

4 (b) The the executive director of the board shall issue a written  
5 acknowledgment of such board approval and that the privately developed  
6 renewable energy generation facility is exempt from sections 70-1012 to  
7 70-1014.01 if such facility remains in compliance with the requirements  
8 of this section.

9 (4) The exemption allowed under this section for a privately  
10 developed renewable energy generation facility shall extend to and exempt  
11 all private electric suppliers owning any interest in the facility,  
12 including any successor private electric supplier which subsequently  
13 acquires any interest in the facility.

14 (5) No property owned, used, or operated as part of a privately  
15 developed renewable energy generation facility shall be subject to  
16 eminent domain by a consumer-owned electric supplier operating in the  
17 State of Nebraska. Nothing in this section shall be construed to grant  
18 the power of eminent domain to a private electric supplier or limit the  
19 rights of any entity to acquire any public, municipal, or utility right-  
20 of-way across property owned, used, or operated as part of a privately  
21 developed renewable energy generation facility as long as the right-of-  
22 way does not prevent the operation of or access to the privately  
23 developed renewable energy generation facility.

24 (6) Only a consumer-owned electric supplier operating in the State  
25 of Nebraska may exercise eminent domain authority to acquire the land  
26 rights necessary for the construction of transmission lines and related  
27 facilities. There is a rebuttable presumption that the exercise of  
28 eminent domain to provide needed transmission lines and related  
29 facilities for a privately developed renewable energy generation facility  
30 is a public use.

31 (7) Nothing in this section shall be construed to authorize a

1 private electric supplier to sell or deliver electricity at retail in  
2 Nebraska.

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