

AMENDMENTS TO LB 1048

Introduced by Natural Resources.

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

3           Section 1. Section 13-518, Revised Statutes Supplement,  
4 2009, is amended to read:

5           13-518 For purposes of sections 13-518 to 13-522:

6           (1) Allowable growth means (a) for governmental units  
7 other than community colleges, the percentage increase in taxable  
8 valuation in excess of the base limitation established under  
9 section 77-3446, if any, due to improvements to real property as  
10 a result of new construction, additions to existing buildings,  
11 any improvements to real property which increase the value of  
12 such property, and any increase in valuation due to annexation  
13 and any personal property valuation over the prior year and (b)  
14 for community colleges, (i) for fiscal years prior to fiscal year  
15 2003-04 and after fiscal year 2004-05 until fiscal year 2007-08,  
16 the percentage increase in excess of the base limitation, if  
17 any, in full-time equivalent students from the second year to  
18 the first year preceding the year for which the budget is being  
19 determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05,  
20 the percentage increase in full-time equivalent students from the  
21 second year to the first year preceding the year for which the  
22 budget is being determined, and (iii) for fiscal year 2007-08 and  
23 each fiscal year thereafter, community college areas may exceed the

1 base limitation to equal base revenue need calculated pursuant to  
2 section 85-2223;

3 (2) Capital improvements means (a) acquisition of real  
4 property or (b) acquisition, construction, or extension of any  
5 improvements on real property;

6 (3) Governing body has the same meaning as in section  
7 13-503;

8 (4) Governmental unit means every political subdivision  
9 which has authority to levy a property tax or authority to  
10 request levy authority under section 77-3443 except sanitary and  
11 improvement districts which have been in existence for five years  
12 or less and school districts;

13 (5) Qualified sinking fund means a fund or funds  
14 maintained separately from the general fund to pay for acquisition  
15 or replacement of tangible personal property with a useful life of  
16 five years or more which is to be undertaken in the future but  
17 is to be paid for in part or in total in advance using periodic  
18 payments into the fund. The term includes sinking funds under  
19 subdivision (13) of section 35-508 for firefighting and rescue  
20 equipment or apparatus;

21 (6) Restricted funds means (a) property tax, excluding  
22 any amounts refunded to taxpayers, (b) payments in lieu of property  
23 taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e)  
24 state aid, (f) transfers of surpluses from any user fee, permit  
25 fee, or regulatory fee if the fee surplus is transferred to fund  
26 a service or function not directly related to the fee and the  
27 costs of the activity funded from the fee, (g) any funds excluded

1 from restricted funds for the prior year because they were budgeted  
2 for capital improvements but which were not spent and are not  
3 expected to be spent for capital improvements, (h) the tax provided  
4 in sections 77-27,223 to 77-27,227 beginning in the second fiscal  
5 year in which the county will receive a full year of receipts,  
6 and (i) any excess tax collections returned to the county under  
7 section 77-1776. Funds received pursuant to the nameplate capacity  
8 tax levied under section 14 of this act for the first five years  
9 after a wind energy generation facility has been commissioned are  
10 nonrestricted funds; and

11 (7) State aid means:

12 (a) For all governmental units, state aid paid pursuant  
13 to sections 60-3,202 and 77-3523;

14 (b) For municipalities, state aid to municipalities  
15 paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190,  
16 77-27,136, and 77-27,139.04 and insurance premium tax paid to  
17 municipalities;

18 (c) For counties, state aid to counties paid pursuant  
19 to sections 39-2501 to 39-2520, 60-3,184 to 60-3,190, and  
20 77-27,137.03, insurance premium tax paid to counties, and  
21 reimbursements to counties from funds appropriated pursuant to  
22 section 29-3933;

23 (d) For community colleges, state aid to community  
24 colleges paid under the Community College Foundation and  
25 Equalization Aid Act;

26 (e) For natural resources districts, state aid to natural  
27 resources districts paid pursuant to section 77-27,136;

1           (f) For educational service units, state aid appropriated  
2 under sections 79-1241.01 to 79-1241.03; and

3           (g) For local public health departments as defined in  
4 section 71-1626, state aid as distributed under section 71-1628.08.

5           Sec. 2. Section 70-1001, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           70-1001 In order to provide the citizens of the state  
8 with adequate electric service at as low overall cost as possible,  
9 consistent with sound business practices, it is the policy of  
10 this state to avoid and eliminate conflict and competition between  
11 public power districts, public power and irrigation districts,  
12 individual municipalities, registered groups of municipalities,  
13 electric membership associations, and cooperatives in furnishing  
14 electric energy to retail and wholesale customers, to avoid and  
15 eliminate the duplication of facilities and resources which result  
16 therefrom, and to facilitate the settlement of rate disputes  
17 between suppliers of electricity.

18           It is also the policy of the state to prepare for an  
19 evolving retail electricity market if certain conditions are met  
20 which indicate that retail competition is in the best interests of  
21 the citizens of the state. The determination on the timing and form  
22 of competitive markets is a matter properly left to the states as  
23 each state must evaluate the costs and benefits of a competitive  
24 retail market based on its own unique conditions. Consequently,  
25 there is a need for the State of Nebraska to monitor whether  
26 the conditions necessary for its citizens to benefit from retail  
27 competition exist.

1           It is also the policy of the State of Nebraska to  
2 encourage and allow opportunities for private developers to  
3 develop, own, and operate renewable energy facilities intended  
4 primarily for export from the state under a statutory framework  
5 which protects the ratepayers of consumer-owned utility systems  
6 operating in the state from subsidizing the costs of such export  
7 facilities through their rates.

8           Sec. 3. Section 70-1001.01, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           70-1001.01 For purposes of sections 70-1001 to 70-1027  
11 and section 6 of this act, unless the context otherwise requires:

12           (1) Board means the Nebraska Power Review Board;

13           (2) Certified renewable export facility means a facility  
14 approved under section 6 of this act that (a) will generate  
15 electricity using solar, wind, biomass, or landfill gas, (b) will  
16 be constructed and owned by an entity other than a municipality,  
17 a registered group of municipalities, a public power district,  
18 a public power and irrigation district, an electric cooperative,  
19 an electric membership association, or any other governmental  
20 entity, and (c) has a power purchase or similar agreement or  
21 agreements with an initial term of ten years or more for the  
22 sale of at least ninety percent of the output of the facility  
23 with a customer or customers located outside the State of Nebraska  
24 and maintains such agreement or agreements for the life of the  
25 facility. Output sold pursuant to subdivision (2)(b)(vii) of  
26 section 6 of this act shall not be included when calculating  
27 such ninety percent. Certified renewable export facility includes

1 all generating equipment, easements, and interconnection equipment  
2 within the facility and connecting the facility to the transmission  
3 grid;

4           ~~(2)~~ (3) Electric suppliers or suppliers of electricity  
5 means any legal entity supplying, producing, or distributing  
6 electricity within the state for sale at wholesale or retail;

7           ~~(3)~~ (4) Regional transmission organization means an  
8 entity independent from those entities generating or marketing  
9 electricity at wholesale or retail, which has operational control  
10 over the electric transmission lines in a designated geographic  
11 area in order to reduce constraints in the flow of electricity and  
12 ensure that all power suppliers have open access to transmission  
13 lines for the transmission of electricity;

14           ~~(4)~~ (5) Representative organization means an organization  
15 designated by the board and organized for the purpose of  
16 providing joint planning and encouraging maximum cooperation and  
17 coordination among electric suppliers. Such organization shall  
18 represent electric suppliers owning a combined electric generation  
19 plant capacity of at least ninety percent of the total electric  
20 generation plant capacity constructed and in operation within the  
21 state;

22           ~~(5)~~ (6) State means the State of Nebraska; and

23           (7) Stranded asset means a generation or transmission  
24 facility owned by an electric supplier as defined in subsection (1)  
25 of section 6 of this act which cannot earn a favorable economic  
26 return due to regulatory or legislative actions or changes in the  
27 market and, at the time an application is filed with the board

1 under such section, either exists or has been approved by the board  
2 or the governing body of an electric supplier as defined in such  
3 subsection; and

4 ~~(6)~~ (8) Unbundled retail rates means the separation of  
5 utility bills into the individual price components for which an  
6 electric supplier charges its retail customers, including, but not  
7 limited to, the separate charges for the generation, transmission,  
8 and distribution of electricity.

9 Sec. 4. Section 70-1013, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 70-1013 Upon application being filed under section  
12 70-1012, the board shall fix a time and place for hearing and shall  
13 give ten days' notice by mail to such ~~alternate~~ power suppliers  
14 as it deems to be affected by the application. The hearing shall  
15 be ~~had~~ held within ~~thirty~~ sixty days unless for good cause shown,  
16 the applicant ~~shall request~~ requests in writing that such hearing  
17 not be scheduled until a later time, but in any event such hearing  
18 shall be held not be more than ~~ninety~~ one hundred twenty days  
19 from the filing of the application, and the board shall give its  
20 decision within ~~thirty~~ sixty days after the conclusion of the  
21 hearing. Any parties interested may appear, file objections, and  
22 offer evidence. The ~~÷ Provided,~~ the board may grant the application  
23 without notice or hearing, upon the filing of such waivers as it  
24 may require, if in its judgment the finding required by section  
25 70-1014 can be made without a hearing. Such hearing shall be  
26 conducted as provided in section 70-1006. The board may allow  
27 amendments to the application, in the interests of justice.

1           Sec. 5. Section 70-1014, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           70-1014 After hearing, the board shall have authority  
4 to approve or deny the application. Except as provided in  
5 section 70-1014.01 for special generation applications and except  
6 as provided in section 6 of this act, before approval of an  
7 application, the board shall find that the application will serve  
8 the public convenience and necessity, and that the applicant  
9 can most economically and feasibly supply the electric service  
10 resulting from the proposed construction or acquisition, without  
11 unnecessary duplication of facilities or operations.

12           Sec. 6. (1) For purposes of this section, electric  
13 supplier means a public power district, a public power and  
14 irrigation district, an individual municipality, a registered  
15 group of municipalities, an electric membership association, or  
16 a cooperative.

17           (2)(a) The board shall conditionally approve an  
18 application for a certified renewable export facility if it finds  
19 that only the criteria described in subdivisions (a)(i) and (ii) of  
20 this subsection are met: (i) The facility will provide reasonably  
21 identifiable and quantifiable public benefits, including economic  
22 development, to the residents of Nebraska or the local area where  
23 the facility will be located; and (ii) the facility meets the  
24 requirements of subdivisions (2)(a) and (b) of section 70-1001.01  
25 and has a memorandum of understanding or similar agreement or  
26 agreements for the sale of at least ninety percent of the output of  
27 the facility for ten years or more with a customer or customers

1 located outside the State of Nebraska. Following the board's  
2 conditional approval of an application under this subdivision, the  
3 applicant shall notify the board within eighteen months that it is  
4 prepared to proceed to consideration of the criteria in subdivision  
5 (b) of this subsection. The board may extend such eighteen-month  
6 deadline not more than twelve additional months for good cause  
7 shown. If the applicant fails to notify the board within such time  
8 that it is so prepared, the conditional approval granted under this  
9 subdivision is void.

10 (b) Upon finding that the criteria described in  
11 subdivisions (b)(i) through (ix) of this subsection have also  
12 been met by the applicant and after the board has fulfilled the  
13 requirements of subsection (3) of section 37-807, the board shall  
14 grant final approval of an application for a certified renewable  
15 export facility:

16 (i) The facility will not have a materially detrimental  
17 effect on the retail electric rates paid by any Nebraska  
18 ratepayers, except that, notwithstanding subdivisions (b)(v) and  
19 (vi) of this subsection, the determination of a materially  
20 detrimental effect on rates shall not include regional transmission  
21 improvements dictated by a regional transmission operator or  
22 transmission improvements required due to participation by  
23 an eligible entity pursuant to subdivision (b)(vii) of this  
24 subsection;

25 (ii) The applicant has obtained the necessary generation  
26 interconnection and transmission service approvals from and  
27 has executed agreements for such generation interconnection and

1 transmission service with the appropriate regional transmission  
2 organization, transmission owner, or transmission provider;

3 (iii) There has been no demonstration that the proposed  
4 facility will result in a substantial risk of creating stranded  
5 assets;

6 (iv) The applicant has certified that it has applied for  
7 and is actively pursuing the required approvals from any other  
8 federal, state, or local entities with jurisdiction or permitting  
9 authority over the certified renewable export facility;

10 (v) The applicant and the electric supplier owning  
11 the transmission facilities to which the certified renewable  
12 export facility will be interconnected, along with any electric  
13 supplier which owns transmission facilities of 115,000 volts  
14 or more and is required to receive notice pursuant to section  
15 70-1013, have entered into a joint transmission development  
16 agreement on reasonable terms and conditions consistent with  
17 and subject to the notice to construct or other directives of  
18 any regional transmission organization with jurisdiction over  
19 the addition or upgrade to transmission facilities or, for any  
20 electric supplier that is not a member of a regional transmission  
21 organization with which the facility will interconnect, covers  
22 the addition or upgrade to transmission facilities required  
23 as a result of the certified renewable export facility. Such  
24 joint transmission development agreement shall include provisions  
25 addressing construction, ownership, operation, and maintenance of  
26 such additions or upgrades to transmission facilities. The electric  
27 supplier or suppliers shall have the right to purchase and own

1 transmission facilities as set forth in the joint transmission  
2 development agreement;

3 (vi) The applicant agrees to reimburse any costs that are  
4 not covered by a regional transmission organization tariff or that  
5 are allocated through the tariff to the electric suppliers as a  
6 result of the certified renewable export facility or not covered  
7 by the tariff of a transmission owner or transmission provider  
8 that is not a member of a regional transmission organization,  
9 costs incurred by any electric supplier as a result of adding the  
10 certified renewable export facility, including, but not limited  
11 to, renewable integration costs, and costs which allow the  
12 interconnected electric supplier to operate and maintain the  
13 transmission facilities under reasonable terms and conditions  
14 agreed to by the parties within the joint transmission development  
15 agreement;

16 (vii) The applicant agrees to benefit Nebraskans by  
17 offering to provide electric suppliers serving loads greater  
18 than fifty megawatts at the time the application is filed an  
19 option to purchase in the aggregate an amount of power up to  
20 ten percent of the output of any facility with greater than  
21 80 megawatts of nameplate capacity at a price not to exceed  
22 the facility's per-kilowatt-hour cost, net of federal and state  
23 incentives, plus a commercially reasonable rate of return. The  
24 applicant shall disclose the rate of return to the board at  
25 the time of the application. Such financial information may be  
26 withheld from disclosure pursuant to subdivision (3) of section  
27 84-712.05. Such electric suppliers shall be entitled to a minimum

1 of their pro rata share based on the load ratio share of  
2 Nebraska electric load served among those electric suppliers  
3 eligible under this subdivision (vii). If an electric supplier  
4 declines to contract for some or all of its pro rata share,  
5 the remaining eligible electric suppliers may share the balance  
6 on a pro rata basis. The ten percent may be above the total  
7 generation amount proposed in the application for a certified  
8 renewable export facility and shall require no separate approval by  
9 the board. Any transmission studies, additions, or upgrades due to  
10 participation by electric suppliers serving loads greater than 50  
11 megawatts shall be the responsibility of the participating electric  
12 supplier. Upon application under this section, the board shall  
13 notify electric suppliers identified in this subdivision (vii) of  
14 a pending application. Such suppliers shall have forty-five days  
15 following the date of the board's notice to notify the applicant of  
16 an interest in exercising the option to purchase power, except that  
17 such suppliers may withdraw their option to purchase power once the  
18 costs of the transmission additions and upgrades are determined.  
19 Electric suppliers withdrawing their option to purchase power  
20 are responsible for their pro rata share of any costs resulting  
21 from their participation in and withdrawal from the generation  
22 interconnection and transmission delivery studies;

23 (viii) The applicant certifies to the board that it  
24 will submit a decommissioning plan before final approval is  
25 granted pursuant to subdivision (2)(b) of this section and will  
26 establish decommissioning security as required in this subdivision  
27 (viii). The owner of the certified renewable export facility shall

1 be solely responsible for decommissioning. Such decommissioning  
2 security shall be an instrument that is posted, a copy of which is  
3 given to the board, no later than the tenth year following final  
4 approval of the facility by the owner of the certified renewable  
5 export facility to ensure sufficient funding is available for  
6 removal of a certified renewable export facility and reclamation  
7 at the end of the useful life of such a facility pursuant to  
8 the decommissioning plan. If the applicant or any subsequent owner  
9 of the facility intends to transfer ownership of the facility,  
10 the proposed new owner shall provide the board with adequate  
11 evidence demonstrating that substitute decommissioning security  
12 has been posted or given prior to transfer of ownership. The  
13 requirements of this subdivision (viii) shall be waived if a local  
14 governmental entity with the authority to create requirements for  
15 decommissioning has enacted decommissioning requirements for the  
16 applicable jurisdiction; and

17 (ix) The facility meets the requirements of subdivision  
18 (2) of section 70-1001.01.

19 (3) If the applicant does not commence construction of  
20 the certified renewable export facility within eighteen months  
21 after receiving final approval from the board under subsection (2)  
22 of this section, the approval is void. Upon written request filed  
23 by the applicant, the board may, for good cause shown, extend the  
24 time period during which an approval will remain valid. Good cause  
25 includes, but is not limited to, national or regional economic  
26 conditions, lack of transmission infrastructure, or an applicant's  
27 inability to obtain authorization from other required governmental

1 regulatory authorities despite the applicant's exercise of a  
2 good-faith effort to obtain such approvals.

3 (4) The applicant shall remit an application fee of five  
4 thousand dollars with the application. The fee shall be remitted  
5 to the State Treasurer for credit to the Nebraska Power Review  
6 Fund. The board shall use the application fee to defray the board's  
7 reasonable expenses associated with reviewing and acting upon the  
8 application, including the costs of the hearing. If the board  
9 incurs expenses of more than five thousand dollars associated with  
10 the application, the board shall provide written notification to  
11 the applicant of the additional sum needed or already expended,  
12 after which the applicant shall promptly submit an additional sum  
13 sufficient to cover the board's anticipated or incurred expenses  
14 or shall file an objection with the board. If, after completion of  
15 the application process and any subsequent legal action, including  
16 appeal of the board's decision, the board's expenses associated  
17 with processing and acting upon the application do not equal the  
18 amount submitted by the applicant, the board shall return the  
19 unused funds to the applicant if the amount is fifty dollars or  
20 more. The applicant shall reimburse the board for any reasonable  
21 expenses the board incurs as a result of appeal of the board's  
22 decision or shall file an objection with the board. The board shall  
23 rule on any objection brought pursuant to this subsection within  
24 thirty days. The applicant may request a hearing on its objection,  
25 in which case the board shall hold such hearing within thirty days  
26 after the request and shall rule within forty-five days after the  
27 hearing.

1           (5) No facility, or part of a facility, which is a  
2 certified renewable export facility is subject to eminent domain by  
3 an electric supplier, or by any other entity if the purpose of the  
4 eminent domain proceeding is to acquire the facility for electric  
5 generation or transmission.

6           (6) Except as provided in subsection (5) of this section,  
7 only an electric supplier may exercise its eminent domain authority  
8 to acquire the land rights necessary for the construction of  
9 transmission lines and related facilities to provide transmission  
10 services for a certified renewable export facility. The exercise  
11 of eminent domain to provide needed transmission lines and related  
12 facilities for a certified renewable export facility is a public  
13 use. Nothing in this section shall be construed to grant the power  
14 of eminent domain to a private entity.

15           (7) If any transmission facilities serving a certified  
16 renewable export facility are proposed to cross the service area of  
17 any electric supplier which owns transmission facilities of 115,000  
18 volts or more and is required to receive notice pursuant to section  
19 70-1013, then such electric supplier may elect to be a party to  
20 a joint transmission development agreement for such transmission  
21 facilities.

22           (8) If a certified renewable export facility no longer  
23 meets the requirements of subdivisions (2)(a) through (c) of  
24 section 70-1001.01, the owner of the facility shall notify  
25 the board. An electric supplier or a governmental entity with  
26 regulatory jurisdiction over the certified renewable export  
27 facility may apply to the board or the board may file its own

1 motion to have the certification of a renewable export facility  
2 revoked upon a showing by the applicant for decertification that  
3 a facility no longer meets the requirements of such subdivisions.  
4 Upon the filing of such application and making of a prima facie  
5 showing by the applicant for decertification that the facility  
6 no longer meets the criteria for certification, the board shall  
7 set the matter for hearing. The hearing shall be held within  
8 forty-five days unless an extension is necessary for good cause.  
9 The applicant for decertification shall have the burden of proof.  
10 Within forty-five days after the conclusion of the hearing, the  
11 board shall enter an order to either reaffirm the certification as  
12 a renewable export facility or to revoke the certification. During  
13 the pendency of the application for decertification and before the  
14 board's final order on decertification, the facility may continue  
15 to operate if the electricity generated at the facility is sold to  
16 customers outside the State of Nebraska or to an electric supplier  
17 pursuant to a power purchase agreement or similar agreement. The  
18 board shall retain jurisdiction over the decertification action  
19 for at least thirty days after entry of such an order. Within  
20 thirty days after a final order revoking certification, the owner  
21 of the facility may apply for recertification, with the time  
22 period for recertification being no longer than one year unless  
23 the board extends the time period for good cause. Such application  
24 for recertification shall extend the board's jurisdiction over the  
25 decertification action until the board completes its review of  
26 the application for recertification and enters an order granting  
27 or denying the application. If the applicant for recertification

1 demonstrates to the board that it is working diligently and  
2 in good faith to restore its compliance with requirements of a  
3 certified renewable export facility, the board shall not terminate  
4 the application for recertification. During the pendency of the  
5 application for recertification and before the board's final order  
6 on recertification, the facility may continue to operate if the  
7 electricity generated at the facility is sold to customers outside  
8 the State of Nebraska or to an electric supplier pursuant to a  
9 power purchase agreement or similar agreement. If the board retains  
10 jurisdiction over the decertification action, the prohibition on  
11 eminent domain set forth in subsection (5) of this section shall  
12 remain in full force and effect. If the board enters an order  
13 decertifying a certified renewable export facility and such order  
14 becomes final due to a failure to timely seek recertification or  
15 judicial review, the prohibition on eminent domain set forth in  
16 subsection (5) of this section shall no longer apply. Nothing  
17 in this section shall prohibit a decertified facility from being  
18 recertified in the same manner as a new facility.

19           Sec. 7. Section 70-1014.01, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           70-1014.01 (1) Except as provided in subsection (2)  
22 of this section, an application by a municipality, a registered  
23 group of municipalities, a public power district, a public  
24 power and irrigation district, an electric cooperative, an  
25 electric membership association, or any other governmental entity  
26 for a facility that will generate not more than ten thousand  
27 kilowatts of electric energy at rated capacity and will generate

1 electricity using solar, wind, biomass, landfill gas, methane gas,  
2 or hydropower generation technology or an emerging generation  
3 technology, including, but not limited to, fuel cells and  
4 micro-turbines, shall be deemed a special generation application.  
5 Such application shall be approved by the board if the board  
6 finds that (a) the application qualifies as a special generation  
7 application, (b) the application will provide public benefits  
8 sufficient to warrant approval of the application, although it  
9 may not constitute the most economically feasible generation  
10 option, and (c) the application under consideration represents a  
11 separate and distinct project from any previous special generation  
12 application the applicant may have filed.

13           (2)(a) An application by a municipality, a registered  
14 group of municipalities, a public power district, a public power  
15 and irrigation district, an electric cooperative, an electric  
16 membership association, or any other governmental entity for a  
17 facility that will generate more than ten thousand kilowatts of  
18 electric energy at rated capacity and will generate electricity  
19 using renewable energy sources such as solar, wind, biomass,  
20 landfill gas, methane gas, or new hydropower generation technology  
21 or an emerging technology, including, but not limited to, fuel  
22 cells and micro-turbines, may be filed with the board if (i)  
23 the total production from all such renewable projects, excluding  
24 sales from such projects to other electric-generating entities,  
25 does not exceed ten percent of total energy sales as shown in  
26 the producer's Annual Electric Power Industry Report to the United  
27 States Department of Energy and (ii) the applicant's governing body

1 conducts at least one advertised public hearing which affords the  
2 ratepayers of the applicant a chance to review and comment on the  
3 subject of the application.

4 (b) The application shall be approved by the board if  
5 the board finds that (i) the applicant is using renewable energy  
6 sources described in this subsection, (ii) total production from  
7 all renewable projects of the applicant does not exceed ten percent  
8 of the producer's total energy sales as described in subdivision  
9 (2)(a) of this section, and (iii) the applicant's governing body  
10 has conducted at least one advertised public hearing which affords  
11 its ratepayers a chance to review and comment on the subject of the  
12 application.

13 (3) A community-based energy development project  
14 organized pursuant to the Rural Community-Based Energy Development  
15 Act which intends to develop renewable energy sources for sale to  
16 one or more Nebraska electric utilities described in this section  
17 may also make an application to the board pursuant to subsection  
18 (2) of this section if (a) the purchasing electric utilities  
19 conduct a public hearing described in such subsection and (b)  
20 the power and energy from the renewable energy sources is sold  
21 exclusively to such electric utilities for a term of at least  
22 twenty years.

23 (4) No facility or part of a facility which is approved  
24 pursuant to this section is subject to eminent domain by any  
25 electric supplier, or by any other entity if the purpose of the  
26 eminent domain proceeding is to acquire the facility for electric  
27 generation or transmission.

1           Sec. 8. (1) All wind measurement equipment associated  
2 with the development or study of wind-powered electric generation,  
3 whether owned or leased, shall be registered with the Department  
4 of Aeronautics if the equipment is at least fifty feet in height  
5 above the ground and is located outside the boundaries of any  
6 incorporated city or village.

7           (2) All such equipment shall be either lighted, marked  
8 with balls at least twenty-one inches in diameter, painted, or  
9 constructed in some other manner so it is recognizable in clear air  
10 during daylight hours from a distance of not less than two thousand  
11 feet.

12           (3) The person or firm that owns or leases equipment  
13 described in subsection (1) of this section shall register it  
14 within thirty days after installation. Such registration shall  
15 include the equipment's exact location and height above the ground,  
16 the name of the person or firm registering the equipment, the  
17 method used to make the equipment recognizable as provided in  
18 subsection (2) of this section, and the name and telephone number  
19 of a contact person for any issues related to such equipment.  
20 Within five days after receiving such registration, the department  
21 shall make all data included in the registration available to the  
22 public.

23           (4) All such equipment installed before the effective  
24 date of this act shall be registered with the department within  
25 fifteen days after such date. All such equipment installed before  
26 such date shall also be marked as provided in subsection (2) of  
27 this section on or before January 1, 2013.

1           (5) Any person or firm that removes equipment subject  
2 to the registration requirements of this section shall report the  
3 removal to the department within thirty days after such removal.

4           Sec. 9. Section 76-710.04, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           76-710.04 (1) A condemner may not take property through  
7 the use of eminent domain under sections 76-704 to 76-724 if the  
8 taking is primarily for an economic development purpose.

9           (2) For purposes of this section, economic development  
10 purpose means taking property for subsequent use by a commercial  
11 for-profit enterprise or to increase tax revenue, tax base,  
12 employment, or general economic conditions.

13           (3) This section does not affect the use of eminent  
14 domain for:

15           (a) Public projects or private projects that make all  
16 or a major portion of the property available for use by the  
17 general public or for use as a right-of-way, aqueduct, pipeline,  
18 transmission line, or similar use;

19           (b) Removing harmful uses of property if such uses  
20 constitute an immediate threat to public health and safety;

21           (c) Leasing property to a private person who occupies an  
22 incidental part of public property or a public facility, such as a  
23 retail establishment on the ground floor of a public building;

24           (d) Acquiring abandoned property;

25           (e) Clearing defective property title;

26           (f) Taking private property for use by a utility or  
27 railroad; ~~and~~

1           (g) Taking private property based upon a finding of  
2 blighted or substandard conditions under the Community Development  
3 Law if the private property is not agricultural land or  
4 horticultural land as defined in section 77-1359; and-

5           (h) Taking private property for a transmission line to  
6 serve a privately developed facility generating electricity using  
7 wind, solar, biomass, or landfill gas. Nothing in this subdivision  
8 shall be construed to grant the power of eminent domain to a  
9 private entity.

10           Sec. 10. Section 77-105, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           77-105 The term tangible personal property includes all  
13 personal property possessing a physical existence, excluding money.  
14 The term tangible personal property also includes trade fixtures,  
15 which means machinery and equipment, regardless of the degree  
16 of attachment to real property, used directly in commercial,  
17 manufacturing, or processing activities conducted on real property,  
18 regardless of whether the real property is owned or leased, and all  
19 property used in the generation of electricity using wind as the  
20 fuel source as listed in subsection (9) of section 77-202. The term  
21 intangible personal property includes all other personal property,  
22 including money.

23           Sec. 11. Section 77-202, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           77-202 (1) The following property shall be exempt from  
26 property taxes:

27           (a) Property of the state and its governmental

1 subdivisions to the extent used or being developed for use by  
2 the state or governmental subdivision for a public purpose. For  
3 purposes of this subdivision, public purpose means use of the  
4 property (i) to provide public services with or without cost to the  
5 recipient, including the general operation of government, public  
6 education, public safety, transportation, public works, civil and  
7 criminal justice, public health and welfare, developments by a  
8 public housing authority, parks, culture, recreation, community  
9 development, and cemetery purposes, or (ii) to carry out the  
10 duties and responsibilities conferred by law with or without  
11 consideration. Public purpose does not include leasing of property  
12 to a private party unless the lease of the property is at fair  
13 market value for a public purpose. Leases of property by a public  
14 housing authority to low-income individuals as a place of residence  
15 are for the authority's public purpose;

16 (b) Unleased property of the state or its governmental  
17 subdivisions which is not being used or developed for use for  
18 a public purpose but upon which a payment in lieu of taxes is  
19 paid for public safety, rescue, and emergency services and road  
20 or street construction or maintenance services to all governmental  
21 units providing such services to the property. Except as provided  
22 in Article VIII, section 11, of the Constitution of Nebraska,  
23 the payment in lieu of taxes shall be based on the proportionate  
24 share of the cost of providing public safety, rescue, or emergency  
25 services and road or street construction or maintenance services  
26 unless a general policy is adopted by the governing body of the  
27 governmental subdivision providing such services which provides for

1 a different method of determining the amount of the payment in  
2 lieu of taxes. The governing body may adopt a general policy by  
3 ordinance or resolution for determining the amount of payment in  
4 lieu of taxes by majority vote after a hearing on the ordinance  
5 or resolution. Such ordinance or resolution shall nevertheless  
6 result in an equitable contribution for the cost of providing such  
7 services to the exempt property;

8 (c) Property owned by and used exclusively for  
9 agricultural and horticultural societies;

10 (d) Property owned by educational, religious, charitable,  
11 or cemetery organizations, or any organization for the exclusive  
12 benefit of any such educational, religious, charitable, or cemetery  
13 organization, and used exclusively for educational, religious,  
14 charitable, or cemetery purposes, when such property is not  
15 (i) owned or used for financial gain or profit to either the  
16 owner or user, (ii) used for the sale of alcoholic liquors for  
17 more than twenty hours per week, or (iii) owned or used by  
18 an organization which discriminates in membership or employment  
19 based on race, color, or national origin. For purposes of this  
20 subdivision, educational organization means (A) an institution  
21 operated exclusively for the purpose of offering regular courses  
22 with systematic instruction in academic, vocational, or technical  
23 subjects or assisting students through services relating to the  
24 origination, processing, or guarantying of federally reinsured  
25 student loans for higher education or (B) a museum or historical  
26 society operated exclusively for the benefit and education of the  
27 public. For purposes of this subdivision, charitable organization

1 means an organization operated exclusively for the purpose of the  
2 mental, social, or physical benefit of the public or an indefinite  
3 number of persons; and

4 (e) Household goods and personal effects not owned or  
5 used for financial gain or profit to either the owner or user.

6 (2) The increased value of land by reason of shade and  
7 ornamental trees planted along the highway shall not be taken into  
8 account in the valuation of land.

9 (3) Tangible personal property which is not depreciable  
10 tangible personal property as defined in section 77-119 shall be  
11 exempt from property tax.

12 (4) Motor vehicles required to be registered for  
13 operation on the highways of this state shall be exempt from  
14 payment of property taxes.

15 (5) Business and agricultural inventory shall be exempt  
16 from the personal property tax. For purposes of this subsection,  
17 business inventory includes personal property owned for purposes  
18 of leasing or renting such property to others for financial gain  
19 only if the personal property is of a type which in the ordinary  
20 course of business is leased or rented thirty days or less and  
21 may be returned at the option of the lessee or renter at any time  
22 and the personal property is of a type which would be considered  
23 household goods or personal effects if owned by an individual. All  
24 other personal property owned for purposes of leasing or renting  
25 such property to others for financial gain shall not be considered  
26 business inventory.

27 (6) Any personal property exempt pursuant to subsection

1 (2) of section 77-4105 or section 77-5209.02 shall be exempt from  
2 the personal property tax.

3 (7) Livestock shall be exempt from the personal property  
4 tax.

5 (8) Any personal property exempt pursuant to the Nebraska  
6 Advantage Act shall be exempt from the personal property tax.

7 (9) Any personal property used directly in the generation  
8 of electricity using wind as the fuel source shall be exempt  
9 from the personal property tax. Personal property used directly  
10 in the generation of electricity using wind as the fuel source  
11 includes, but is not limited to, wind turbines, rotors and blades,  
12 towers, trackers, generating equipment, transmission components,  
13 substations, supporting structures or racks, inverters, and other  
14 system components such as wiring, control systems, switchgears, and  
15 generator step-up transformers.

16 Sec. 12. The Legislature finds and declares:

17 (1) The purpose of the nameplate capacity tax levied  
18 under section 14 of this act is to replace property taxes currently  
19 imposed on wind infrastructure and depreciated over a short period  
20 of time in a way that causes local budgeting challenges and  
21 increases up-front costs for wind developers;

22 (2) The nameplate capacity tax should be competitive  
23 with taxes imposed directly and indirectly on wind generation and  
24 development in other states;

25 (3) The nameplate capacity tax should be fair and  
26 nondiscriminatory when compared with other taxes imposed on other  
27 industries in the state; and

1           (4) The nameplate capacity tax should not be singled  
2 out as a source of General Fund revenue during times of economic  
3 hardship.

4           Sec. 13. For purposes of sections 12 to 15 of this act:

5           (1) Commissioned means the wind turbine of a wind  
6 generation facility has been in commercial operation for at least  
7 twenty-four hours. A wind turbine is not in commercial operation  
8 unless the wind energy generation facility is connected to the  
9 electrical grid;

10          (2) Nameplate capacity means the capacity of a wind  
11 turbine to generate electricity as measured in megawatts, including  
12 fractions of a megawatt; and

13          (3) Wind energy generation facility means a facility that  
14 generates electricity using wind as the fuel source.

15          Sec. 14. (1) The owner of a wind energy generation  
16 facility annually shall pay a nameplate capacity tax equal to  
17 the total nameplate capacity of the commissioned wind turbine of  
18 the wind energy generation facility multiplied by a tax rate of  
19 \$3,518.00 per megawatt.

20          (2) No tax shall be imposed on a wind energy generation  
21 facility:

22          (a) Owned or operated by the federal government, the  
23 State of Nebraska, a public power district, a public power and  
24 irrigation district, an individual municipality, a registered  
25 group of municipalities, an electric membership association, or  
26 a cooperative; or

27          (b) That is a customer-generator as defined in section

1 70-2002.

2 (3) No tax levied pursuant to this section shall be  
3 construed to constitute restricted funds as defined in section  
4 13-518 for the first five years after the wind energy generation  
5 facility is commissioned.

6 (4) The presence of one or more wind energy generation  
7 facilities or supporting infrastructure shall not be a factor in  
8 the assessment, determination of actual value, or classification  
9 under section 77-201 of the real property underlying or adjacent to  
10 such facilities or infrastructure.

11 (5) (a) The Department of Revenue shall collect the tax  
12 due under this section.

13 (b) The tax shall be imposed beginning the first calendar  
14 year the wind turbine is commissioned. A wind energy generation  
15 facility commissioned prior to the effective date of this act shall  
16 be subject to the tax levied pursuant to section 14 of this act  
17 on and after such date. The amount of property tax previously paid  
18 on a wind energy generation facility commissioned prior to the  
19 effective date of this act which is greater than the amount that  
20 would have been paid pursuant to section 14 of this act from the  
21 date of commissioning until the effective date of this act shall be  
22 credited against any other tax due under Chapter 77, and any amount  
23 so credited that is unused in any tax year shall be carried over to  
24 subsequent tax years until fully utilized.

25 (c) (i) The tax for the first calendar year shall be  
26 prorated based upon the number of days remaining in the calendar  
27 year after the wind turbine is commissioned.

1           (ii) In the first year in which a wind energy generation  
2 facility is taxed or in any year in which additional commissioned  
3 nameplate capacity is added to a wind energy generation facility,  
4 the taxes on the initial or additional nameplate capacity shall be  
5 prorated for the number of days remaining in the calendar year.

6           (iii) When a wind turbine is decommissioned or made  
7 nonoperational by a change in law or decertification from its  
8 status as a certified renewable export facility during a tax year,  
9 the taxes shall be prorated for the number of days during which the  
10 wind turbine was not decommissioned or was operational.

11           (iv) When the capacity of a wind turbine to produce  
12 electricity is reduced but the wind turbine is not decommissioned,  
13 the nameplate capacity of the wind turbine is deemed to be  
14 unchanged.

15           (6) (a) On March 1 of each year, the owner of a wind  
16 energy generation facility shall file with the Department of  
17 Revenue a report on the nameplate capacity of the facility for  
18 the previous year from January 1 through December 31. All taxes  
19 shall be due on April 1 and shall be delinquent if not paid on a  
20 quarterly basis on April 1 and each quarter thereafter. Delinquent  
21 quarterly payments shall draw interest at the rate provided for in  
22 section 45-104.02, as such rate may from time to time be adjusted.

23           (b) The owner of a wind energy generation facility is  
24 liable for the taxes under this section with respect to the  
25 facility, whether or not the owner of the facility is the owner of  
26 the land on which the facility is situated.

27           (7) Failure to file a report required by subsection (6)

1 of this section, filing such report late, failure to pay taxes due,  
2 or underpayment of such taxes shall result in a penalty of five  
3 percent of the amount due being imposed for each quarter the report  
4 is overdue or the payment is delinquent, except that the penalty  
5 shall not exceed ten thousand dollars.

6 (8) The Department of Revenue shall enforce the  
7 provisions of this section. The department shall adopt and  
8 promulgate rules and regulations necessary for the implementation  
9 and enforcement of this section.

10 (9) The Department of Revenue shall separately identify  
11 the proceeds from the tax imposed by this section and shall pay all  
12 such proceeds over to the county treasurer of the county where the  
13 wind energy generation facility is located within thirty days after  
14 receipt of such proceeds.

15 Sec. 15. (1) The county treasurer shall distribute all  
16 revenue received from the Department of Revenue pursuant to section  
17 14 of this act to local taxing entities which, but for such  
18 personal property tax exemption, would have received distribution  
19 of personal property tax revenue from depreciable personal property  
20 used directly in the generation of electricity using wind as the  
21 fuel source.

22 (2) A local taxing entity's status as eligible for  
23 distribution under subsection (1) of this section shall not be  
24 affected when and if the net book value of personal property used  
25 directly in the generation of electricity using wind as the fuel  
26 source becomes zero. A local taxing entity's status as eligible  
27 for distribution under such subsection shall be affected by the

1 disposal of all of the exempt depreciable personal property used  
2 directly in the generation of electricity using wind as the fuel  
3 source.

4 (3) The distribution to each eligible local taxing entity  
5 shall be calculated by determining the amount of taxes that the  
6 eligible local taxing entity levied during the taxable year and  
7 dividing this amount by the total tax levied by all of the  
8 eligible local taxing entities during the year. Each eligible  
9 entity's resulting fraction shall then be multiplied by the revenue  
10 distributed to the county treasurer by the department to determine  
11 the portion of such revenue due each local taxing entity.

12 (4) The Department of Revenue shall not retain any  
13 revenue collected pursuant to sections 12 to 15 of this act for  
14 distribution, use, transfer, pledge, or allocation to or from the  
15 General Fund.

16 Sec. 16. The Revisor of Statutes shall assign section 6  
17 of this act within sections 70-1001 to 70-1027.

18 Sec. 17. Original sections 70-1001, 70-1001.01, 70-1013,  
19 70-1014, 70-1014.01, 76-710.04, 77-105, and 77-202, Reissue  
20 Revised Statutes of Nebraska, and section 13-518, Revised Statutes  
21 Supplement, 2009, are repealed.