

AMENDMENTS TO LB 1048

(Amendments to E & R amendments, ER8211)

Introduced by Langemeier, 23.

1 1. Strike sections 1 through 17 and all amendments
2 thereto and insert the following 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

1 each fiscal year thereafter, community college areas may exceed the
2 base limitation to equal base revenue need calculated pursuant to
3 section 85-2223;

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

7 (3) Governing body has the same meaning as in section
8 13-503;

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

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

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

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

12 (7) State aid means:

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

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

19 (c) For counties, (i) until July 1, 2011, state aid to
20 counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01,
21 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium
22 tax paid to counties, and reimbursements to counties from funds
23 appropriated pursuant to section 29-3933, and (ii) beginning on
24 July 1, 2011, state aid to counties paid pursuant to sections
25 39-2501 to 39-2520, 60-3,184 to 60-3,190, and 77-27,137.03,
26 insurance premium tax paid to counties, and reimbursements to
27 counties from funds appropriated pursuant to section 29-3933;

1 (d) For community colleges, state aid to community
2 colleges paid under the Community College Foundation and
3 Equalization Aid Act;

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

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

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

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

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

23 It is also the policy of the state to prepare for an
24 evolving retail electricity market if certain conditions are met
25 which indicate that retail competition is in the best interests of
26 the citizens of the state. The determination on the timing and form
27 of competitive markets is a matter properly left to the states as

1 each state must evaluate the costs and benefits of a competitive
2 retail market based on its own unique conditions. Consequently,
3 there is a need for the ~~State of Nebraska~~ state to monitor whether
4 the conditions necessary for its citizens to benefit from retail
5 competition exist.

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

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

15 70-1001.01 For purposes of sections 70-1001 to 70-1027
16 and section 6 of this act, unless the context otherwise requires:

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

18 (2) Certified renewable export facility means a facility
19 approved under section 6 of this act that (a) will generate
20 electricity using solar, wind, biomass, or landfill gas, (b) will
21 be constructed and owned by an entity other than a municipality,
22 a registered group of municipalities, a public power district,
23 a public power and irrigation district, an electric cooperative,
24 an electric membership association, or any other governmental
25 entity, and (c) has a power purchase or similar agreement or
26 agreements with an initial term of ten years or more for the
27 sale of at least ninety percent of the output of the facility

1 with a customer or customers located outside the State of Nebraska
2 and maintains such an agreement or agreements for the life of
3 the facility. Output sold pursuant to subdivision (2)(a)(iv) of
4 section 6 of this act shall not be included when calculating
5 such ninety percent. Certified renewable export facility includes
6 all generating equipment, easements, and interconnection equipment
7 within the facility and connecting the facility to the transmission
8 grid;

9 ~~(2)~~ (3) Electric suppliers or suppliers of electricity
10 means any legal entity supplying, producing, or distributing
11 electricity within the state for sale at wholesale or retail;

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

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

27 ~~(5)~~ (6) State means the State of Nebraska; ~~and~~

1 (7) Stranded asset means a generation or transmission
2 facility owned by an electric supplier as defined in subsection (1)
3 of section 6 of this act which cannot earn a favorable economic
4 return due to regulatory or legislative actions or changes in the
5 market and, at the time an application is filed with the board
6 under such section, either exists or has been approved by the board
7 or the governing body of an electric supplier as defined in such
8 subsection; and

9 ~~(6)~~ (8) Unbundled retail rates means the separation of
10 utility bills into the individual price components for which an
11 electric supplier charges its retail customers, including, but not
12 limited to, the separate charges for the generation, transmission,
13 and distribution of electricity.

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

16 70-1013 Upon application being filed under section
17 70-1012, the board shall fix a time and place for hearing and shall
18 give ten days' notice by mail to such alternate power suppliers
19 as it deems to be affected by the application. The hearing shall
20 be had held within ~~thirty~~ sixty days unless for good cause shown,
21 the applicant ~~shall request~~ requests in writing that such hearing
22 not be scheduled until a later time, but in any event such hearing
23 shall be held not be more than ~~ninety~~ one hundred twenty days
24 from the filing of the application, and the board shall give its
25 decision within ~~thirty~~ sixty days after the conclusion of the
26 hearing. Any parties interested may appear, file objections, and
27 offer evidence. The ~~÷ Provided,~~ the board may grant the application

1 without notice or hearing, upon the filing of such waivers as it
2 may require, if in its judgment the finding required by section
3 70-1014 can be made without a hearing. Such hearing shall be
4 conducted as provided in section 70-1006. The board may allow
5 amendments to the application, in the interests of justice.

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

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

17 Sec. 6. (1) For purposes of this section, electric
18 supplier means a public power district, a public power and
19 irrigation district, an individual municipality, a registered
20 group of municipalities, an electric membership association, or
21 a cooperative.

22 (2)(a) The board shall conditionally approve an
23 application for a certified renewable export facility if it
24 finds that only the criteria described in subdivisions (a)(i)
25 through (iv) of this subsection are met: (i) The facility will
26 provide reasonably identifiable and quantifiable public benefits,
27 including economic development, to the residents of Nebraska or the

1 local area where the facility will be located; (ii) the facility
2 meets the requirements of subdivisions (2) (a) and (b) of section
3 70-1001.01; (iii) the facility has a memorandum of understanding
4 or other written evidence of mutual intent to negotiate a power
5 purchase agreement or agreements with a purchaser or purchasers
6 outside the State of Nebraska for at least ninety percent of
7 the output of the facility for ten years or more; and (iv)
8 the applicant offers electric suppliers serving loads greater
9 than fifty megawatts at the time the initial application is
10 filed an option to purchase in the aggregate an amount of power
11 up to ten percent of the output of any facility with greater
12 than eighty megawatts of nameplate capacity contingent upon the
13 applicant and electric suppliers negotiating in good faith a
14 power purchase agreement and any other necessary agreements. Such
15 electric suppliers shall be entitled to a minimum of their pro
16 rata share based on the load ratio share of Nebraska electric
17 load served among those electric suppliers eligible under this
18 subdivision (iv). If an electric supplier declines to contract
19 for some or all of its pro rata share, the remaining eligible
20 electric suppliers may share the balance on a pro rata basis.
21 The ten percent may be above the total generation amount proposed
22 in the application for a certified renewable export facility and
23 shall require no separate approval by the board. Any transmission
24 studies, additions, or upgrades due to participation by electric
25 suppliers serving loads greater than fifty megawatts shall be
26 the responsibility of the participating electric supplier. Upon
27 receiving the initial application under this section, the board

1 shall notify electric suppliers identified in this subdivision
2 (iv) of a pending application with a nameplate capacity greater
3 than eighty megawatts. Such suppliers shall have forty-five days
4 following the date of the board's notice to notify the applicant of
5 an interest in exercising the option to purchase power, except that
6 such suppliers may withdraw their option to purchase power once the
7 costs of the transmission additions and upgrades are determined.
8 Electric suppliers withdrawing their option to purchase power
9 are responsible for their pro rata share of any costs resulting
10 from their participation in and withdrawal from the generation
11 interconnection and transmission delivery studies.

12 (b) Following the board's conditional approval of an
13 application under subdivision (a) of this subsection, the applicant
14 shall notify the board within eighteen months that it is prepared
15 to proceed to consideration of the criteria in subdivision (c) of
16 this subsection. The board may extend such eighteen-month deadline
17 not more than twelve additional months for good cause shown. If the
18 applicant fails to notify the board within such time that it is so
19 prepared, the conditional approval granted under this subdivision
20 is void.

21 (c) Upon finding that the criteria described in
22 subdivisions (c)(i) through (viii) of this subsection have also
23 been met by the applicant and after the board has fulfilled the
24 requirements of subsection (3) of section 37-807, the board shall
25 grant final approval of an application for a certified renewable
26 export facility:

27 (i) The facility will not have a materially detrimental

1 effect on the retail electric rates paid by any Nebraska
2 ratepayers, except that, notwithstanding subdivisions (c) (v) and
3 (vi) of this subsection, the determination of a materially
4 detrimental effect on rates shall not include regional transmission
5 improvements dictated by a regional transmission operator or
6 transmission improvements required due to participation by an
7 eligible entity pursuant to subdivision (2) (a) (iv) of this section;

8 (ii) The applicant has obtained the necessary generation
9 interconnection and transmission service approvals from and
10 has executed agreements for such generation interconnection and
11 transmission service with the appropriate regional transmission
12 organization, transmission owner, or transmission provider;

13 (iii) There has been no demonstration that the proposed
14 facility will result in a substantial risk of creating stranded
15 assets;

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

20 (v) The applicant and the electric supplier owning the
21 transmission facilities to which the certified renewable export
22 facility will be interconnected, along with any electric supplier
23 which owns transmission facilities of one hundred fifteen thousand
24 volts or more and is required to receive notice pursuant to
25 section 70-1013, have entered into a joint transmission development
26 agreement on reasonable terms and conditions consistent with
27 and subject to the notice to construct or other directives of

1 any regional transmission organization with jurisdiction over
2 the addition or upgrade to transmission facilities or, for any
3 electric supplier that is not a member of a regional transmission
4 organization with which the facility will interconnect, covers
5 the addition or upgrade to transmission facilities required
6 as a result of the certified renewable export facility. Such
7 joint transmission development agreement shall include provisions
8 addressing construction, ownership, operation, and maintenance of
9 such additions or upgrades to transmission facilities. The electric
10 supplier or suppliers shall have the right to purchase and own
11 transmission facilities as set forth in the joint transmission
12 development agreement;

13 (vi) The applicant agrees to reimburse any costs that are
14 not covered by a regional transmission organization tariff or that
15 are allocated through the tariff to the electric suppliers as a
16 result of the certified renewable export facility or not covered
17 by the tariff of a transmission owner or transmission provider
18 that is not a member of a regional transmission organization,
19 costs incurred by any electric supplier as a result of adding the
20 certified renewable export facility, including, but not limited
21 to, renewable integration costs, and costs which allow the
22 interconnected electric supplier to operate and maintain the
23 transmission facilities under reasonable terms and conditions
24 agreed to by the parties within the joint transmission development
25 agreement;

26 (vii) The applicant shall submit a decommissioning
27 plan. The applicant or owner of the facility shall establish

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

16 (viii) The facility meets the requirements of
17 subdivisions (2)(a) through (c) of section 70-1001.01.

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

1 good-faith effort to obtain such approvals.

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

27 (5) No facility or part of a facility which is a

1 certified renewable export facility is subject to eminent domain by
2 an electric supplier or by any other entity if the purpose of the
3 eminent domain proceeding is to acquire the facility for electric
4 generation or transmission.

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

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

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

1 export facility revoked upon a showing by the applicant for
2 decertification that the facility no longer meets the requirements
3 of such subdivisions. Upon the filing of such application
4 and making of a prima facie showing by the applicant for
5 decertification that the facility no longer meets the requirements
6 of such subdivisions, the board shall set the matter for hearing.
7 The hearing shall be held within forty-five days unless an
8 extension is necessary for good cause shown. The applicant for
9 decertification shall have the burden of proof. Within forty-five
10 days after the conclusion of the hearing, the board shall enter
11 an order to either reaffirm the facility's status as a certified
12 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 for
19 at least thirty days after entry of such an order. Within thirty
20 days after a final order revoking certification, the owner of the
21 facility may apply for recertification, with the time period for
22 recertification being no longer than one year unless the board
23 extends the time period for good cause shown. 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 in
2 good faith to restore its compliance with subdivisions (2) (a)
3 through (c) of section 70-1001.01, 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, or to an electric supplier pursuant to a power purchase
9 agreement or similar agreement. If the board retains jurisdiction
10 over the decertification action, the prohibition on eminent domain
11 set forth in subsection (5) of this section shall remain in full
12 force and effect. If the board enters an order decertifying a
13 certified renewable export facility and such order becomes final
14 due to a failure to timely seek recertification or judicial review,
15 the prohibition on eminent domain set forth in subsection (5) of
16 this section shall no longer apply. Nothing in this section shall
17 prohibit a decertified facility from being recertified in the same
18 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 power
24 and irrigation district, an electric cooperative, an electric
25 membership association, or any other governmental entity, for
26 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) (a) On or before January 1, 2013, all such equipment
8 installed prior to the effective date of this act shall be either
9 lighted, marked with balls at least twenty-one inches in diameter,
10 painted, or modified in some other manner so it is recognizable in
11 clear air during daylight hours from a distance of not less than
12 two thousand feet.

13 (b) All such equipment installed on or after the
14 effective date of this act shall be either lighted or painted.

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

1 (4) 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
19 all property used in the generation of electricity using wind as
20 the fuel source, including, but not limited to, that listed in
21 subsection (9) of section 77-202. The term intangible personal
22 property includes all other personal property, 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 property used directly in the generation of
8 electricity using wind as the fuel source shall be exempt
9 from the property tax. Personal property used directly in the
10 generation of electricity using wind as the fuel source includes,
11 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 the
17 total nameplate capacity of the commissioned wind turbine of the
18 wind energy generation facility multiplied by a tax rate of three
19 thousand five hundred eighteen dollars 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 sections 12 to 15 of
17 this act on and after January 1, 2010. The amount of property tax
18 previously paid on a wind energy generation facility commissioned
19 prior to the effective date of this act which is greater than the
20 amount that would have been paid pursuant to sections 12 to 15
21 of this act from the date of commissioning until January 1, 2010,
22 shall be credited against any tax due under Chapter 77, and any
23 amount so credited that is unused in any tax year shall be carried
24 over to 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. Section 79-1018.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 79-1018.01 Except as otherwise provided in this section,
19 local system formula resources include other actual receipts
20 available for the funding of general fund operating expenditures
21 as determined by the department for the second school fiscal
22 year immediately preceding the school fiscal year in which aid
23 is to be paid. Receipts from the Community Improvements Cash Fund
24 and receipts acquired pursuant to the Low-Level Radioactive Waste
25 Disposal Act shall not be included. Other actual receipts include:

26 (1) Public power district sales tax revenue;

27 (2) Fines and license fees;

1 (3) Tuition receipts from individuals, other districts,
2 or any other source except receipts derived from adult education,
3 receipts derived from summer school tuition, receipts derived from
4 early childhood education tuition, and receipts from educational
5 entities as defined in section 79-1201.01 for providing distance
6 education courses through the Distance Education Council until July
7 1, 2008, and the Educational Service Unit Coordinating Council on
8 and after July 1, 2008, to such educational entities;

9 (4) Transportation receipts;

10 (5) Interest on investments;

11 (6) Other miscellaneous noncategorical local receipts,
12 not including receipts from private foundations, individuals,
13 associations, or charitable organizations;

14 (7) Special education receipts;

15 (8) Special education receipts and non-special education
16 receipts from the state for wards of the court and wards of the
17 state;

18 (9) All receipts from the temporary school fund.
19 Beginning with the calculation of aid for school fiscal year
20 2002-03 and each school fiscal year thereafter, receipts from
21 the temporary school fund shall only include receipts pursuant
22 to section 79-1035 and the receipt of funds pursuant to section
23 79-1036 for property leased for a public purpose as set forth in
24 subdivision (1)(a) of section 77-202;

25 (10) Motor vehicle tax receipts received on or after
26 January 1, 1998;

27 (11) Pro rata motor vehicle license fee receipts;

1 (12) Other miscellaneous state receipts excluding revenue
2 from the textbook loan program authorized by section 79-734;

3 (13) Impact aid entitlements for the school fiscal year
4 which have actually been received by the district to the extent
5 allowed by federal law;

6 (14) All other noncategorical federal receipts;

7 (15) All receipts pursuant to the enrollment option
8 program under sections 79-232 to 79-246;

9 (16) Receipts under the federal Medicare Catastrophic
10 Coverage Act of 1988, as such act existed on May 8, 2001, as
11 authorized pursuant to sections 43-2510 and 43-2511 but only to the
12 extent of the amount the local system would have otherwise received
13 pursuant to the Special Education Act; ~~and~~

14 (17) Receipts for accelerated or differentiated
15 curriculum programs pursuant to sections 79-1106 to 79-1108.03;
16 and-

17 (18) Revenue received from the nameplate capacity tax
18 distributed pursuant to section 15 of this act.

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

21 Sec. 18. Original sections 70-1001, 70-1001.01, 70-1013,
22 70-1014, 70-1014.01, 76-710.04, 77-105, 77-202, and 79-1018.01,
23 Reissue Revised Statutes of Nebraska, and section 13-518, Revised
24 Statutes Supplement, 2009, are repealed.