

AMENDMENTS TO LB700

Introduced by Natural Resources.

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

3 Section 1. Section 66-911.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 66-911.01 An instrument creating a land right or an option to secure
6 a land right in real property or the vertical space above real property
7 for a solar agreement or a wind agreement shall be created in writing,
8 and the instrument, or an abstract, shall be filed, duly recorded, and
9 indexed in the office of the register of deeds of the county in which the
10 real property subject to the instrument is located. The instrument shall
11 include, but the contents are not limited to:

12 (1) The names of the parties;

13 (2) A legal description of the real property involved;

14 (3) The nature of the interest created;

15 (4) The consideration paid for the transfer;

16 (5) A description of the improvements the developer intends to make
17 on the real property, including, but not limited to: Roads; transmission
18 lines; substations; wind turbines; and meteorological towers;

19 (6) A description of any decommissioning security or local
20 requirements related to decommissioning or requirements of section 5 of
21 this act; and

22 (7) The terms or conditions, if any, under which the interest may be
23 revised or terminated.

24 An abstract under this section need not include the items described
25 in subdivisions (4) through (7) of this section.

26 Sec. 2. Section 70-1014.02, Reissue Revised Statutes of Nebraska, is
27 amended to read:

1 70-1014.02 (1)(a) A privately developed renewable energy generation
2 facility that meets the requirements of this section is exempt from
3 sections 70-1012 to 70-1014.01 if no less than thirty days prior to the
4 commencement of construction the owner of the facility:

5 (i) Notifies the board in writing of its intent to commence
6 construction of a privately developed renewable energy generation
7 facility;

8 (ii) Certifies to the board that the facility will meet the
9 requirements for a privately developed renewable energy generation
10 facility;

11 (iii) Certifies to the board that the private electric supplier will
12 (A) comply with any decommissioning requirements adopted by the local
13 governmental entities having jurisdiction over the privately developed
14 renewable energy generation facility and with the requirements of section
15 5 of this act and (B) except as otherwise provided in subdivision (b) of
16 this subsection, submit a decommissioning plan to the board obligating
17 the private electric supplier to bear all costs of decommissioning the
18 privately developed renewable energy generation facility and requiring
19 that the private electric supplier post a security bond or other
20 instrument, no later than the tenth year following commercial operation,
21 securing the costs of decommissioning the facility and provide a copy of
22 the bond or instrument to the board;

23 (iv) Certifies to the board that the private electric supplier has
24 entered into or prior to commencing construction will enter into a joint
25 transmission development agreement pursuant to subdivision (c) of this
26 subsection with the electric supplier owning the transmission facilities
27 of sixty thousand volts or greater to which the privately developed
28 renewable energy generation facility will interconnect; and

29 (v) Certifies to the board that the private electric supplier has
30 consulted with the Game and Parks Commission to identify potential
31 measures to avoid, minimize, and mitigate impacts to species identified

1 under subsection (1) or (2) of section 37-806 during the project planning
2 and design phases, if possible, but in no event later than the
3 commencement of construction.

4 (b) The board may bring an action in the name of the State of
5 Nebraska for failure to comply with subdivision (a)(iii)(B) of this
6 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if
7 a local government entity with the authority to create requirements for
8 decommissioning has enacted decommissioning requirements for the
9 applicable jurisdiction.

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

28 (2) Within ten days after receipt of a written notice complying with
29 subsection (1) of this section, the executive director of the board shall
30 issue a written acknowledgment that the privately developed renewable
31 energy generation facility is exempt from sections 70-1012 to 70-1014.01.

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

6 (4) No property owned, used, or operated as part of a privately
7 developed renewable energy generation facility shall be subject to
8 eminent domain by a consumer-owned electric supplier operating in the
9 State of Nebraska. Nothing in this section shall be construed to grant
10 the power of eminent domain to a private electric supplier or limit the
11 rights of any entity to acquire any public, municipal, or utility right-
12 of-way across property owned, used, or operated as part of a privately
13 developed renewable energy generation facility as long as the right-of-
14 way does not prevent the operation of or access to the privately
15 developed renewable energy generation facility.

16 (5) Only a consumer-owned electric supplier operating in the State
17 of Nebraska may exercise eminent domain authority to acquire the land
18 rights necessary for the construction of transmission lines and related
19 facilities. The exercise of eminent domain to provide needed transmission
20 lines and related facilities for a privately developed renewable energy
21 generation facility is a public use.

22 (6) Nothing in this section shall be construed to authorize a
23 private electric supplier to sell or deliver electricity at retail in
24 Nebraska.

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

30 Sec. 3. Section 76-3001, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 76-3001 For purposes of sections 76-3001 to 76-3004 and section 5 of
2 this act:

3 (1) Decommissioning security means a security instrument that is
4 posted or given by a wind developer to a municipality or other
5 governmental entity to ensure sufficient funding is available for removal
6 of a wind energy conversion system and reclamation at the end of the
7 useful life of such a system; and

8 (2) Wind agreement means a right, whether or not stated in the form
9 of a restriction, easement, covenant, or condition, in any deed, wind
10 easement, wind option, or lease or lease option securing land for the
11 study or production of wind-generated energy or any other instrument
12 executed by or on behalf of any owner of land or air space for the
13 purpose of allowing another party to study the potential for, or to
14 develop, a wind energy conversion system as defined in section 66-909.02
15 on the land or in the air space.

16 Sec. 4. Section 76-3003, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 76-3003 A wind agreement shall comply with section 66-911.01 and
19 section 5 of this act.

20 Sec. 5. (1) It is the policy of the state that the landscapes of
21 Nebraska be restored to predevelopment condition when wind turbines built
22 to generate electricity for commercial purposes are decommissioned in
23 order to ensure the full benefits of future uses.

24 (2) Every landowner who is a party to a wind agreement shall be
25 provided with information from the wind turbine owner who is a party to
26 the same wind agreement detailing the materials and equipment that will
27 be removed from, and that will remain on, the landowner's property when a
28 wind turbine is decommissioned.

29 (3) Every wind agreement executed on or after January 1, 2020, for
30 the installation of wind turbines to be used to generate electricity for
31 commercial purposes in Nebraska shall provide for the removal of

1 foundation material and equipment below grade upon decommissioning,
2 except for a wind turbine which is used for repowering within twenty-four
3 months after it would have been decommissioned. Any void left from the
4 removal of foundation material and equipment shall be restored to the
5 condition of the land prior to the installation of the wind turbine or to
6 an improved condition otherwise agreed to between the wind turbine owner
7 and the landowner who are parties to the wind agreement.

8 (4) For purposes of this section:

9 (a) Foundation material and equipment includes, but is not limited
10 to, anchor bolts, rebar, conduits, and concrete; and

11 (b) Repowering means a process by which a wind turbine that would
12 otherwise be decommissioned is fully or partially refurbished, upgraded,
13 or replaced for the purpose of generating electricity.

14 (5) Nothing in this section prevents a political subdivision from
15 enacting standards that meet or exceed the requirements of this section.

16 Sec. 6. Original sections 66-911.01, 70-1014.02, 76-3001, and
17 76-3003, Reissue Revised Statutes of Nebraska, are repealed.