AMENDMENTS TO LB61

(Amendments to AM2296)

Introduced by DeBoer, 10.

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

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

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

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

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

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1 local market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) To maintain an office at such place or places as it may20 determine;

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

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

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

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

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1 personal property or interest in such property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In order to provide for the payments due under such serviceagreement:

30 (a) Any city, county, village, or fire protection district may31 provide that payments may be made from a special tax levied for such

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

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

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

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

21 (a) Own dark fiber;

22 (b) Sell dark fiber pursuant to section 86-576; and

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3 (c) Lease <u>or license</u> dark fiber pursuant to section 86-577.

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

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

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

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

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

7 (b) Unserved location means a location, as determined in accordance
8 with the Nebraska location fabric broadband access map created by the
9 Nebraska Broadband Office pursuant to section 86-333, where:

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

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

20 (a) Served location means a location receiving, or at the time the 21 lease is filed with the Public Service Commission able to receive, 22 communications service at a minimum download speed of twenty-five 23 megabits per second and a minimum upload speed of three megabits per 24 second or higher speeds, as determined by the Public Service Commission; 25 and

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

31 (2) Any agency or political subdivision of the state may lease <u>or</u>

<u>license</u> its dark fiber <u>and related infrastructure under such terms as</u>
 <u>determined by such agency or political subdivision pursuant to its duly</u>
 <u>adopted and promulgated rules and regulations, issued orders, written</u>
 policies, enacted ordinances, or adopted resolutions if:

5 (a) The lessee <u>or licensee</u> is a certificated telecommunications 6 common carrier or a permitted telecommunications contract carrier 7 pursuant to section 86-128 or an Internet service provider;

8 (b) The lease <u>or license</u> terms are fair, reasonable, and
9 nondiscriminatory; <u>and</u>

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

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<u>(d)</u> (c) The lease <u>or license complies with this section.</u>

14 (3)(a) Before a lease or license of dark fiber under this section 15 becomes effective, it shall be filed by the lessee or licensee with the 16 commission, and the which shall expeditiously cause notice of the lease, 17 including lease rates, to be published. (b)(i) The lease or license shall become effective upon such filing. The lease or license rate shall be 18 19 within or above the safe harbor range of market rates established 20 pursuant to subdivision (4)(a) of this section fourteen business days 21 after the date of the published notice unless a protest is filed with the 22 commission, in which event the commission shall consider the lease as a 23 contested matter and consider the contested lease according to the 24 commission's rules of procedure.

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

(c) Any Internet service provider may challenge a lease or license
 filed with the commission pursuant to this subsection alleging that such
 lease or license does not serve an unserved location in violation of

Subdivision (2)(c) of this section. A provider shall file such challenge with the commission within thirty days after receipt of the notice described in subdivision (b) of this subsection. The commission shall make a determination regarding such alleged violation within thirty days after the challenge is filed.

6 (d) If an Internet service provider files a challenge under 7 subdivision (c) of this subsection alleging that a location is not an 8 unserved location and the commission finds that it is an unserved 9 location, the Internet service provider filing such challenge may be 10 prohibited from filing any other challenge pursuant to subdivision (c) of 11 this subsection for a period of two years from the date such challenge 12 was filed.

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

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

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

1 <u>fiber-related infrastructure.</u>

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

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

14 (5)(a) If a dispute arises between an Internet service provider 15 claiming an enforceable commitment for a location and an Internet service provider seeking to utilize a dark fiber lease or license to serve such 16 17 location, either party may file a request with the state entity with which there is an enforceable commitment to verify the enforceable 18 19 commitment. Upon the filing of the request, such state entity shall 20 require, and the Internet service provider claiming the enforceable 21 commitment shall provide, documentation related to the enforceable 22 commitment. The state entity shall review the documentation and make a finding as to the Internet service provider's compliance with the 23 24 enforceable commitment and the reasonable likelihood of meeting its deployment obligations under the enforceable commitment. 25 A11 documentation submitted to the state entity under this subdivision shall 26 27 be deemed confidential and not subject to public disclosure pursuant to 28 sections 84-712 to 84-712.09.

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

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

1 <u>service provider for such location;</u>

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

5 (iii) After reviewing documentation submitted pursuant to this 6 subsection, the state entity verifying the enforceable commitment finds 7 that the Internet service provider is not in compliance with the 8 enforceable commitment or will fail to meet the terms of the enforceable 9 commitment for such location. 10 (5) The lessee shall make every reasonable effort to activate the 11 maximum amount of the leased fiber as is possible, within one year after

12 entering into the lease, unless good cause is shown.

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