

AMENDMENTS TO LB399

(Amendments to Standing Committee amendments, AM2702)

Introduced by Brewer, 43.

1           1. Strike sections 3 and 4 and insert the following new section:

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

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

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

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

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

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

19          (2)(a) A privately developed renewable energy generation facility  
20   that meets the requirements of this section is exempt from sections  
21   70-1012 to 70-1014.01 if, no less than thirty days prior to the  
22   commencement of construction, the owner of the facility:

23           (i) Notifies the board in writing of its intent to commence  
24   construction of a privately developed renewable energy generation  
25   facility;

26           (ii) Certifies to the board that the facility will meet the

1 requirements for a privately developed renewable energy generation  
2 facility;

3 (iii) Certifies to the board that the private electric supplier will  
4 (A) comply with any decommissioning requirements adopted by the local  
5 governmental entities having jurisdiction over the privately developed  
6 renewable energy generation facility and (B) except as otherwise provided  
7 in subdivision (b) of this subsection, submit a decommissioning plan to  
8 the board obligating the private electric supplier to bear all costs of  
9 decommissioning the privately developed renewable energy generation  
10 facility and requiring that the private electric supplier post a security  
11 bond or other instrument, no later than the third tenth year following  
12 commercial operation, securing the costs of decommissioning the facility  
13 and provide a copy of the bond or instrument to the board;

14 (iv) Certifies to the board that the private electric supplier has  
15 entered into or prior to commencing construction will enter into a joint  
16 transmission development agreement pursuant to subdivision (c) of this  
17 subsection with the electric supplier owning the transmission facilities  
18 of sixty thousand volts or greater to which the privately developed  
19 renewable energy generation facility will interconnect;~~and~~

20 (v) Certifies to the board that the private electric supplier has  
21 consulted with the Game and Parks Commission to identify potential  
22 measures to avoid, minimize, and mitigate impacts to species identified  
23 under subsection (1) or (2) of section 37-806 during the project planning  
24 and design phases, if possible, but in no event later than the  
25 commencement of construction; ~~-~~

26 (vi) Certifies to the board that the private electric supplier has  
27 entered into a power purchase agreement with an electric supplier  
28 operating in this state that is not a private electric supplier for the  
29 output of the privately developed renewable energy generation facility;  
30 and

31 (vii) For a proposed privately developed renewable energy generation

1 facility that has a generating capacity that is greater than ten  
2 megawatts, certifies to the board that the entity with whom the private  
3 electric supplier has entered into a power purchase agreement has held at  
4 least one public meeting with advanced publicized notice in one of the  
5 counties in which the proposed facility will be located at which (A) at  
6 least fifty percent of the governing body of such entity attends either  
7 in person or by videoconference, but with not less than one member of the  
8 governing body physically present, (B) the private electric supplier  
9 explains the need for the proposed facility and the type of facility, and  
10 (C) real property owners in any of the counties in which the proposed  
11 facility will be located are provided an opportunity to comment on the  
12 proposed facility. The private electric supplier shall provide a report  
13 to the board containing the minutes of any such meeting and how many  
14 people commented on the proposed facility. Documentation received at any  
15 such meeting shall be made available to the board upon its request. A  
16 meeting described in this subdivision is not subject to the requirements  
17 described in subdivision (2)(b)(iv) of section 84-1411.

18 (b) The board may bring an action in the name of the State of  
19 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
20 subsection, except that such subdivision ~~Subdivision (a)(iii)(B) of~~  
21 ~~this subsection~~ does not apply if a local government entity with the  
22 authority to create requirements for decommissioning has enacted  
23 decommissioning requirements for the applicable jurisdiction.

24 (c) A ~~The~~ joint transmission development agreement shall be entered  
25 into to address construction, ownership, operation, and maintenance of  
26 such additions or upgrades to the transmission facilities as required for  
27 the privately developed renewable energy generation facility. The joint  
28 transmission development agreement shall be negotiated and executed  
29 contemporaneously with the generator interconnection agreement or other  
30 directives of the applicable regional transmission organization with  
31 jurisdiction over the addition or upgrade of transmission, upon terms

1 consistent with prudent electric utility practices for the  
2 interconnection of renewable generation facilities, the electric  
3 supplier's reasonable transmission interconnection requirements, and  
4 applicable transmission design and construction standards. The electric  
5 supplier shall have the right to purchase and own transmission facilities  
6 as set forth in the joint transmission development agreement. The private  
7 electric supplier of the privately developed renewable energy generation  
8 facility shall have the right to construct any necessary facilities or  
9 improvements set forth in the joint transmission development agreement  
10 pursuant to the standards set forth in the agreement at the private  
11 electric supplier's cost.

12 (3) Within ten days after receipt of a written notice complying with  
13 subsection (2) of this section, the executive director of the board shall  
14 issue a written acknowledgment that the privately developed renewable  
15 energy generation facility is exempt from sections 70-1012 to 70-1014.01  
16 if such facility remains in compliance with the requirements of this  
17 section.

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

23 (5) No property owned, used, or operated as part of a privately  
24 developed renewable energy generation facility shall be subject to  
25 eminent domain by a consumer-owned electric supplier operating in the  
26 State of Nebraska. Nothing in this section shall be construed to grant  
27 the power of eminent domain to a private electric supplier or limit the  
28 rights of any entity to acquire any public, municipal, or utility right-  
29 of-way across property owned, used, or operated as part of a privately  
30 developed renewable energy generation facility as long as the right-of-  
31 way does not prevent the operation of or access to the privately

1 developed renewable energy generation facility.

2 (6) Only a consumer-owned electric supplier operating in the State  
3 of Nebraska may exercise eminent domain authority to acquire the land  
4 rights necessary for the construction of transmission lines and related  
5 facilities. There is a rebuttable presumption that the exercise of  
6 eminent domain to provide needed transmission lines and related  
7 facilities for a privately developed renewable energy generation facility  
8 is a public use.

9 (7) Nothing in this section shall be construed to authorize a  
10 private electric supplier to sell or deliver electricity at retail in  
11 Nebraska.

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

17 2. On page 3, line 25, strike "may" and insert "shall".

18 3. Renumber the remaining sections and correct the repealer  
19 accordingly.