

AMENDMENTS TO LB61

Introduced by Geist, 25.

1 1. Strike the original sections and insert the following new
2 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 its dark fiber
9 pursuant to sections 86-574 to 86-577 ~~86-578~~.

10 Sec. 2. Section 70-625, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

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

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

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

30 (4) In addition to the powers authorized by Chapter 70 and specified
31 in its petition for creation as amended, a public power district may sell

1 or lease its dark fiber pursuant to sections 86-574 to 86-577 ~~86-578~~.

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

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

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

22 70-704 Each corporation shall have power: (1) To sue and be sued,
23 complain, and defend, in its corporate name; (2) to have perpetual
24 succession unless a limited period of duration is stated in its articles
25 of incorporation; (3) to adopt a corporate seal, which may be altered at
26 pleasure, and to use it or a facsimile thereof, as required by law; (4)
27 to generate, manufacture, purchase, acquire, and accumulate electric
28 energy and to transmit, distribute, sell, furnish, and dispose of such
29 electric energy; (5) to acquire, own, hold, use, exercise and, to the
30 extent permitted by law, to sell, mortgage, pledge, hypothecate, and in
31 any manner dispose of franchises, rights, privileges, licenses, rights-

1 of-way, and easements necessary, useful, or appropriate; (6) to purchase,
2 receive, lease as lessee, or in any other manner acquire, own, hold,
3 maintain, sell, exchange, and use any and all real and personal property
4 or any interest therein for the purposes expressed herein; (7) to borrow
5 money and otherwise contract indebtedness, to issue its obligations
6 therefor, and to secure the payment thereof by mortgage, pledge, or deed
7 of trust of all or any of its property, assets, franchises, revenue, or
8 income; (8) to sell and convey, mortgage, pledge, lease as lessor, and
9 otherwise dispose of all or any part of its property and assets; (9) to
10 have the same powers now exercised by law by public light and power
11 districts or private corporations to use any of the streets, highways, or
12 public lands of the state or its political subdivisions in the manner
13 provided by law; (10) to have and exercise the power of eminent domain
14 for the purposes expressed in section 70-703 in the manner set forth in
15 sections 76-704 to 76-724 and to have the powers and be subject to the
16 restrictions of electric light and power corporations and districts as
17 regards the use and occupation of public highways and the manner or
18 method of construction and physical operation of plants, systems, and
19 transmission lines; (11) to accept gifts or grants of money, services, or
20 property, real or personal; (12) to make any and all contracts necessary
21 or convenient for the exercise of the powers granted herein; (13) to fix,
22 regulate, and collect rates, fees, rents, or other charges for electric
23 energy furnished by the corporation; (14) to elect or appoint officers,
24 agents, and employees of the corporation and to define their duties and
25 fix their compensation; (15) to make and alter bylaws not inconsistent
26 with the articles of incorporation or with the laws of this state for the
27 administration and regulation of the affairs of the corporation; (16) to
28 sell or lease its dark fiber pursuant to sections 86-574 to 86-577
29 ~~86-578~~; and (17) to do and perform, either for itself or its members or
30 for any other corporation organized under the Electric Cooperative
31 Corporation Act or for the members thereof, any and all acts and things

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

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

9 70-1409 Each joint authority shall have all the rights and powers
10 necessary or convenient to carry out and effectuate the purposes and
11 provisions of the Joint Public Power Authority Act including, but not
12 limited to, the right and power:

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

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

17 (3) To maintain an office at such place or places as it may
18 determine;

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

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

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

28 (7) To sell, lease, exchange, transfer, or otherwise dispose of, or
29 to grant options for any such purposes with respect to, any real or
30 personal property or interest in such property;

31 (8) To pledge or assign any money, rents, charges, or other revenue

1 and any proceeds derived by the joint authority from the sales of
2 property, insurance, or condemnation awards;

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

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

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

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

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

27 (14) To generate, produce, transmit, deliver, exchange, purchase, or
28 sell for resale only electric power or energy, to produce, store,
29 deliver, or distribute hydrogen for use in fuel processes, or to produce,
30 deliver, or distribute ethanol and to enter into contracts for any or all
31 such purposes, subject to sections 70-1410 and 70-1413;

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

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

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

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

27 (19) To employ engineers, architects, attorneys, appraisers,
28 financial advisors, and such other consultants and employees as may be
29 required in the judgment of the joint authority and to fix and pay their
30 compensation from funds available to the joint authority. The joint
31 authority may employ technical experts and such other officers, agents,

1 and employees as it may require and shall assess their qualifications,
2 duties, compensation, and term of office. The board may delegate to one
3 or more of the joint authority's employees or agents such powers and
4 duties as the board may deem proper;

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

12 (21) To sell or lease its dark fiber pursuant to sections 86-574 to
13 86-577 ~~86-578~~.

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

16 Sec. 5. Section 75-132.01, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 75-132.01 (1) Notwithstanding the provisions of section 75-131, the
19 commission shall have exclusive original jurisdiction over any action
20 concerning a violation of any provision of ~~(a)~~ the Automatic Dialing-
21 Announcing Devices Act, the Emergency Telephone Communications Systems
22 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
23 Regulation Act, the Nebraska Telecommunications Regulation Act, the
24 Nebraska Telecommunications Universal Service Fund Act, the
25 Telecommunications Relay System Act, or the Telephone Consumer Slamming
26 Prevention Act by any person providing telecommunications service for a
27 fee in Nebraska intrastate commerce pursuant to such acts ~~or (b) sections~~
28 ~~86-574 to 86-578 by an agency or political subdivision of the state.~~

29 (2) If the commission enters an order declining jurisdiction under
30 subsection (1) of this section, any interested person may petition the
31 district court of the county in which such alleged violation has

1 occurred. If it appears to the court, after a hearing, that a provision
2 of such acts or sections has been violated, the court may issue an
3 injunction or other proper process to restrain the telecommunications
4 company and its directors, officers, employees, or agents or the agency
5 or political subdivision of the state from continuing such violation and
6 may order additional relief. Any party to the case shall have the right
7 to appeal the decision of the district court to the Court of Appeals
8 under the rules provided by law for appeals in civil cases.

9 Sec. 6. Section 86-416, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 86-416 (1) Notwithstanding any other provision of Nebraska law, any
12 city, county, village, public power district, or fire protection district
13 may enter into a service agreement with any joint entity created pursuant
14 to the Interlocal Cooperation Act or any joint public agency created
15 pursuant to the Joint Public Agency Act which owns or operates or
16 proposes to own or operate any public safety communication project for
17 obtaining communication services, including the use or right to use real
18 or personal property included in any such project. This subsection shall
19 not be construed to authorize any service agreements that conflict with
20 the provisions for the sale or lease of dark fiber pursuant to sections
21 86-574 to 86-577 ~~86-578~~.

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

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

26 (b) That such service agreement may extend for a term of years as
27 determined by the governing body of the city, county, village, public
28 power district, or fire protection district and be binding upon such
29 city, county, village, public power district, or fire protection district
30 over such term of years;

31 (c) That fixed or variable periodic amounts payable may be

1 determined based upon any of the following factors:

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

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

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

8 (d) That any such service agreement may require payment to be made
9 in the agreed fixed or variable periodic amounts irrespective of whether
10 such public safety communication project or regional communication system
11 is completed or operational and notwithstanding any suspension,
12 interruption, interference, reduction, or curtailment of the services of
13 such project or system; and

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

19 (3) In order to provide for the payments due under such service
20 agreement:

21 (a) Any city, county, village, or fire protection district may
22 provide that payments may be made from a special tax levied for such
23 purpose upon all taxable property within such city, county, village, or
24 fire protection district, if determined appropriate by the governing body
25 by a vote of three-fourths of the members of the governing body, if there
26 are four or more members of such body, or by a vote of two-thirds of the
27 members of the governing body, if there are less than four members of
28 such body. The special tax shall for all purposes of Nebraska law,
29 including limitations upon tax levies, budgets, revenue, and expenditures
30 of public funds, have the same status as a tax levied for the purpose of
31 paying the bonded indebtedness of such city, county, village, or fire

1 protection district; and

2 (b) Any public power district may pledge the revenue of the
3 district, subject to any existing pledges made for bonded indebtedness or
4 borrowings from the United States or any other party and existing
5 conditions relating to issuance of additional bonds or other
6 indebtedness, and, if deemed appropriate by the governing body, the
7 service agreement may have the status of revenue bond indebtedness issued
8 pursuant to sections 70-631 to 70-635.

9 Sec. 7. Section 86-574, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 86-574 For purposes of sections 86-574 to ~~86-577~~ ~~86-578~~, dark fiber
12 means any unused fiber optic cable through which no light is transmitted
13 or any installed fiber optic cable not carrying a signal.

14 Sec. 8. Section 86-575, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 86-575 (1) Any agency or political subdivision of the state may:

17 (a) Own dark fiber;

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

19 (c) Lease dark fiber pursuant to section 86-577.

20 (2) Any agency or political subdivision which sells or leases its
21 dark fiber pursuant to sections 86-574 to ~~86-577~~ ~~86-578~~ shall not be
22 deemed to be providing telecommunications services as defined in section
23 86-593.

24 Sec. 9. Section 86-577, Revised Statutes Cumulative Supplement,
25 2022, is amended to read:

26 86-577 (1) For purposes of this section, underserved location means
27 a location where broadband Internet service at speeds of at least one
28 hundred megabits per second for downloading and twenty megabits per
29 second for uploading are not available. ÷

30 ~~(a) Served location means a location receiving, or at the time the~~
31 ~~lease is filed with the Public Service Commission able to receive,~~

1 ~~communications service at a minimum download speed of twenty-five~~
2 ~~megabits per second and a minimum upload speed of three megabits per~~
3 ~~second or higher speeds, as determined by the Public Service Commission;~~
4 ~~and~~

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

10 (2) Any agency or political subdivision of the state may lease its
11 dark fiber if:

12 (a) The lessee is a certificated telecommunications common carrier
13 or a permitted telecommunications contract carrier pursuant to section
14 86-128 or an Internet service provider;

15 (b) The lease terms are fair, reasonable, and nondiscriminatory; ~~and~~

16 (c) The site address of the leased fiber is located in an
17 underserved location and certified by the Public Service Commission
18 pursuant to subsection (4) of this section; and

19 ~~(d) (e)~~ The lease complies with this section.

20 ~~(3)(a) Before a lease of dark fiber under this section becomes~~
21 ~~effective, it shall be filed with the commission which shall~~
22 ~~expeditiously cause notice of the lease, including lease rates, to be~~
23 ~~published.~~

24 ~~(b)(i) The lease shall become effective fourteen business days after~~
25 ~~the date of the published notice unless a protest is filed with the~~
26 ~~commission, in which event the commission shall consider the lease as a~~
27 ~~contested matter and consider the contested lease according to the~~
28 ~~commission's rules of procedure.~~

29 ~~(ii) If the allocation of served location and unserved location in~~
30 ~~the lease is contested, the commission shall determine such allocation~~
31 ~~under the lease as a contested matter and consider the contested lease~~

1 ~~according to the commission's rules of procedure.~~

2 (3) (4) For the lease of dark fiber under this section, an agency or
3 political subdivision of the state may post the site address of its dark
4 fiber that is available for lease on the Specialized Network Services
5 website of the Office of the Chief Information Officer to solicit bids
6 from broadband Internet service providers. The Chief Information Officer
7 shall make any necessary modifications to the website to accommodate such
8 postings. ÷

9 (4)(a) Before entering into a lease of dark fiber under this
10 section, an Internet service provider shall file an application with the
11 Public Service Commission identifying all site addresses to be provided
12 service under such lease and requesting certification of such site
13 addresses as located in underserved locations. The application shall be
14 on a form prescribed by the commission. The commission shall publish
15 notice of such application within ten days after receipt of the
16 application. Any other Internet service provider may, within thirty days
17 after publication of notice of the application, file a challenge to such
18 application with the commission and provide written notice of the
19 challenge to the applicant.

20 (b) The commission shall promptly review the application and any
21 filed challenge and may require either party to submit supplemental
22 information, including, but not limited to, speed test results. If the
23 commission determines that all site addresses listed in the application
24 are in underserved locations, the commission shall approve the
25 application and certify such site addresses. If the commission determines
26 any site address listed in an application is not located in an
27 underserved location, the commission shall not certify such site address.

28 ~~(a) The commission shall establish a safe harbor range of market~~
29 ~~rates for all dark fiber leases using a competitive price determination~~
30 ~~comparison. When conducting a competitive price determination comparison,~~
31 ~~the commission, in its discretion, shall use rate schedules,~~

1 ~~interconnection agreements, or other documents within its regulatory~~
2 ~~oversight and shall gather other market rate information as deemed~~
3 ~~necessary. If a lease utilizes rates within the safe harbor range, such~~
4 ~~rates shall be deemed approved. Any other term of the lease may be~~
5 ~~contested pursuant to subdivision (3)(b) of this section; and~~

6 ~~(b) 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) The lessee shall make every reasonable effort to activate the~~
15 ~~maximum amount of the leased fiber as is possible, within one year after~~
16 ~~entering into the lease, unless good cause is shown.~~

17 Sec. 10. Original sections 18-419, 70-704, 70-1409, 75-132.01,
18 86-416, 86-574, and 86-575, Reissue Revised Statutes of Nebraska, and
19 sections 70-625 and 86-577, Revised Statutes Cumulative Supplement, 2022,
20 are repealed.

21 Sec. 11. The following section is outright repealed: Section
22 86-578, Reissue Revised Statutes of Nebraska.