

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; and -

26 (vi) For a proposed privately developed renewable energy generation
27 facility that has a generating capacity that is greater than ten
28 megawatts, certifies to the board that the private electric supplier has
29 held at least one public meeting with advanced publicized notice in one
30 of the counties in which the proposed facility will be located at which
31 (A) the private electric supplier explains the need for the proposed

1 facility and the type of facility and (B) real property owners in any of
2 the counties in which the proposed facility will be located are provided
3 an opportunity to comment on the proposed facility. The private electric
4 supplier shall provide a report to the board containing the minutes of
5 any such meeting and how many people commented on the proposed facility.
6 Documentation received at any such meeting shall be made available to the
7 board upon its request. A meeting described in this subdivision is not
8 subject to the requirements described in subdivision (2)(b)(iv) of
9 section 84-1411.

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

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

1 improvements set forth in the joint transmission development agreement
2 pursuant to the standards set forth in the agreement at the private
3 electric supplier's cost.

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

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

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

25 (6) Only a consumer-owned electric supplier operating in the State
26 of Nebraska may exercise eminent domain authority to acquire the land
27 rights necessary for the construction of transmission lines and related
28 facilities. There is a rebuttable presumption that the exercise of
29 eminent domain to provide needed transmission lines and related
30 facilities for a privately developed renewable energy generation facility
31 is a public use.

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

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

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

10 3. Renumber the remaining sections and correct the repealer
11 accordingly.