

AMENDMENTS TO LB 1048

Introduced by Langemeier, 23.

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

3 Section 1. Section 70-1001, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 70-1001 In order to provide the citizens of the state
6 with adequate electric service at as low overall cost as possible,
7 consistent with sound business practices, it is the policy of
8 this state to avoid and eliminate conflict and competition between
9 public power districts, public power and irrigation districts,
10 individual municipalities, registered groups of municipalities,
11 electric membership associations, and cooperatives in furnishing
12 electric energy to retail and wholesale customers, to avoid and
13 eliminate the duplication of facilities and resources which result
14 therefrom, and to facilitate the settlement of rate disputes
15 between suppliers of electricity.

16 It is also the policy of the state to prepare for an
17 evolving retail electricity market if certain conditions are met
18 which indicate that retail competition is in the best interests of
19 the citizens of the state. The determination on the timing and form
20 of competitive markets is a matter properly left to the states as
21 each state must evaluate the costs and benefits of a competitive
22 retail market based on its own unique conditions. Consequently,
23 there is a need for the State of Nebraska to monitor whether

1 the conditions necessary for its citizens to benefit from retail
2 competition exist.

3 It is also the policy of the State of Nebraska
4 to encourage and allow opportunities for private developers
5 to develop, own, and operate renewable energy facilities for
6 export from the state under a statutory framework which affords
7 economic benefits to Nebraskans but protects the ratepayers
8 of consumer-owned utility systems operating in the state from
9 subsidizing the costs of such export facilities through their
10 rates.

11 Sec. 2. Section 70-1001.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 70-1001.01 For purposes of sections 70-1001 to 70-1027
14 and section 5 of this act, unless the context otherwise requires:

15 (1) Board means the Nebraska Power Review Board;

16 (2) Certified renewable export facility means a facility
17 approved under section 5 of this act that (a) will generate
18 electricity using solar, wind, biomass, landfill gas, or methane
19 gas, (b) will be constructed and owned by an entity other than
20 a municipality, a registered group of municipalities, a public
21 power district, a public power and irrigation district, an electric
22 cooperative, an electric membership association, or any other
23 governmental entity, and (c) has a power purchase agreement or
24 agreements or similar agreements with an initial term of ten years
25 or more and maintains for the life of the facility a power purchase
26 agreement or agreements for the sale of at least ninety percent of
27 the output of the facility with a customer or customers located

1 outside the State of Nebraska. Output sold pursuant to subdivision
2 (2) (b) (vi) of section 5 of this act shall not be included when
3 calculating such ninety percent;

4 ~~(2)~~ (3) Electric suppliers or suppliers of electricity
5 means any legal entity supplying, producing, or distributing
6 electricity within the state for sale at wholesale or retail;

7 ~~(3)~~ (4) Regional transmission organization means an
8 entity independent from those entities generating or marketing
9 electricity at wholesale or retail, which has operational control
10 over the electric transmission lines in a designated geographic
11 area in order to reduce constraints in the flow of electricity and
12 ensure that all power suppliers have open access to transmission
13 lines for the transmission of electricity;

14 ~~(4)~~ (5) Representative organization means an organization
15 designated by the board and organized for the purpose of
16 providing joint planning and encouraging maximum cooperation and
17 coordination among electric suppliers. Such organization shall
18 represent electric suppliers owning a combined electric generation
19 plant capacity of at least ninety percent of the total electric
20 generation plant capacity constructed and in operation within the
21 state;

22 ~~(5)~~ (6) State means the State of Nebraska; and

23 (7) Stranded asset means an asset existing at the time
24 of application or the governing board of an electric supplier or a
25 generation or transmission facility approved by the Nebraska Power
26 Review Board which cannot earn a favorable economic return due to
27 regulatory or legislative actions or changes in the market; and

1 ~~(6)~~ (8) Unbundled retail rates means the separation of
2 utility bills into the individual price components for which an
3 electric supplier charges its retail customers, including, but not
4 limited to, the separate charges for the generation, transmission,
5 and distribution of electricity.

6 Sec. 3. Section 70-1013, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 70-1013 Upon application being filed under section
9 70-1012, the board shall fix a time and place for hearing and shall
10 give ten days' notice by mail to such ~~alternate~~ power suppliers
11 as it deems to be affected by the application. The hearing shall
12 be had within ~~thirty~~ sixty days unless for good cause shown,
13 the applicant shall request in writing that such hearing not be
14 scheduled until a later time, but in any event such hearing shall
15 not be more than ~~ninety~~ one hundred twenty days from the filing
16 of the application, and the board shall give its decision within
17 ~~thirty~~ sixty days after the conclusion of the hearing. Any parties
18 interested may appear, file objections, and offer evidence, but
19 ~~Provided~~, the board may grant the application without notice or
20 hearing, upon the filing of such waivers as it may require, if in
21 its judgment the finding required by section 70-1014 can be made
22 without a hearing. Such hearing shall be conducted as provided in
23 section 70-1006. The board may allow amendments to the application,
24 in the interests of justice.

25 Sec. 4. Section 70-1014, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 70-1014 After hearing, the board shall have authority

1 to approve or deny the application. Except as provided in
2 section 70-1014.01 for special generation applications and except
3 as provided in section 5 of this act, before approval of an
4 application, the board shall find that the application will serve
5 the public convenience and necessity, and that the applicant
6 can most economically and feasibly supply the electric service
7 resulting from the proposed construction or acquisition, without
8 unnecessary duplication of facilities or operations.

9 Sec. 5. (1) For purposes of this section, electric
10 supplier means a public power district, a public power and
11 irrigation district, an individual municipality, a registered
12 group of municipalities, an electric membership association, or
13 a cooperative.

14 (2)(a) The board shall conditionally approve an
15 application for a certified renewable export facility if it finds
16 that only the criteria described in subdivisions (a)(i) through
17 (iii) of this subsection are met: (i) The facility will provide
18 reasonably identifiable and quantifiable public benefits, including
19 economic development, to the residents of Nebraska or the local
20 area where the facility will be located; (ii) there has been no
21 demonstration that the facility will create a substantial risk
22 that any existing generation or transmission facilities owned by
23 any electric supplier will become stranded assets; and (iii) the
24 facility meets the requirements of subdivisions (2)(a) through (c)
25 of section 70-1001.01.

26 (b) Upon finding that the criteria described in
27 subdivisions (b)(i) through (vii) of this subsection have also

1 been met by the applicant and after the board has fulfilled the
2 requirements of subsection (3) of section 37-807, the board shall
3 grant final approval of an application for a certified renewable
4 export facility:

5 (i) The facility will not have a materially detrimental
6 effect on the retail electric rates paid by any Nebraska
7 ratepayers, except that, notwithstanding subdivisions (b) (iv)
8 and (v) of this subsection, the determination of a materially
9 detrimental effect on rates shall not include regional transmission
10 improvements dictated by a regional transmission operator or
11 transmission improvements required due to participation by an
12 eligible entity pursuant to subdivision (b) (vi) of this subsection;

13 (ii) The applicant has obtained the necessary generation
14 interconnection and transmission service approvals from and
15 has executed agreements for such generator interconnection and
16 transmission service with the appropriate regional transmission
17 organization, transmission owner, or transmission provider;

18 (iii) The applicant has certified that it has applied
19 for and is actively pursuing the required approvals from any other
20 federal, state, or local entities with jurisdiction or permitting
21 authority over the certified renewable export facility;

22 (iv) The applicant and the electric supplier owning
23 the transmission facilities to which the certified renewable
24 export facility will be interconnected, along with any electric
25 supplier owning transmission facilities of 115,000 volts or
26 more, which electric supplier shall be deemed to be required
27 to receive notice pursuant to section 70-1013, have entered

1 into a joint transmission development agreement on reasonable
2 terms and conditions consistent with and subject to the notice
3 to construct or other directives of any regional transmission
4 organization with jurisdiction over the addition of new or upgrade
5 of existing transmission facilities or, for any electric supplier
6 that is not a member of a regional transmission organization
7 with which the facility will interconnect, covers the addition of
8 new or the upgrade of existing transmission facilities required
9 as a result of a certified renewable export facility. Such
10 joint transmission development agreement shall include provisions
11 addressing construction, ownership, operation, and maintenance of
12 such new or upgrades of existing transmission facilities. The
13 electric supplier or suppliers shall have the right to purchase and
14 own transmission facilities as set forth in the joint transmission
15 development agreement;

16 (v) The applicant agrees to reimburse any costs that are
17 not covered by a regional transmission organization tariff or that
18 are allocated through the tariff to the electric suppliers as a
19 result of the certified renewable export facility or not covered
20 by the tariff of a transmission owner or transmission provider
21 that is not a member of a regional transmission organization,
22 costs incurred by any electric supplier as a result of adding the
23 certified renewable export facility, including, but not limited
24 to, renewable integration costs, and those costs which allow
25 the interconnected electric supplier to operate and maintain
26 the transmission facilities under reasonable terms and conditions
27 agreed to by the parties within the joint transmission development

1 agreement;

2 (vi) The applicant agrees to benefit Nebraskans by
3 offering to provide electric suppliers serving loads greater
4 than fifty megawatts at the time the application is filed an
5 option to purchase in the aggregate an amount of power up to
6 ten percent of the output of any facility with greater than
7 80 megawatts of nameplate capacity at a price not to exceed
8 the facility's per-kilowatt-hour cost, net of federal and state
9 incentives, plus a commercially reasonable rate of return. The
10 applicant shall disclose the rate of return to the board at the
11 time of the application. Such financial information may be withheld
12 from disclosure pursuant to subdivision (3) of section 84-712.05.
13 Such electric suppliers shall be entitled to a minimum of their
14 pro rata share based on the load ratio share of Nebraska electric
15 load served among those electric suppliers eligible under this
16 subdivision (vi). If an electric supplier declines to contract for
17 some or all of its pro rata share, the remaining eligible electric
18 suppliers may share the balance on a pro rata basis. The ten
19 percent may be above the total generation amount proposed in the
20 application for a certified renewable export facility and shall
21 require no further approval by the board. Any transmission studies
22 or upgrades due to participation by electric suppliers serving
23 loads greater than 50 megawatts shall be the responsibility of
24 the participating electric supplier. Upon application under this
25 section, the board shall notify electric suppliers identified in
26 this subdivision (vi) of a pending application. Such suppliers
27 shall have forty-five days following the date of the board's notice

1 to notify the developer of an interest in exercising the option
2 to purchase power, except that such suppliers may withdraw their
3 option to purchase once the costs of the transmission additions
4 and upgrades are determined. Electric suppliers withdrawing their
5 option to purchase power are responsible for their pro rata
6 share of any costs resulting from their participation in and
7 withdrawal from the generation interconnection and transmission
8 delivery studies; and

9 (vii) The applicant certifies to the board that
10 it will establish decommissioning security. The owner of the
11 certified renewable export facility shall be solely responsible
12 for decommissioning. Such decommissioning security shall be an
13 instrument that is posted, a copy of which is given to the board,
14 prior to construction no later than the tenth year of operation of
15 the facility by the applicant for the certified renewable export
16 facility to ensure sufficient funding is available for removal of
17 a certified renewable export facility and reclamation at the end
18 of the useful life of such a facility. If the applicant or any
19 subsequent owner of the facility intends to transfer ownership of
20 the facility, the proposed new owner shall provide the board with
21 adequate evidence demonstrating that substitute decommissioning
22 security has been posted or given prior to transfer of ownership.
23 The requirement of this subdivision (vii) shall be waived if a
24 local governmental entity with the authority to create requirements
25 for decommissioning security has exercised its authority and
26 enacted decommissioning security requirements for the applicable
27 jurisdiction.

1 (3) If the applicant does not commence construction of
2 the generation facility within eighteen months after receiving
3 final approval from the board under subsection (2) of this section,
4 the approval is void. Upon written request filed by the applicant,
5 the board may, for good cause shown, extend the time period during
6 which an approval will remain valid. Good cause includes, but is
7 not limited to, national or regional economic conditions, lack
8 of transmission infrastructure, or an applicant's inability to
9 obtain authorization from other required governmental regulatory
10 authorities despite the applicant's exercise of a good-faith effort
11 to obtain such approvals.

12 (4) The applicant shall remit an application fee of five
13 thousand dollars with the application. The fee shall be remitted
14 to the State Treasurer for credit to the Nebraska Power Review
15 Fund. The board shall use the application fee to defray the board's
16 reasonable expenses associated with reviewing and acting upon the
17 application, including the costs of the hearing. If the board
18 incurs expenses of more than five thousand dollars associated with
19 the application, the board shall provide written notification to
20 the applicant of the additional sum needed or already expended,
21 after which the applicant shall promptly submit an additional sum
22 sufficient to cover the board's anticipated or incurred expenses
23 or shall file an objection with the board. If, after completion of
24 the application process and any subsequent legal action, including
25 appeal of the board's decision, the board's expenses associated
26 with processing and acting upon the application do not equal the
27 amount submitted by the applicant, the board shall return the

1 unused funds to the applicant if the amount is fifty dollars or
2 more. The applicant shall reimburse the board for any reasonable
3 expenses the board incurs as a result of appeal of the board's
4 decision or shall file an objection with the board. The board shall
5 rule on any objection brought pursuant to this subsection within
6 thirty days. The applicant may request a hearing on its objection,
7 in which case the board shall hold such hearing within thirty
8 days of the request and shall rule within forty-five days of the
9 hearing.

10 (5) No facility, or part of a facility, which is a
11 certified renewable export facility is subject to eminent domain by
12 an electric supplier, or by any other entity if the purpose of the
13 eminent domain proceeding is to acquire the facility for electric
14 generation or transmission.

15 (6) Except as provided in subsection (5) of this section,
16 an electric supplier may exercise its eminent domain authority
17 to acquire the land rights necessary for the construction of
18 transmission lines and related facilities to provide transmission
19 services for a certified renewable export facility. The exercise
20 of eminent domain to provide needed transmission lines and related
21 facilities for a certified renewable export facility shall be
22 considered a public use.

23 (7) In the event any transmission facilities serving
24 a certified renewable export facility are proposed to cross the
25 service area of any electric supplier owning electric generation
26 facilities of 115,000 volts or more and such electric supplier
27 is deemed to be required to receive notice pursuant to section

1 70-1013, then such electric supplier may elect to be a party to
2 a joint transmission development agreement for such transmission
3 facilities.

4 (8) An electric supplier or a governmental entity
5 with regulatory jurisdiction over the certified renewable export
6 facility may apply to the board or the board may file its own
7 motion to have the certification of a renewable export facility
8 revoked upon a showing by the applicant for decertification
9 that a facility no longer meets the requirements of subdivisions
10 (2)(a) through (c) of section 70-1001.01. Upon the filing of such
11 application and making of a prima facie showing by the applicant
12 for decertification that the facility no longer meets the criteria
13 for certification, the board shall set the matter for hearing. The
14 hearing shall be held within forty-five days unless an extension
15 is necessary for good cause. The applicant for decertification
16 shall have the burden of proof. Within forty-five days after the
17 conclusion of the hearing, the board shall enter an order to
18 either reaffirm the certification as a renewable export facility or
19 to revoke the certification. The board shall retain jurisdiction
20 over the decertification action for at least thirty days after
21 entry of such an order. Within thirty days of a final order
22 revoking certification, the owner of the facility may apply for
23 recertification, with the time period for recertification being
24 no longer than one year unless the board extends the time period
25 for good cause. Such application for recertification shall extend
26 the board's jurisdiction over the decertification action until the
27 board completes its review of the application for recertification

1 and enters an order granting or denying the application. If the
2 applicant for recertification demonstrates to the board that it
3 is working diligently and in good faith to restore its compliance
4 with requirements of a certified renewable export facility, the
5 board shall not terminate the application for recertification. If
6 the board retains jurisdiction over the decertification action, the
7 prohibition on eminent domain set forth in subsection (5) of this
8 section shall remain in full force and effect. If the board revokes
9 a facility's certification as a renewable export facility either
10 by entering an order decertifying the facility that is not timely
11 appealed or an order denying an application for recertification
12 becomes final and all applicable statutes of limitations have run,
13 the prohibition on eminent domain set forth in such subsection
14 shall no longer apply. Nothing in this section shall prohibit a
15 decertified facility from being recertified in the same manner as
16 a new facility.

17 Sec. 6. Section 70-1014.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 70-1014.01 (1) Except as provided in subsection (2)
20 of this section, an application by a municipality, a registered
21 group of municipalities, a public power district, a public
22 power and irrigation district, an electric cooperative, an
23 electric membership association, or any other governmental entity
24 for a facility that will generate not more than ten thousand
25 kilowatts of electric energy at rated capacity and will generate
26 electricity using solar, wind, biomass, landfill gas, methane gas,
27 or hydropower generation technology or an emerging generation

1 technology, including, but not limited to, fuel cells and
2 micro-turbines, shall be deemed a special generation application.
3 Such application shall be approved by the board if the board
4 finds that (a) the application qualifies as a special generation
5 application, (b) the application will provide public benefits
6 sufficient to warrant approval of the application, although it
7 may not constitute the most economically feasible generation
8 option, and (c) the application under consideration represents a
9 separate and distinct project from any previous special generation
10 application the applicant may have filed.

11 (2)(a) An application by a municipality, a registered
12 group of municipalities, a public power district, a public power
13 and irrigation district, an electric cooperative, an electric
14 membership association, or any other governmental entity for a
15 facility that will generate more than ten thousand kilowatts of
16 electric energy at rated capacity and will generate electricity
17 using renewable energy sources such as solar, wind, biomass,
18 landfill gas, methane gas, or new hydropower generation technology
19 or an emerging technology, including, but not limited to, fuel
20 cells and micro-turbines, may be filed with the board if (i)
21 the total production from all such renewable projects, excluding
22 sales from such projects to other electric-generating entities,
23 does not exceed ten percent of total energy sales as shown in
24 the producer's Annual Electric Power Industry Report to the United
25 States Department of Energy and (ii) the applicant's governing body
26 conducts at least one advertised public hearing which affords the
27 ratepayers of the applicant a chance to review and comment on the

1 subject of the application.

2 (b) The application shall be approved by the board if
3 the board finds that (i) the applicant is using renewable energy
4 sources described in this subsection, (ii) total production from
5 all renewable projects of the applicant does not exceed ten percent
6 of the producer's total energy sales as described in subdivision
7 (2)(a) of this section, and (iii) the applicant's governing body
8 has conducted at least one advertised public hearing which affords
9 its ratepayers a chance to review and comment on the subject of the
10 application.

11 (3) A community-based energy development project
12 organized pursuant to the Rural Community-Based Energy Development
13 Act which intends to develop renewable energy sources for sale to
14 one or more Nebraska electric utilities described in this section
15 may also make an application to the board pursuant to subsection
16 (2) of this section if (a) the purchasing electric utilities
17 conduct a public hearing described in such subsection and (b)
18 the power and energy from the renewable energy sources is sold
19 exclusively to such electric utilities for a term of at least
20 twenty years.

21 (4) No facility or part of a facility which is approved
22 pursuant to this section is subject to eminent domain by any
23 electric supplier, or by any other entity if the purpose of the
24 eminent domain proceeding is to acquire the facility for electric
25 generation or transmission.

26 Sec. 7. Section 76-710.04, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 76-710.04 (1) A condemner may not take property through
2 the use of eminent domain under sections 76-704 to 76-724 if the
3 taking is primarily for an economic development purpose.

4 (2) For purposes of this section, economic development
5 purpose means taking property for subsequent use by a commercial
6 for-profit enterprise or to increase tax revenue, tax base,
7 employment, or general economic conditions.

8 (3) This section does not affect the use of eminent
9 domain for:

10 (a) Public projects or private projects that make all
11 or a major portion of the property available for use by the
12 general public or for use as a right-of-way, aqueduct, pipeline,
13 transmission line, or similar use;

14 (b) Removing harmful uses of property if such uses
15 constitute an immediate threat to public health and safety;

16 (c) Leasing property to a private person who occupies an
17 incidental part of public property or a public facility, such as a
18 retail establishment on the ground floor of a public building;

19 (d) Acquiring abandoned property;

20 (e) Clearing defective property title;

21 (f) Taking private property for use by a utility or
22 railroad; ~~and~~

23 (g) Taking private property based upon a finding of
24 blighted or substandard conditions under the Community Development
25 Law if the private property is not agricultural land or
26 horticultural land as defined in section 77-1359; ~~and-~~

27 (h) Taking private property for a transmission line to

1 serve a privately developed facility generating electricity using
2 wind, solar, biomass, landfill gas, or methane gas.

3 Sec. 8. Section 77-202, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-202 (1) The following property shall be exempt from
6 property taxes:

7 (a) Property of the state and its governmental
8 subdivisions to the extent used or being developed for use by
9 the state or governmental subdivision for a public purpose. For
10 purposes of this subdivision, public purpose means use of the
11 property (i) to provide public services with or without cost to the
12 recipient, including the general operation of government, public
13 education, public safety, transportation, public works, civil and
14 criminal justice, public health and welfare, developments by a
15 public housing authority, parks, culture, recreation, community
16 development, and cemetery purposes, or (ii) to carry out the
17 duties and responsibilities conferred by law with or without
18 consideration. Public purpose does not include leasing of property
19 to a private party unless the lease of the property is at fair
20 market value for a public purpose. Leases of property by a public
21 housing authority to low-income individuals as a place of residence
22 are for the authority's public purpose;

23 (b) Unleased property of the state or its governmental
24 subdivisions which is not being used or developed for use for
25 a public purpose but upon which a payment in lieu of taxes is
26 paid for public safety, rescue, and emergency services and road
27 or street construction or maintenance services to all governmental

1 units providing such services to the property. Except as provided
2 in Article VIII, section 11, of the Constitution of Nebraska,
3 the payment in lieu of taxes shall be based on the proportionate
4 share of the cost of providing public safety, rescue, or emergency
5 services and road or street construction or maintenance services
6 unless a general policy is adopted by the governing body of the
7 governmental subdivision providing such services which provides for
8 a different method of determining the amount of the payment in
9 lieu of taxes. The governing body may adopt a general policy by
10 ordinance or resolution for determining the amount of payment in
11 lieu of taxes by majority vote after a hearing on the ordinance
12 or resolution. Such ordinance or resolution shall nevertheless
13 result in an equitable contribution for the cost of providing such
14 services to the exempt property;

15 (c) Property owned by and used exclusively for
16 agricultural and horticultural societies;

17 (d) Property owned by educational, religious, charitable,
18 or cemetery organizations, or any organization for the exclusive
19 benefit of any such educational, religious, charitable, or cemetery
20 organization, and used exclusively for educational, religious,
21 charitable, or cemetery purposes, when such property is not

22 (i) owned or used for financial gain or profit to either the
23 owner or user, (ii) used for the sale of alcoholic liquors for
24 more than twenty hours per week, or (iii) owned or used by
25 an organization which discriminates in membership or employment
26 based on race, color, or national origin. For purposes of this
27 subdivision, educational organization means (A) an institution

1 operated exclusively for the purpose of offering regular courses
2 with systematic instruction in academic, vocational, or technical
3 subjects or assisting students through services relating to the
4 origination, processing, or guarantying of federally reinsured
5 student loans for higher education or (B) a museum or historical
6 society operated exclusively for the benefit and education of the
7 public. For purposes of this subdivision, charitable organization
8 means an organization operated exclusively for the purpose of the
9 mental, social, or physical benefit of the public or an indefinite
10 number of persons; and

11 (e) Household goods and personal effects not owned or
12 used for financial gain or profit to either the owner or user.

13 (2) The increased value of land by reason of shade and
14 ornamental trees planted along the highway shall not be taken into
15 account in the valuation of land.

16 (3) Tangible personal property which is not depreciable
17 tangible personal property as defined in section 77-119 shall be
18 exempt from property tax.

19 (4) Motor vehicles required to be registered for
20 operation on the highways of this state shall be exempt from
21 payment of property taxes.

22 (5) Business and agricultural inventory shall be exempt
23 from the personal property tax. For purposes of this subsection,
24 business inventory includes personal property owned for purposes
25 of leasing or renting such property to others for financial gain
26 only if the personal property is of a type which in the ordinary
27 course of business is leased or rented thirty days or less and

1 may be returned at the option of the lessee or renter at any time
2 and the personal property is of a type which would be considered
3 household goods or personal effects if owned by an individual. All
4 other personal property owned for purposes of leasing or renting
5 such property to others for financial gain shall not be considered
6 business inventory.

7 (6) Any personal property exempt pursuant to subsection
8 (2) of section 77-4105 or section 77-5209.02 shall be exempt from
9 the personal property tax.

10 (7) Livestock shall be exempt from the personal property
11 tax.

12 (8) Any personal property exempt pursuant to the Nebraska
13 Advantage Act shall be exempt from the personal property tax.

14 (9) Any personal property used directly in the generation
15 of electricity using wind as the fuel source shall be exempt
16 from the personal property tax. Personal property used directly
17 in the generation of electricity using wind as the fuel source
18 includes, but is not limited to, wind turbines, rotors and blades,
19 trackers, generating equipment, transmission components, towers,
20 supporting structures or racks, inverters, towers, and other system
21 components including wiring, control systems, switchgears, and
22 generator step-up transformers.

23 Sec. 9. (1) The Legislature finds and declares:

24 (a) The purpose of the nameplate capacity tax established
25 under this section is to replace personal property taxes currently
26 imposed on wind infrastructure and depreciated over a short period
27 of time in a way that causes local budgeting challenges and

1 increases up-front costs for wind developers;

2 (b) The nameplate capacity tax should be competitive
3 with taxes imposed directly and indirectly on wind generation and
4 development in other states;

5 (c) The wind generation tax should be fair and
6 nondiscriminatory when compared with other taxes imposed on other
7 industries in the state; and

8 (d) The wind generation tax should not be singled out as
9 a source of General Fund revenue during times of economic hardship.

10 (2) For purposes of this section:

11 (a) Commissioned means the wind turbine of a wind
12 generation facility has been in commercial operation for at least
13 twenty-four hours. A wind turbine is not in commercial operation
14 unless the wind energy generation facility is connected to the
15 electrical grid;

16 (b) Nameplate capacity means the capacity of a wind
17 turbine to generate electricity as measured in megawatts, including
18 fractions of a megawatt; and

19 (c) Wind energy generation facility means a facility that
20 generates electricity using wind.

21 (3) (a) The owner of a wind energy generation facility
22 annually shall pay a nameplate capacity tax equal to the total
23 nameplate capacity of the commissioned wind turbine of the wind
24 energy generation facility multiplied by a tax rate of \$3,518.00
25 per megawatt.

26 (b) No tax shall be imposed on a wind generation
27 facility:

1 (i) Owned or operated by the federal government, the
2 State of Nebraska, a public power district, a public power and
3 irrigation district, an individual municipality, a registered
4 group of municipalities, an electric membership association, or
5 a cooperative; or

6 (ii) That is a customer-generator as defined in section
7 70-2002.

8 (c) No tax levied pursuant to this section shall be
9 construed to constitute restricted funds as defined in section
10 13-518. This subdivision terminates on December 31, 2013.

11 (4) (a) The Department of Revenue shall collect the tax
12 due under this section.

13 (b) The tax shall be imposed beginning the first calendar
14 year the wind turbine is commissioned.

15 (c) (i) The tax for the first calendar year shall be
16 prorated based upon the days of the calendar year remaining after
17 the wind turbine is commissioned.

18 (ii) In the first year in which a wind energy generation
19 facility is taxed or in any year in which additional commissioned
20 nameplate capacity is added to a wind energy generation facility,
21 the taxes on the initial or additional nameplate capacity shall be
22 prorated for the number of days remaining in the calendar year.

23 (iii) When a wind turbine is decommissioned or made
24 nonoperational by a change in law or decertification from its
25 status as a certified renewable export facility during a tax year,
26 the taxes shall be prorated for the number of days during which the
27 wind turbine was not decommissioned or was operational.

1 (iv) When the capacity of a wind turbine to produce
2 electricity is reduced but the wind turbine is not decommissioned,
3 the nameplate capacity of the wind turbine is deemed to be
4 unchanged.

5 (5) (a) On March 1 of each year, the owner of a wind
6 generation facility shall file with the Department of Revenue a
7 report on the nameplate capacity of the facility for the previous
8 year from January 1 through December 31. All taxes shall be due on
9 April 1 and shall be delinquent if not paid on a quarterly basis on
10 April 1 and each quarter thereafter. Delinquent quarterly payments
11 shall draw interest at the rate provided for in section 45-104.02,
12 as such rate may from time to time be adjusted.

13 (b) The owner of a wind energy generation facility is
14 liable for the taxes under this section with respect to the
15 facility, whether or not the owner of the facility is the owner of
16 the land on which the facility is situated.

17 (6) Failure to file a report required by subsection (5)
18 of this section, filing such report late, failure to pay taxes due,
19 or underpayment of such taxes shall result in a penalty of five
20 percent of the amount due being imposed for each month the report
21 is overdue or the payment is delinquent, except that the penalty
22 shall not exceed ten thousand dollars.

23 (7) The Department of Revenue shall enforce the
24 provisions of this section. The department shall adopt and
25 promulgate rules and regulations necessary for the implementation
26 and enforcement of this section.

27 (8) The Department of Revenue shall separately identify

1 the proceeds from the tax imposed by this section by wind energy
2 generation facility and shall pay the funds over to the county
3 treasurer of the county where the wind energy generation facility
4 is located within thirty days of receipt of such proceeds.

5 Sec. 10. (1) The county treasurer shall distribute the
6 revenue received from the Department of Revenue pursuant to section
7 9 of this act, within thirty days after receipt of such revenue,
8 to local taxing entities which, but for such personal property tax
9 exemption, would have levied a tax upon the depreciable personal
10 property used directly in the generation of electricity using wind
11 as the fuel source.

12 (2) A local taxing entity's status as eligible for
13 distribution under subsection (1) of this section shall not be
14 affected when and if the net book value of such property becomes
15 zero. A local taxing entity's status as eligible for distribution
16 under such subsection shall be affected by the disposal of all
17 of the exempt depreciable personal property used directly in the
18 generation of electricity using wind as the fuel source.

19 (3) The distribution to each eligible local taxing entity
20 shall be calculated by determining the amount of taxes that the
21 eligible local taxing entity levied during the taxable year and
22 dividing this amount by the total tax levied by all of the
23 eligible local taxing entities during the year. Each eligible
24 entity's resulting fraction shall then be multiplied by the revenue
25 distributed to the county treasurer by the department to determine
26 the portion of such revenue due each local taxing entity.

27 (4) For purposes of this section, local taxing entity

1 means all political subdivisions in the county.

2 Sec. 11. The Revisor of Statutes shall assign section 5
3 of this act within sections 70-1001 to 70-1027.

4 Sec. 12. Original sections 70-1001, 70-1001.01, 70-1013,
5 70-1014, 70-1014.01, 76-710.04, and 77-202, Reissue Revised
6 Statutes of Nebraska, are repealed.