

E AND R AMENDMENTS TO LB 828

Introduced by Larson, 40, Chairman Enrollment and Review

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

3 Section 1. Section 66-901, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 66-901 The Legislature hereby finds and declares that
6 the use of solar energy and wind energy in Nebraska: (1) Can
7 help reduce the nation's reliance upon irreplaceable domestic and
8 imported fossil fuels; (2) can reduce air and water pollution
9 resulting from the use of conventional energy sources; (3) requires
10 effective legislation and efficient administration of state and
11 local programs to be of greatest value to its citizens; and (4) is
12 of such importance to the public health, safety, and welfare that
13 the state should take appropriate action to encourage its use.

14 As the use of solar energy and wind energy devices
15 increases, the possibility of future shading and obstruction of
16 such devices by structures or vegetation will also increase. The
17 Legislature therefor declares that the purpose of sections 66-901
18 to 66-914 and sections 3, 4, 9, and 10 of this act is to promote
19 the public health, safety, and welfare by protecting access to
20 solar ~~skyspae~~ energy and wind energy as provided in sections
21 66-901 to 66-914 and sections 3, 4, 9, and 10 of this act.

22 Sec. 2. Section 66-902, Reissue Revised Statutes of
23 Nebraska, is amended to read:

1 66-902 For purposes of sections 66-901 to 66-914 and
2 sections 3, 4, 9, and 10 of this act, unless the context otherwise
3 requires, the definitions found in sections 66-903 to ~~66-909.03~~
4 66-909.02 and sections 3 and 4 of this act apply.

5 Sec. 3. Decommissioning security means a security
6 instrument that is posted or given by a wind developer to a
7 municipality or other governmental entity to ensure sufficient
8 funding is available for removal of a wind energy conversion system
9 and reclamation at the end of the useful life of such a system.

10 Sec. 4. Wind agreement means a right, whether or not
11 stated in the form of a restriction, easement, covenant, or
12 condition, in any deed, wind easement, wind option, lease, or lease
13 option securing land for the study or production of wind-generated
14 energy or any other instrument executed by or on behalf of any
15 owner of land or air space for the purpose of allowing another
16 party to study the potential for or to develop a wind energy
17 conversion system on such land or in such air space.

18 Sec. 5. Section 66-909, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 66-909 Solar ~~skyspace easement agreement~~ shall mean a
21 right, whether or not stated in the form of a restriction,
22 easement, covenant, or condition, in any deed, will, or other
23 instrument executed by any person for the purpose of insuring
24 adequate access of a solar energy system to solar energy.

25 Sec. 6. Section 66-910, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 66-910 Any property owner may grant a solar ~~skyspace~~

1 ~~easement agreement or wind energy easement agreement in the same~~
2 ~~manner and with the same effect as a conveyance of any other~~
3 ~~interest in real property. The easement shall be created in writing~~
4 ~~and shall be filed, duly recorded, and indexed in the office of the~~
5 ~~register of deeds of the county in which the real property subject~~
6 ~~to the easement is located. No duly recorded easement shall be~~
7 ~~unenforceable on account of lack of privity of estate or privity of~~
8 ~~contract. Such easements shall run with the land or lands benefited~~
9 ~~and burdened and shall constitute a perpetual easement, except that~~
10 ~~a solar skyspace easement or wind energy easement may terminate~~
11 ~~upon the conditions stated therein or by agreement of the owners of~~
12 ~~the lands benefited and burdened.~~

13 Sec. 7. Section 66-911.01, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 66-911.01 An instrument creating a land right or an
16 option to secure a land right in real property or the vertical
17 space above real property for a solar energy system, for a
18 wind energy conversion system, or for wind measurement equipment
19 agreement or a wind agreement shall be created in writing, and
20 the instrument, or an abstract, shall be filed, duly recorded, and
21 indexed in the office of the register of deeds of the county in
22 which the real property subject to the instrument is located. The
23 instrument shall include, but the contents are not limited to:

- 24 (1) The names of the parties;
- 25 (2) A legal description of the real property involved;
- 26 (3) The nature of the interest created;
- 27 (4) The consideration paid for the transfer;

1 (5) A description of the improvements the developer
2 intends to make on the real property, including, but not limited
3 to: Roads; transmission lines; substations; wind turbines; and
4 meteorological towers;

5 (6) A description of any decommissioning security ~~as~~
6 ~~defined in section 76-3001~~ or local requirements related to
7 decommissioning; and

8 (7) The terms or conditions, if any, under which the
9 interest may be revised or terminated.

10 An abstract under this section need not include the items
11 described in subdivisions (4) through (7) of this section.

12 Sec. 8. Section 66-912, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 66-912 A solar ~~skyspace easement~~ agreement or wind energy
15 ~~easement~~ agreement may be enforced by injunction or proceedings in
16 equity or other civil action.

17 Sec. 9. A solar agreement or wind agreement shall run
18 with the land benefited and burdened and shall terminate upon the
19 conditions stated in the solar agreement or wind agreement. The
20 initial term of a solar agreement or wind agreement shall not
21 exceed forty years, except that the parties to a solar agreement
22 or wind agreement may extend or renew the initial term by mutual
23 written agreement. A wind agreement shall terminate if development
24 of a wind energy conversion system has not commenced within ten
25 years after the effective date of the wind agreement, except that
26 this period may be extended by mutual agreement of the parties to
27 the wind agreement.

1 Sec. 10. No interest in any wind or solar resource
2 located on a tract of land and associated with the production or
3 potential production of wind or solar energy on the tract of land
4 may be severed from the surface estate.

5 Sec. 11. Section 72-270, Revised Statutes Cumulative
6 Supplement, 2010, is amended to read:

7 72-270 ~~Leases~~ Agreements involving the production of wind
8 or solar energy on lands under the control of the Board of
9 Educational Lands and Funds shall be regulated by sections 72-270
10 to 72-274.

11 Sec. 12. Section 72-271, Revised Statutes Cumulative
12 Supplement, 2010, is amended to read:

13 72-271 For purposes of sections 72-270 to 72-274:

14 (1) Agreement means (a) for purposes of a solar energy
15 system, a solar agreement as defined in section 66-909 and (b) for
16 purposes of a wind energy conversion system, a wind agreement as
17 defined in section 4 of this act;

18 (2) Board means the Board of Educational Lands and Funds;

19 ~~(2) Lease means any lease, easement, covenant, or other~~
20 ~~such contractual arrangement;~~

21 (3) Lessee means any individual, corporation, or other
22 entity that enters into a lease an agreement with the board;

23 (4) Solar energy means radiant energy, direct, diffuse,
24 or reflected, received from the sun at wavelengths suitable for
25 conversion into thermal, chemical, or electrical energy; and

26 (5) Wind energy means ~~the use of wind to produce~~
27 ~~electricity.~~ has the definition found in section 66-909.01.

1 Sec. 13. Section 72-272, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 72-272 The board may authorize ~~leases~~ agreements for
4 the use of any school or public lands belonging to the state
5 and under its control for exploration and development of wind
6 energy or solar energy for such durations and under such terms
7 and conditions as the board shall deem appropriate, except that
8 ~~the initial term for any such wind energy lease and any amendment~~
9 ~~thereto shall not exceed forty years.~~ such agreements shall comply
10 with sections 66-901 to 66-914 and sections 3, 4, 9, and 10 of
11 this act. In making such determinations, the board shall consider
12 comparable arrangements involving other lands similarly situated
13 and any other relevant factors bearing upon such leases. ~~Any such~~
14 ~~lease authorized by the board shall be created in writing and shall~~
15 ~~be filed, duly recorded, and indexed in the office of the register~~
16 ~~of deeds of the county in which the real property subject to the~~
17 ~~lease is located. Such leases shall run with the land benefited and~~
18 ~~burdened and shall include, as applicable, the contents specified~~
19 ~~in sections 66-911 and 66-911.01.~~ agreements.

20 Sec. 14. Section 72-273, Revised Statutes Cumulative
21 Supplement, 2010, is amended to read:

22 72-273 (1) If a an agreement relating to wind energy or
23 solar energy lease is authorized by the board on land already being
24 leased for agricultural or other purposes by a prior lessee, the
25 existing rights of the prior lessee shall not be impaired, and the
26 board shall reduce the rental amount due from such prior lessee in
27 proportion to the amount of land that is removed from use as a

1 result of the ~~wind or solar energy lease~~ agreement.

2 (2) A lessee for agricultural or other purposes shall
3 be compensated for all damages to personal property owned by such
4 lessee or to growing crops, including grass, caused by operations
5 under a concurrent ~~lease of~~ agreement regarding such land for wind
6 energy or solar energy purposes, and the board shall require the
7 lessee under the ~~wind or solar energy lease~~ agreement to provide
8 such insurance and indemnity agreements which the board determines
9 are necessary for the protection of the state and its lessees.

10 (3) If ~~a~~ an agreement relating to wind energy or solar
11 energy lease is authorized by the board on land concurrently
12 being leased for agricultural purposes, the lessee for agricultural
13 purposes shall have priority as to the use of the water on
14 the land, but lessees for other purposes, including parties to
15 agreements relating to wind energy or solar energy, ~~lessees,~~ shall
16 be allowed reasonable use of the water on the land.

17 Sec. 15. Section 72-274, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 72-274 The board may adopt and promulgate such rules
20 and regulations as it shall deem necessary and proper to regulate
21 the ~~leasing of school and public lands for~~ agreements relating to
22 wind energy or solar energy exploration and development on school
23 and public lands pursuant to sections 72-270 to 72-274 and to
24 prescribe such terms and conditions, including bonds, as it shall
25 deem necessary in order to protect the interests of the state and
26 its lessees.

27 Sec. 16. Section 76-3001, Revised Statutes Supplement,

1 2011, is amended to read:

2 76-3001 For purposes of sections 76-3001 to 76-3004:

3 (1) Decommissioning security means a security instrument
4 that is posted or given by ~~the~~ a wind developer to a municipality
5 or other governmental entity to ensure sufficient funding is
6 available for removal of a wind energy conversion system and
7 reclamation at the end of the useful life of such a system; and

8 (2) Wind agreement means a right, whether or not stated
9 in the form of a restriction, easement, covenant, or condition,
10 in any deed, wind easement, wind option, or lease or lease option
11 securing land for the study or production of wind-generated energy
12 or any other instrument executed by or on behalf of any owner of
13 land or air space for the purpose of allowing another party to
14 study the potential for, or to develop, a wind energy conversion
15 system as defined in section 66-909.02 on the land or in the air
16 space.

17 Sec. 17. Section 76-3004, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 76-3004 No interest in any wind or solar resource located
20 on a tract of land and associated with the production or potential
21 production of ~~wind-generated~~ wind or solar energy on the tract of
22 land may be severed from the surface estate.

23 Sec. 18. Section 77-2704.57, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 77-2704.57 (1) Sales and use tax shall not be imposed
26 on the gross receipts from the sale, lease, or rental of personal
27 property for use in a C-BED project or community-based energy

1 development project. This exemption shall be conditioned upon
2 filing requirements for the exemption as imposed by the Tax
3 Commissioner. The requirements imposed by the Tax Commissioner
4 shall be related to ensuring that the property purchased qualifies
5 for the exemption. The Tax Commissioner may require the filing
6 of the documents showing compliance with section 70-1907, the
7 organization of the project, the distribution of the payments,
8 the power purchase agreements, the project pro forma, articles of
9 incorporation, operating agreements, and any amendments or changes
10 to these documents during the life of the power purchase agreement.

11 (2) The Tax Commissioner shall notify an electric utility
12 that has a power purchase agreement with a C-BED project if
13 there is a change in project ownership which makes the project no
14 longer eligible as a C-BED project. Purchase of a C-BED project
15 by an electric utility prior to the end of the power purchase
16 agreement disqualifies the C-BED project for the exemption, but the
17 Department of Revenue may not recover the amount of the sales and
18 use tax that was not paid by the project prior to the purchase.

19 (3) For purposes of this section:

20 (a) C-BED project or community-based energy development
21 project means a new wind energy project that:

22 (i) Has an ownership structure as follows:

23 (A) For a C-BED project that consists of more than
24 two turbines, has one or more qualified owners with no single
25 individual qualified owner owning directly or indirectly more than
26 fifteen percent of the project and with at least thirty-three
27 percent of the gross power purchase agreement payments flowing to

1 the qualified owner or owners or local community; or

2 (B) For a C-BED project that consists of one or
3 two turbines, has one or more qualified owners with at least
4 thirty-three percent of the gross power purchase agreement payments
5 flowing to a qualified owner or owners or local community; and

6 (ii) Has a resolution of support adopted:

7 (A) By the county board of each county in which the C-BED
8 project is to be located; or

9 (B) By the tribal council for a C-BED project located
10 within the boundaries of an Indian reservation;

11 (b) Debt financing payments means principal, interest,
12 and other typical financing costs paid by the C-BED project company
13 to one or more third-party financial institutions for the financing
14 or refinancing of the construction of the C-BED project. Debt
15 financing payments does not include the repayment of principal at
16 the time of a refinancing;

17 (c) New wind energy project means any tangible
18 personal property incorporated into the manufacture, installation,
19 construction, repair, or replacement of a device, such as a wind
20 charger, windmill, or wind turbine, which is used to convert wind
21 energy to electrical energy or for the transmission of electricity
22 to the purchaser; and

23 (d) Qualified owner means:

24 (i) A Nebraska resident;

25 (ii) A limited liability company that is organized under
26 the Limited Liability Company Act or the Nebraska Uniform Limited
27 Liability Company Act and that is entirely made up of members who

1 are Nebraska residents;

2 (iii) A Nebraska nonprofit corporation organized under
3 the Nebraska Nonprofit Corporation Act;

4 (iv) An electric supplier as defined in section
5 70-1001.01, except that ownership in a single C-BED project is
6 limited to no more than:

7 (A) Fifteen percent either directly or indirectly by a
8 single electric supplier; and

9 (B) A combined total of twenty-five percent ownership
10 either directly or indirectly by multiple electric suppliers; or

11 (v) A tribal council.

12 (4) Gross power purchase agreement payments are the
13 total amount of payments during the life of the agreement. For
14 power purchase agreements entered into on or before December 31,
15 2011, if the qualified owners have a combined total of at least
16 thirty-three percent of the equity ownership in the C-BED project,
17 gross power purchase agreement payments shall be reduced by the
18 debt financing payments. For the purpose of determining eligibility
19 of the project, an estimate of the payments and their recipients
20 shall be used.

21 (5) Payments to the local community include, but are not
22 limited to, lease payments to property owners on whose property a
23 turbine is located, ~~wind energy easement~~ agreement payments, and
24 real and personal property tax receipts from the C-BED project.

25 (6) The Department of Revenue may examine the actual
26 payments and the distribution of the payments to determine if the
27 projected distributions were met. If the payment distributions to

1 qualified owners do not meet the requirements of this section, the
2 department may recover the amount of the sales or use tax that was
3 not paid by the project at any time up until the end of three years
4 after the end of the power purchase agreement.

5 (7) At any time prior to the end of the power purchase
6 agreements, the project may voluntarily surrender the exemption
7 granted by the Tax Commissioner and pay the amount of sales and use
8 tax that would otherwise have been due.

9 (8) The amount of the tax due under either subsection
10 (6) or (7) of this section shall be increased by interest at the
11 rate specified in section 45-104.02, as such rate may from time to
12 time be adjusted, from the date the tax would have been due if no
13 exemption was granted until the date paid.

14 Sec. 19. Section 79-309.01, Revised Statutes Cumulative
15 Supplement, 2010, is amended to read:

16 79-309.01 (1)(a) Beginning in 2016, the Commissioner of
17 Education shall annually collect data from each school district
18 prior to February 25 and determine whether at least seventy-five
19 percent of the school districts have included a system for
20 distributing apportionment funds attributable to income from solar
21 or wind ~~energy leases~~ agreements on school lands for teacher
22 performance pay within such districts' local collective-bargaining
23 agreements for the ensuing school fiscal year.

24 (b)(i) If the seventy-five percent requirement has been
25 met for the year, the Commissioner of Education shall use
26 the separate accounting provided by the State Treasurer under
27 subdivision (1)(b) of section 79-1035 to determine the amount of

1 the apportionment to each school district under section 79-1035
2 that is attributable to income from solar or wind ~~energy leases~~
3 agreements on school lands. The commissioner shall notify each
4 school district of such amount within five days after certification
5 of the apportionment required pursuant to subsection (3) of section
6 79-1035. Each school district shall use the amount of apportionment
7 funds specified in the notice provided by the commissioner for
8 the purpose of teacher performance pay. Such amount shall be
9 used as a supplement to the salary schedule as provided in local
10 collective-bargaining agreements. For purposes of distribution of
11 such funds only, the Legislature finds that teacher performance
12 pay measurements, criteria, and payout amounts are mandatory topics
13 of collective bargaining. If a school district has not included a
14 system for distributing apportionment funds attributable to income
15 from solar or wind ~~energy leases~~ agreements on school lands for
16 teacher performance pay within its local collective-bargaining
17 agreement, the amount of apportionment funds specified in the
18 notice provided by the commissioner shall be returned to the State
19 Treasurer within one month of receipt of such funds. The State
20 Treasurer shall immediately credit any funds returned under this
21 section to the temporary school fund. Any funds returned under this
22 section shall be redistributed from the temporary school fund in
23 the following year and shall no longer be designated as income
24 attributable to solar or wind ~~energy leases~~ agreements on school
25 lands.

26 (ii) If the seventy-five percent requirement has not been
27 met for the year, then subdivision (1)(b)(i) of this section shall

1 not apply for that year.

2 (2) If the seventy-five percent requirement has not been
3 met in 2016, 2017, or 2018, then this section shall not apply in
4 2019 or any year thereafter.

5 (3) For purposes of this section:

6 (a) Lease Agreement means any lease, easement, covenant,
7 or other such contractual arrangement; and

8 (b) Teacher performance pay means a systematic process
9 for measuring teachers' performance and linking the measurements
10 to changes in teacher pay. Indicators of teacher performance may
11 include improving professional skills and knowledge, classroom
12 performance or instructional behavior, and instructional outcomes.
13 Teacher performance pay may include predetermined bonus amounts and
14 payout criteria.

15 Sec. 20. Section 79-1035, Revised Statutes Cumulative
16 Supplement, 2010, is amended to read:

17 79-1035 (1)(a) The State Treasurer shall, each year on
18 or before the third Monday in January, make a complete exhibit of
19 all money belonging to the permanent school fund and the temporary
20 school fund as returned to him or her from the several counties,
21 together with the amount derived from other sources, and deliver
22 such exhibit duly certified to the Commissioner of Education.

23 (b) Beginning in 2016 and each year thereafter, the
24 exhibit required in subdivision (1)(a) of this section shall
25 include a separate accounting, not to exceed an amount of ten
26 million dollars, of the income from solar and wind ~~energy leases~~
27 agreements on school lands. The Board of Educational Lands and

1 Funds shall provide the State Treasurer with the information
2 necessary to make the exhibit required by this subsection. Separate
3 accounting shall not be made for income from solar or wind ~~energy~~
4 ~~leases~~ agreements on school lands that exceeds the sum of ten
5 million dollars.

6 (2) On or before February 25 following receipt of the
7 exhibit from the State Treasurer pursuant to subsection (1) of this
8 section, the Commissioner of Education shall make the apportionment
9 of the temporary school fund to each school district as follows:
10 From the whole amount there shall be paid to those districts in
11 which there are school or saline lands, which lands are used for a
12 public purpose, an amount in lieu of tax money that would be raised
13 if such lands were taxable, to be fixed in the manner prescribed
14 in section 79-1036; and the remainder shall be apportioned to the
15 districts according to the pro rata enumeration of children who are
16 five through eighteen years of age in each district last returned
17 from the school district. The calculation of apportionment for
18 each school fiscal year shall include any corrections to the prior
19 school fiscal year's apportionment.

20 (3) The Commissioner of Education shall certify the
21 amount of the apportionment of the temporary school fund as
22 provided in subsection (2) of this section to the Director of
23 Administrative Services. The Director of Administrative Services
24 shall draw a warrant on the State Treasurer in favor of the
25 various districts for the respective amounts so certified by the
26 Commissioner of Education.

27 (4) For purposes of this section, ~~lease~~ agreement

1 means any lease, easement, covenant, or other such contractual
2 arrangement.

3 Sec. 21. Original sections 66-901, 66-902, 66-909,
4 66-910, 66-911.01, 66-912, and 76-3004, Reissue Revised Statutes
5 of Nebraska, sections 72-270, 72-271, 72-272, 72-273, 72-274,
6 77-2704.57, 79-309.01, and 79-1035, Revised Statutes Cumulative
7 Supplement, 2010, and section 76-3001, Revised Statutes Supplement,
8 2011, are repealed.

9 Sec. 22. The following sections are outright repealed:
10 Sections 66-907, 66-909.03, and 66-911, Reissue Revised Statutes of
11 Nebraska.

12 Sec. 23. Since an emergency exists, this act takes effect
13 when passed and approved according to law.

14 2. On page 1, line 2, strike "and 66-912" and insert
15 "66-912, and 76-3004"; in line 12 strike the first "and"; and in
16 line 13 after "Nebraska" insert "; and to declare an emergency".