

AMENDMENTS TO LB824

Introduced by Haar, 21.

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

3           Section 1. Section 70-670, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           70-670 (1) In addition to any other rights and powers hereinabove  
6 conferred upon any district organized under or subject to Chapter 70,  
7 article 6, each such district shall have and exercise the power of  
8 eminent domain to acquire from any person, firm, association, or private  
9 corporation any and all property owned, used, or operated, or useful for  
10 operation, in the generation, transmission, or distribution of electrical  
11 energy, including an existing electric utility system or any part  
12 thereof. The procedure to condemn property shall be exercised in the  
13 manner set forth in Chapter 76, article 7.

14           (2) In the case of the acquisition through the exercise of the power  
15 of eminent domain of an existing electric utility system or part thereof,  
16 the Attorney General shall, upon request of any district, represent such  
17 district in the institution and prosecution of condemnation proceedings.  
18 After acquisition of an existing electric utility system through the  
19 exercise of the power of eminent domain, the district shall reimburse the  
20 state for all costs and expenses incurred in the condemnation proceedings  
21 by the Attorney General.

22           (3) A district may agree to limit its exercise of the power of  
23 eminent domain to acquire a project which is a renewable energy  
24 generation facility producing electricity with wind and any related  
25 facilities.

26           (4) No property owned, used, or operated as part of a privately  
27 developed renewable energy generation facility meeting the requirements

1 of section 70-1014.02 shall be subject to eminent domain by any consumer-  
2 owned electric supplier operating in the State of Nebraska.

3 Sec. 2. Section 70-1001, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

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

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

24 It is also the policy of the state to encourage and allow  
25 opportunities for private developers to develop, own, and operate  
26 renewable energy facilities intended ~~primarily~~ for sale at wholesale  
27 ~~export from the state~~ under a statutory framework which protects the  
28 ratepayers of consumer-owned utility systems operating in the state from  
29 subsidizing the costs of such export facilities through their rates.

30 Sec. 3. Section 70-1001.01, Revised Statutes Cumulative Supplement,  
31 2014, is amended to read:

1           70-1001.01 For purposes of sections 70-1001 to 70-1028 ~~70-1027~~,  
2 unless the context otherwise requires:

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

4           ~~(2) Certified renewable export facility means a facility approved~~  
5 ~~under section 70-1014.02 that (a) will generate electricity using solar,~~  
6 ~~wind, biomass, or landfill gas, (b) will be constructed and owned by an~~  
7 ~~entity other than a municipality, a registered group of municipalities, a~~  
8 ~~public power district, a public power and irrigation district, an~~  
9 ~~electric cooperative, an electric membership association, or any other~~  
10 ~~governmental entity, and (c) has a power purchase or similar agreement or~~  
11 ~~agreements with an initial term of ten years or more for the sale of at~~  
12 ~~least ninety percent of the output of the facility with a customer or~~  
13 ~~customers located outside the State of Nebraska and maintains such an~~  
14 ~~agreement or agreements for the life of the facility. Output sold~~  
15 ~~pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be~~  
16 ~~included when calculating such ninety percent. Certified renewable export~~  
17 ~~facility includes all generating equipment, easements, and~~  
18 ~~interconnection equipment within the facility and connecting the facility~~  
19 ~~to the transmission grid;~~

20           (2) Electric ~~(3) Except as expressly provided in section 70-1014.02,~~  
21 ~~electric suppliers or suppliers of electricity means any legal entity~~  
22 ~~supplying, producing, or distributing electricity within the state for~~  
23 ~~sale at wholesale or retail;~~

24           (3) Private electric supplier means an electric supplier producing  
25 electricity from a privately developed renewable energy generation  
26 facility that is not a public power district, a public power and  
27 irrigation district, a municipality, a registered group of  
28 municipalities, an electric cooperative, an electric membership  
29 association, any other governmental entity, or any combination thereof;

30           (4) Privately developed renewable energy generation facility means a  
31 facility that (a) generates electricity using solar, wind, geothermal,

1 biomass, landfill gas, or biogas, including all electrically connected  
2 equipment used to produce, collect, and store the facility output up to  
3 and including the transformer that steps up the voltage to sixty thousand  
4 volts or greater, and including supporting structures, buildings, and  
5 roads, unless otherwise agreed to in a joint transmission development  
6 agreement, (b) is developed, constructed, and owned, in whole or in part,  
7 by one or more private electric suppliers, and (c) is not wholly owned by  
8 a public power district, a public power and irrigation district, a  
9 municipality, a registered group of municipalities, an electric  
10 cooperative, an electric membership association, any other governmental  
11 entity, or any combination thereof;

12 (5 4) Regional transmission organization means an entity independent  
13 from those entities generating or marketing electricity at wholesale or  
14 retail, which has operational control over the electric transmission  
15 lines in a designated geographic area in order to reduce constraints in  
16 the flow of electricity and ensure that all power suppliers have open  
17 access to transmission lines for the transmission of electricity;

18 (6 5) Representative organization means an organization designated  
19 by the board and organized for the purpose of providing joint planning  
20 and encouraging maximum cooperation and coordination among electric  
21 suppliers. Such organization shall represent electric suppliers owning a  
22 combined electric generation plant capacity of at least ninety percent of  
23 the total electric generation plant capacity constructed and in operation  
24 within the state;

25 (7 6) State means the State of Nebraska; and

26 ~~(7) Stranded asset means a generation or transmission facility owned~~  
27 ~~by an electric supplier as defined in subsection (1) of section~~  
28 ~~70-1014.02 which cannot earn a favorable economic return due to~~  
29 ~~regulatory or legislative actions or changes in the market and, at the~~  
30 ~~time an application is filed with the board under such section, either~~  
31 ~~exists or has been approved by the board or the governing body of an~~

1 ~~electric supplier as defined in such subsection; and~~

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

7 Sec. 4. Section 70-1012, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 70-1012 (1) Before any electric generation facilities or any  
10 transmission lines or related facilities carrying more than seven hundred  
11 volts are constructed or acquired by any supplier, an application, filed  
12 with the board and containing such information as the board shall  
13 prescribe, shall be approved by the board, except that such approval  
14 shall not be required (a 1) for the construction or acquisition of a  
15 transmission line extension or related facilities within a supplier's own  
16 service area or for the construction or acquisition of a line not  
17 exceeding one-half mile outside its own service area when all owners of  
18 electric lines located within one-half mile of the extension consent  
19 thereto in writing and such consents are filed with the board, (b 2) for  
20 any generation facility when the board finds that (i) such : ~~(a)~~ Such  
21 facility is being constructed or acquired to replace a generating plant  
22 owned by an individual municipality or registered group of municipalities  
23 with a capacity not greater than that of the plant being replaced, (ii b)  
24 such facility will generate less than twenty-five thousand kilowatts of  
25 electric energy at rated capacity, and (iii e) the applicant will not use  
26 the plant or transmission capacity to supply wholesale power to customers  
27 outside the applicant's existing retail service area or chartered  
28 territory, (c 3) for acquisition of transmission lines or related  
29 facilities, within the state, carrying one hundred fifteen thousand volts  
30 or less, if the current owner of the transmission lines or related  
31 facilities notifies the board of the lines or facilities involved in the

1 transaction and the parties to the transaction, or (d 4) for the  
2 construction of a qualified facility as defined in section 70-2002.

3 (2) A privately developed renewable energy generation facility is  
4 exempt from this section if it complies with section 70-1014.02.

5 Sec. 5. Section 70-1012.01, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 70-1012.01 (1) If ~~In the event~~ a supplier terminates construction  
8 or acquisition of electric generation or transmission facilities after  
9 receiving approval for the facilities from the board ~~Nebraska Power~~  
10 ~~Review Board~~, the supplier shall file with the board, within thirty days  
11 after ~~of~~ the action taken to terminate construction or acquisition, a  
12 statement of the factors or reasons relied upon by the supplier in taking  
13 such action. Within ten days after receipt of such a filing, the board  
14 shall give notice of the filing to such other suppliers as it deems  
15 interested or affected by such action and it shall hold a hearing for the  
16 purpose of obtaining such additional information as the board deems  
17 advisable or necessary to inform other suppliers and the public of the  
18 reasons for such termination. Notice of any such hearing shall be given  
19 to those suppliers previously given notice of the filing and to any other  
20 parties expressing interest in the approved application.

21 (2) The board shall not have authority to approve or deny the action  
22 of a supplier terminating construction or acquisition, and any such  
23 filing or hearing shall be advisory and solely for the purpose of  
24 informing the board, other suppliers, interested parties, and the  
25 ratepayers of this state of the factors or reasons relied upon in taking  
26 action to terminate construction or acquisition.

27 (3) Nothing in this section shall constitute or be construed as a  
28 defense to any cause of action, including a claim for breach of contract,  
29 resulting from such termination.

30 (4) A privately developed renewable energy generation facility is  
31 exempt from this section if it complies with section 70-1014.02.

1           Sec. 6. Section 70-1013, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3           70-1013 (1) Upon application being filed under section 70-1012, the  
4 board shall fix a time and place for hearing and shall give ten days'  
5 notice by mail to such power suppliers as it deems to be affected by the  
6 application. The hearing shall be held within sixty days unless for good  
7 cause shown the applicant requests in writing that such hearing not be  
8 scheduled until a later time, but in any event such hearing shall be held  
9 not more than one hundred twenty days after the filing of the application  
10 and the board shall give its decision within sixty days after the  
11 conclusion of the hearing. Any parties interested may appear, file  
12 objections, and offer evidence. The board may grant the application  
13 without notice or hearing, upon the filing of such waivers as it may  
14 require, if in its judgment the finding required by section 70-1014 or  
15 70-1014.01 ~~or subdivision (2)(a) of section 70-1014.02~~ can be made  
16 without a hearing. Such hearing shall be conducted as provided in section  
17 70-1006. The board may allow amendments to the application, in the  
18 interests of justice.

19           (2) A privately developed renewable energy generation facility is  
20 exempt from this section if it complies with section 70-1014.02.

21           Sec. 7. Section 70-1014, Revised Statutes Cumulative Supplement,  
22 2014, is amended to read:

23           70-1014 (1) After hearing, the board shall have authority to  
24 approve or deny the application. Except as provided in section 70-1014.01  
25 for special generation applications ~~and except as provided in section~~  
26 ~~70-1014.02~~, before approval of an application, the board shall find that  
27 the application will serve the public convenience and necessity, and that  
28 the applicant can most economically and feasibly supply the electric  
29 service resulting from the proposed construction or acquisition, without  
30 unnecessary duplication of facilities or operations.

31           (2) If the application involves a transmission line or related

1 facilities planned and approved by a regional transmission organization  
2 and the regional transmission organization has issued a notice to  
3 construct or similar notice or order to a utility to construct the line  
4 or related facilities, the board shall also consider information from the  
5 regional transmission organization's planning process and may consider  
6 the benefits to the region, which shall include Nebraska, provided by the  
7 proposed line or related facilities as part of the board's process in  
8 determining whether to approve or deny the application.

9 (3) A privately developed renewable energy generation facility is  
10 exempt from this section if it complies with section 70-1014.02.

11 Sec. 8. Section 70-1014.01, Revised Statutes Cumulative Supplement,  
12 2014, is amended to read:

13 70-1014.01 (1) Except as provided in subsection (2) of this section,  
14 an application by a municipality, a registered group of municipalities, a  
15 public power district, a public power and irrigation district, an  
16 electric cooperative, an electric membership association, or any other  
17 governmental entity, for a facility that will generate not more than ten  
18 thousand kilowatts of electric energy at rated capacity and will generate  
19 electricity using solar, wind, biomass, landfill gas, methane gas, or  
20 hydropower generation technology or an emerging generation technology,  
21 including, but not limited to, fuel cells and micro-turbines, shall be  
22 deemed a special generation application. Such application shall be  
23 approved by the board if the board finds that (a) the application  
24 qualifies as a special generation application, (b) the application will  
25 provide public benefits sufficient to warrant approval of the  
26 application, although it may not constitute the most economically  
27 feasible generation option, and (c) the application under consideration  
28 represents a separate and distinct project from any previous special  
29 generation application the applicant may have filed.

30 (2)(a) An application by a municipality, a registered group of  
31 municipalities, a public power district, a public power and irrigation



1 district, an electric cooperative, an electric membership association, or  
2 any other governmental entity for a facility that will generate more than  
3 ten thousand kilowatts of electric energy at rated capacity and will  
4 generate electricity using renewable energy sources such as solar, wind,  
5 biomass, landfill gas, methane gas, or new hydropower generation  
6 technology or an emerging technology, including, but not limited to, fuel  
7 cells and micro-turbines, may be filed with the board if (i) the total  
8 production from all such renewable projects, excluding sales from such  
9 projects to other electric-generating entities, does not exceed ten  
10 percent of total energy sales as shown in the producer's Annual Electric  
11 Power Industry Report to the United States Department of Energy and (ii)  
12 the applicant's governing body conducts at least one advertised public  
13 hearing which affords the ratepayers of the applicant a chance to review  
14 and comment on the subject of the application.

15 (b) The application filed under subdivision (2)(a) of this section  
16 shall be approved by the board if the board finds that (i) the applicant  
17 is using renewable energy sources described in this subsection, (ii)  
18 total production from all renewable projects of the applicant does not  
19 exceed ten percent of the producer's total energy sales as described in  
20 subdivision (2)(a) of this section, and (iii) the applicant's governing  
21 body has conducted at least one advertised public hearing which affords  
22 its ratepayers a chance to review and comment on the subject of the  
23 application.

24 (3)(a) A community-based energy development project organized  
25 pursuant to the Rural Community-Based Energy Development Act or any  
26 privately developed project which intends to develop renewable energy  
27 sources for sale to one or more Nebraska electric utilities described in  
28 this section may also make an application to the board pursuant to this  
29 subsection if (i) the purchasing electric utilities conduct a public  
30 hearing described in subdivision (2)(a) of this section, (ii) the power  
31 and energy from the renewable energy sources is sold exclusively to such

1 electric utilities for a term of at least twenty years, and (iii) the  
2 total production from all such renewable projects, excluding sales from  
3 such projects to other electric-generation entities, does not exceed ten  
4 percent of total energy sales of such purchasing electric utilities as  
5 shown in such utilities' Annual Electric Power Industry Report to the  
6 United States Department of Energy or the successor to such report.

7 (b) The application filed under subdivision (3)(a) of this section  
8 shall be approved by the board if the board finds that the purchasing  
9 electric utilities have met the conditions described in subdivision (3)  
10 (a) of this section.

11 (4) No facility or part of a facility which is approved pursuant to  
12 this section is subject to eminent domain by any electric supplier, or by  
13 any other entity if the purpose of the eminent domain proceeding is to  
14 acquire the facility for electric generation or transmission.

15 (5) A privately developed renewable energy generation facility is  
16 exempt from this section if it complies with section 70-1014.02.

17 Sec. 9. Section 70-1014.02, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

19 70-1014.02 ~~(1) For purposes of this section:~~

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

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

27 (ii) Certifies to the board that the facility will meet the  
28 requirements for a privately developed renewable energy generation  
29 facility;

30 (iii) Certifies to the board that the private electric supplier will  
31 (A) comply with any decommissioning requirements adopted by the local

1 governmental entities having jurisdiction over the privately developed  
2 renewable energy generation facility and (B) except as otherwise provided  
3 in subdivision (b) of this subsection, submit a decommissioning plan to  
4 the board obligating the private electric supplier to bear all costs of  
5 decommissioning the privately developed renewable energy generation  
6 facility and requiring that the private electric supplier post a security  
7 bond or other instrument, no later than the tenth year following  
8 commercial operation, securing the costs of decommissioning the facility  
9 and provide a copy of the bond or instrument to the board;

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

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

22 (b) The board may bring an action in the name of the State of  
23 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
24 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if  
25 a local government entity with the authority to create requirements for  
26 decommissioning has enacted decommissioning requirements for the  
27 applicable jurisdiction.

28 (c) The joint transmission development agreement shall address  
29 construction, ownership, operation, and maintenance of such additions or  
30 upgrades to the transmission facilities as required for the privately  
31 developed renewable energy generation facility. The joint transmission

1 development agreement shall be negotiated and executed contemporaneously  
2 with the generator interconnection agreement or other directives of the  
3 applicable regional transmission organization with jurisdiction over the  
4 addition or upgrade of transmission, upon terms consistent with prudent  
5 electric utility practices for the interconnection of renewable  
6 generation facilities, the electric supplier's reasonable transmission  
7 interconnection requirements, and applicable transmission design and  
8 construction standards. The electric supplier shall have the right to  
9 purchase and own transmission facilities as set forth in the joint  
10 transmission development agreement. The private electric supplier of the  
11 privately developed renewable energy generation facility shall have the  
12 right to construct any necessary facilities or improvements set forth in  
13 the joint transmission development agreement pursuant to the standards  
14 set forth in the agreement at the private electric supplier's cost.

15 (2) Within ten days after receipt of a written notice complying with  
16 subsection (1) of this section, the executive director of the board shall  
17 issue a written acknowledgement that the privately developed renewable  
18 energy generation facility is exempt from sections 70-1012 to 70-1014.01.

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

24 (4) No property owned, used, or operated as part of a privately  
25 developed renewable energy generation facility shall be subject to  
26 eminent domain by a consumer-owned electric supplier operating in the  
27 State of Nebraska. Nothing in this section shall be construed to grant  
28 the power of eminent domain to a private electric supplier or limit the  
29 rights of any entity to acquire any public, municipal, or utility right-  
30 of-way across property owned, used, or operated as part of a privately  
31 developed renewable energy generation facility as long as the right-of-

1 way does not prevent the operation of or access to the privately  
2 developed renewable energy generation facility.

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

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

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

17 ~~(a) Electric supplier means a public power district, a public power~~  
18 ~~and irrigation district, an individual municipality, a registered group~~  
19 ~~of municipalities, an electric membership association, or a cooperative;~~  
20 ~~and~~

21 ~~(b) Electric supplier does not have the same meaning as in section~~  
22 ~~70-1001.01.~~

23 ~~(2)(a) The board shall conditionally approve an application for a~~  
24 ~~certified renewable export facility if it finds that only the criteria~~  
25 ~~described in subdivisions (a)(i) through (iv) of this subsection are met:~~  
26 ~~(i) The facility will provide reasonably identifiable and quantifiable~~  
27 ~~public benefits, including economic development, to the residents of~~  
28 ~~Nebraska or the local area where the facility will be located; (ii) the~~  
29 ~~facility meets the requirements of subdivisions (2)(a) and (b) of section~~  
30 ~~70-1001.01; (iii) the facility has a memorandum of understanding or other~~  
31 ~~written evidence of mutual intent to negotiate a power purchase agreement~~

1 ~~or agreements with a purchaser or purchasers outside the State of~~  
2 ~~Nebraska for at least ninety percent of the output of the facility for~~  
3 ~~ten years or more; and (iv) the applicant offers electric suppliers~~  
4 ~~serving loads greater than fifty megawatts at the time the initial~~  
5 ~~application is filed an option to purchase in the aggregate an amount of~~  
6 ~~power up to ten percent of the output of any facility with greater than~~  
7 ~~eighty megawatts of nameplate capacity contingent upon the applicant and~~  
8 ~~electric suppliers negotiating in good faith a power purchase agreement~~  
9 ~~and any other necessary agreements. Such electric suppliers shall be~~  
10 ~~entitled to a minimum of their pro rata share based on the load ratio~~  
11 ~~share of Nebraska electric load served among those electric suppliers~~  
12 ~~eligible under this subdivision (iv). If an electric supplier declines to~~  
13 ~~contract for some or all of its pro rata share, the remaining eligible~~  
14 ~~electric suppliers may share the balance on a pro rata basis. The ten~~  
15 ~~percent may be above the total generation amount proposed in the~~  
16 ~~application for a certified renewable export facility and shall require~~  
17 ~~no separate approval by the board. Any transmission studies, additions,~~  
18 ~~or upgrades due to participation by electric suppliers serving loads~~  
19 ~~greater than fifty megawatts shall be the responsibility of the~~  
20 ~~participating electric supplier. Upon receiving the initial application~~  
21 ~~under this section, the board shall notify electric suppliers identified~~  
22 ~~in this subdivision (iv) of a pending application with a nameplate~~  
23 ~~capacity greater than eighty megawatts. Such suppliers shall have forty-~~  
24 ~~five days following the date of the board's notice to notify the~~  
25 ~~applicant of an interest in exercising the option to purchase power,~~  
26 ~~except that such suppliers may withdraw their option to purchase power~~  
27 ~~once the costs of the transmission additions and upgrades are determined.~~  
28 ~~Electric suppliers withdrawing their option to purchase power are~~  
29 ~~responsible for their pro rata share of any costs resulting from their~~  
30 ~~participation in and withdrawal from the generation interconnection and~~  
31 ~~transmission delivery studies.~~

1           ~~(b) Following the board's conditional approval of an application~~  
2 ~~under subdivision (a) of this subsection, the applicant shall notify the~~  
3 ~~board within eighteen months that it is prepared to proceed to~~  
4 ~~consideration of the criteria in subdivision (c) of this subsection. The~~  
5 ~~board may extend such eighteen-month deadline not more than twelve~~  
6 ~~additional months for good cause shown. If the applicant fails to notify~~  
7 ~~the board within such time that it is so prepared, the conditional~~  
8 ~~approval granted under this subdivision is void.~~

9           ~~(c) Upon finding that the criteria described in subdivisions (c)(i)~~  
10 ~~through (viii) of this subsection have also been met by the applicant and~~  
11 ~~after the board has fulfilled the requirements of subsection (3) of~~  
12 ~~section 37-807, the board shall grant final approval of an application~~  
13 ~~for a certified renewable export facility:~~

14           ~~(i) The facility will not have a materially detrimental effect on~~  
15 ~~the retail electric rates paid by any Nebraska ratepayers, except that,~~  
16 ~~notwithstanding subdivisions (c)(v) and (vi) of this subsection, the~~  
17 ~~determination of a materially detrimental effect on rates shall not~~  
18 ~~include regional transmission improvements dictated by a regional~~  
19 ~~transmission operator or transmission improvements required due to~~  
20 ~~participation by an eligible entity pursuant to subdivision (2)(a)(iv) of~~  
21 ~~this section;~~

22           ~~(ii) The applicant has obtained the necessary generation~~  
23 ~~interconnection and transmission service approvals from and has executed~~  
24 ~~agreements for such generation interconnection and transmission service~~  
25 ~~with the appropriate regional transmission organization, transmission~~  
26 ~~owner, or transmission provider;~~

27           ~~(iii) There has been no demonstration that the proposed facility~~  
28 ~~will result in a substantial risk of creating stranded assets;~~

29           ~~(iv) The applicant has certified that it has applied for and is~~  
30 ~~actively pursuing the required approvals from any other federal, state,~~  
31 ~~or local entities with jurisdiction or permitting authority over the~~

1 ~~certified renewable export facility;~~

2 ~~(v) The applicant and the electric supplier owning the transmission~~  
3 ~~facilities to which the certified renewable export facility will be~~  
4 ~~interconnected, along with any electric supplier which owns transmission~~  
5 ~~facilities of one hundred fifteen thousand volts or more and is required~~  
6 ~~to receive notice pursuant to section 70-1013, have entered into a joint~~  
7 ~~transmission development agreement on reasonable terms and conditions~~  
8 ~~consistent with and subject to the notice to construct or other~~  
9 ~~directives of any regional transmission organization with jurisdiction~~  
10 ~~over the addition or upgrade to transmission facilities or, for any~~  
11 ~~electric supplier that is not a member of a regional transmission~~  
12 ~~organization with which the facility will interconnect, covers the~~  
13 ~~addition or upgrade to transmission facilities required as a result of~~  
14 ~~the certified renewable export facility. Such joint transmission~~  
15 ~~development agreement shall include provisions addressing construction,~~  
16 ~~ownership, operation, and maintenance of such additions or upgrades to~~  
17 ~~transmission facilities. The electric supplier or suppliers shall have~~  
18 ~~the right to purchase and own transmission facilities as set forth in the~~  
19 ~~joint transmission development agreement;~~

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

31 ~~(vii) The applicant shall submit a decommissioning plan. The~~



1 ~~applicant or owner of the facility shall establish decommissioning~~  
2 ~~security by posting an instrument, a copy of which is given to the board,~~  
3 ~~no later than the tenth year following final approval of the facility to~~  
4 ~~ensure sufficient funding is available for removal of the facility and~~  
5 ~~reclamation at the end of the useful life of such facility pursuant to~~  
6 ~~the decommissioning plan. The owner of the certified renewable export~~  
7 ~~facility shall be solely responsible for decommissioning. If the~~  
8 ~~applicant or any subsequent owner of the facility intends to transfer~~  
9 ~~ownership of the facility, the proposed new owner shall provide the board~~  
10 ~~with adequate evidence demonstrating that substitute decommissioning~~  
11 ~~security has been posted or given prior to transfer of ownership. The~~  
12 ~~requirements of this subdivision (vii) shall be waived if a local~~  
13 ~~governmental entity with authority to create requirements for~~  
14 ~~decommissioning has enacted decommissioning requirements for the~~  
15 ~~applicable jurisdiction; and~~

16 ~~(viii) The facility meets the requirements of subdivisions (2)(a)~~  
17 ~~through (c) of section 70-1001.01.~~

18 ~~(3) If the applicant does not commence construction of the certified~~  
19 ~~renewable export facility within eighteen months after receiving final~~  
20 ~~approval from the board under subsection (2) of this section, the~~  
21 ~~approval is void. Upon written request filed by the applicant, the board~~  
22 ~~may, for good cause shown, extend the time period during which an~~  
23 ~~approval will remain valid. Good cause includes, but is not limited to,~~  
24 ~~national or regional economic conditions, lack of transmission~~  
25 ~~infrastructure, or an applicant's inability to obtain authorization from~~  
26 ~~other required governmental regulatory authorities despite the~~  
27 ~~applicant's exercise of a good-faith effort to obtain such approvals.~~

28 ~~(4) The applicant shall remit an application fee of five thousand~~  
29 ~~dollars with the application. The fee shall be remitted to the State~~  
30 ~~Treasurer for credit to the Nebraska Power Review Fund. The board shall~~  
31 ~~use the application fee to defray the board's reasonable expenses~~

1 ~~associated with reviewing and acting upon the application, including the~~  
2 ~~costs of the hearing. If the board incurs expenses of more than five~~  
3 ~~thousand dollars associated with the application, the board shall provide~~  
4 ~~written notification to the applicant of the additional sum needed or~~  
5 ~~already expended, after which the applicant shall promptly submit an~~  
6 ~~additional sum sufficient to cover the board's anticipated or incurred~~  
7 ~~expenses or shall file an objection with the board. If, after completion~~  
8 ~~of the application process and any subsequent legal action, including~~  
9 ~~appeal of the board's decision, the board's expenses associated with~~  
10 ~~processing and acting upon the application do not equal the amount~~  
11 ~~submitted by the applicant, the board shall return the unused funds to~~  
12 ~~the applicant if the amount is fifty dollars or more. The applicant shall~~  
13 ~~reimburse the board for any reasonable expenses the board incurs as a~~  
14 ~~result of an appeal of the board's decision or shall file an objection~~  
15 ~~with the board. The board shall rule on any objection brought pursuant to~~  
16 ~~this subsection within thirty days. The applicant may request a hearing~~  
17 ~~on its objection, in which case the board shall hold such hearing within~~  
18 ~~thirty days after the request and shall rule within forty-five days after~~  
19 ~~the hearing.~~

20 ~~(5) No facility or part of a facility which is a certified renewable~~  
21 ~~export facility is subject to eminent domain by an electric supplier or~~  
22 ~~by any other entity if the purpose of the eminent domain proceeding is to~~  
23 ~~acquire the facility for electric generation or transmission.~~

24 ~~(6) Except as provided in subsection (5) of this section, only an~~  
25 ~~electric supplier may exercise its eminent domain authority to acquire~~  
26 ~~the land rights necessary for the construction of transmission lines and~~  
27 ~~related facilities to provide transmission services for a certified~~  
28 ~~renewable export facility. The exercise of eminent domain to provide~~  
29 ~~needed transmission lines and related facilities for a certified~~  
30 ~~renewable export facility is a public use. Nothing in this section shall~~  
31 ~~be construed to grant the power of eminent domain to a private entity.~~

1           ~~(7) If any transmission facilities serving a certified renewable~~  
2 ~~export facility are proposed to cross the service area of any electric~~  
3 ~~supplier which owns transmission facilities of one hundred fifteen~~  
4 ~~thousand volts or more and is required to receive notice pursuant to~~  
5 ~~section 70-1013, then such electric supplier may elect to be a party to a~~  
6 ~~joint transmission development agreement for such transmission~~  
7 ~~facilities.~~

8           ~~(8) If a certified renewable export facility no longer meets the~~  
9 ~~requirements of subdivisions (2)(a) through (c) of section 70-1001.01,~~  
10 ~~the owner of the facility shall notify the board. An electric supplier or~~  
11 ~~a governmental entity with regulatory jurisdiction over the certified~~  
12 ~~renewable export facility may apply to the board or the board may file~~  
13 ~~its own motion to have the certification of a certified renewable export~~  
14 ~~facility revoked upon a showing by the applicant for decertification that~~  
15 ~~the facility no longer meets the requirements of such subdivisions. Upon~~  
16 ~~the filing of such application and making of a prima facie showing by the~~  
17 ~~applicant for decertification that the facility no longer meets the~~  
18 ~~requirements of such subdivisions, the board shall set the matter for~~  
19 ~~hearing. The hearing shall be held within forty-five days unless an~~  
20 ~~extension is necessary for good cause shown. The applicant for~~  
21 ~~decertification shall have the burden of proof. Within forty-five days~~  
22 ~~after the conclusion of the hearing, the board shall enter an order to~~  
23 ~~either reaffirm the facility's status as a certified renewable export~~  
24 ~~facility or to revoke the certification. During the pendency of the~~  
25 ~~application for decertification and before the board's final order on~~  
26 ~~decertification, the facility may continue to operate if the electricity~~  
27 ~~generated at the facility is sold to customers outside the State of~~  
28 ~~Nebraska, or to an electric supplier pursuant to a power purchase~~  
29 ~~agreement or similar agreement. The board shall retain jurisdiction over~~  
30 ~~the decertification action for at least thirty days after entry of such~~  
31 ~~an order. Within thirty days after a final order revoking certification,~~

1 ~~the owner of the facility may apply for recertification, with the time~~  
2 ~~period for recertification being no longer than one year unless the board~~  
3 ~~extends the time period for good cause shown. Such application for~~  
4 ~~recertification shall extend the board's jurisdiction over the~~  
5 ~~decertification action until the board completes its review of the~~  
6 ~~application for recertification and enters an order granting or denying~~  
7 ~~the application. If the applicant for recertification demonstrates to the~~  
8 ~~board that it is working diligently and in good faith to restore its~~  
9 ~~compliance with subdivisions (2)(a) through (c) of section 70-1001.01,~~  
10 ~~the board shall not terminate the application for recertification. During~~  
11 ~~the pendency of the application for recertification and before the~~  
12 ~~board's final order on recertification, the facility may continue to~~  
13 ~~operate if the electricity generated at the facility is sold to customers~~  
14 ~~outside the state, or to an electric supplier pursuant to a power~~  
15 ~~purchase agreement or similar agreement. If the board retains~~  
16 ~~jurisdiction over the decertification action, the prohibition on eminent~~  
17 ~~domain set forth in subsection (5) of this section shall remain in full~~  
18 ~~force and effect. If the board enters an order decertifying a certified~~  
19 ~~renewable export facility and such order becomes final due to a failure~~  
20 ~~to timely seek recertification or judicial review, the prohibition on~~  
21 ~~eminent domain set forth in subsection (5) of this section shall no~~  
22 ~~longer apply. Nothing in this section shall prohibit a decertified~~  
23 ~~facility from being recertified in the same manner as a new facility.~~

24       Sec. 10. Section 70-1015, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26       70-1015 ~~(1)~~ If any supplier violates Chapter 70, article 10, by  
27 either (1) commencing the construction or finalizing or attempting  
28 commences the construction or finalizes or attempts to finalize the  
29 acquisition of any generation facilities, any transmission lines, or any  
30 related facilities without first providing notice or obtaining board  
31 approval, whichever is required, or (2) serving or attempting to serve at

1 ~~retail any customers located in Nebraska or any wholesale customers in~~  
2 ~~violation of section 70-1002.02, or any customers are served in violation~~  
3 ~~of the provisions of Chapter 70, article 10, such construction,~~  
4 acquisition, or service of such customers shall be enjoined in an action  
5 brought in the name of the State of Nebraska until such supplier has  
6 complied with the provisions of Chapter 70, article 10.

7 (2) ~~If any person owning or operating a certified renewable export~~  
8 ~~facility violates any provision of Chapter 70, article 10, or violates or~~  
9 ~~disobeys any requirement imposed by the board pursuant to the board's~~  
10 ~~jurisdiction established in section 70-1014.02 or the board enters an~~  
11 ~~order decertifying the facility and the order becomes final, further~~  
12 ~~operation of the facility may be enjoined or otherwise limited or have~~  
13 ~~conditions put upon it in an action brought in the name of the State of~~  
14 ~~Nebraska until such person rectifies the violation or disobedience of the~~  
15 ~~order or the facility becomes recertified.~~

16 Sec. 11. Section 70-1028, Revised Statutes Cumulative Supplement,  
17 2014, is amended to read:

18 70-1028 (1) If an electric transmission line has been approved for  
19 construction in a regional transmission organization transmission plan,  
20 the incumbent electric transmission owner of the existing electric  
21 transmission facilities to which the electric transmission line will  
22 connect shall give notice to the board ~~Nebraska Power Review Board~~, in  
23 writing, within ninety days after such approval, if it intends to  
24 construct, own, and maintain the electric transmission line. If no notice  
25 is provided, the incumbent electric transmission owner shall surrender  
26 its first right to construct, own, and maintain the electric transmission  
27 line and any other incumbent electric transmission owner may file an  
28 application for the electric transmission line under section 70-1012.  
29 Within twenty-four months after such notice, the incumbent electric  
30 transmission owner shall file an application with the board pursuant to  
31 section 70-1012.

1 (2) For purposes of this section:

2 (a) Electric transmission line means any line and related facilities  
3 connecting to existing electric transmission facilities for transmitting  
4 electric energy at a voltage of one hundred kilovolts or greater, other  
5 than a line solely for connecting an electric generation facility to  
6 facilities owned by an electric supplier; and

7 (b) Incumbent ~~incumbent~~ electric transmission owner means an entity  
8 that: (i) Is an electric supplier; (ii) is a member of a regional  
9 transmission organization; and (iii) owns and operates electric  
10 transmission lines at a voltage of one hundred kilovolts or greater; ~~and~~  
11 ~~(c) regional transmission organization has the meaning provided in~~  
12 ~~section 70-1001.01.~~

13 Sec. 12. Section 70-1903, Revised Statutes Supplement, 2015, is  
14 amended to read:

15 70-1903 For purposes of the Rural Community-Based Energy Development  
16 Act:

17 (1) C-BED project or community-based energy development project  
18 means a new energy generation project using wind, solar, biomass, or  
19 landfill gas as the fuel source that:

20 (a) Has at least twenty-five percent of the gross power purchase  
21 agreement payments flowing to the qualified owner or owners or as  
22 payments to the local community; and

23 (b) Has a resolution of support or zoning approval adopted:

24 (i) By the county board of each county in which the C-BED project is  
25 to be located and which has adopted zoning regulations that require  
26 planning commission, county board, or county commission approval for the  
27 C-BED project; or

28 (ii) By the tribal council for a C-BED project located within the  
29 boundaries of an Indian reservation;

30 (2) Electric utility means an electric supplier that:

31 (a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt

1 or larger transmission lines in the State of Nebraska;

2 (b) Owns more than two hundred megawatts of electric generating  
3 facilities; and

4 (c) Has the obligation to directly serve more than two hundred  
5 megawatts of wholesale or retail electric load in the State of Nebraska;

6 (3) Gross power purchase agreement payments means the total amount  
7 of payments during the first twenty years of the agreement;

8 (4) Payments to the local community include, but are not limited to:

9 (a) Lease and easement payments to property owners made as part of a  
10 C-BED project;

11 (b) Contract payments for concrete, steel, gravel, towers, turbines,  
12 blades, wire, or engineering, procurement, construction, geotechnical,  
13 environmental, meteorological, or legal services or payments for other  
14 components, equipment, materials, or services that are necessary to  
15 permit or construct the C-BED project and that are provided by a company  
16 that has been organized or incorporated in Nebraska under Nebraska law  
17 and has employed at least five Nebraska residents for at least eighteen  
18 months prior to the date of the project application for certification as  
19 a C-BED project; and

20 (c) Payments that are for physical parts, materials, or components  
21 that are manufactured, assembled, or fabricated in Nebraska and that are  
22 not described in subdivision (a) or (b) of this subdivision.

23 Such payments need not be made directly from power purchase  
24 agreement revenue and may be made from other funds in advance of  
25 receiving power purchase agreement revenue; and

26 (5) Qualified owner means:

27 (a) A Nebraska resident;

28 (b) A limited liability company that is organized under the Nebraska  
29 Uniform Limited Liability Company Act and that is made up of members who  
30 are Nebraska residents;

31 (c) A Nebraska nonprofit corporation organized under the Nebraska

1 Nonprofit Corporation Act;

2 (d) A public power district, a public power and irrigation district,  
3 a municipality, a registered group of municipalities, an electric  
4 cooperative, or an electric membership association ~~An electric supplier~~  
5 ~~as defined in section 70-1014.02~~, except that qualified ownership in a  
6 single C-BED project is limited to no more than:

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

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

11 (e) A tribal council;

12 (f) A domestic corporation organized in Nebraska under the Nebraska  
13 Model Business Corporation Act and domiciled in Nebraska; or

14 (g) A cooperative corporation organized under sections 21-1301 to  
15 21-1306 and domiciled in Nebraska.

16 Sec. 13. Section 77-6203, Revised Statutes Supplement, 2015, is  
17 amended to read:

18 77-6203 (1) The owner of a renewable energy generation facility  
19 annually shall pay a nameplate capacity tax equal to the total nameplate  
20 capacity of the commissioned renewable energy generation facility  
21 multiplied by a tax rate of three thousand five hundred eighteen dollars  
22 per megawatt.

23 (2) No tax shall be imposed on a renewable energy generation  
24 facility:

25 (a) Owned or operated by the federal government, the State of  
26 Nebraska, a public power district, a public power and irrigation  
27 district, an individual municipality, a registered group of  
28 municipalities, an electric membership association, or a cooperative; or

29 (b) That is a customer-generator as defined in section 70-2002.

30 (3) No tax levied pursuant to this section shall be construed to  
31 constitute restricted funds as defined in section 13-518 for the first



1 five years after the renewable energy generation facility is  
2 commissioned.

3 (4) The presence of one or more renewable energy generation  
4 facilities or supporting infrastructure shall not be a factor in the  
5 assessment, determination of actual value, or classification under  
6 section 77-201 of the real property underlying or adjacent to such  
7 facilities or infrastructure.

8 (5)(a) The Department of Revenue shall collect the tax due under  
9 this section.

10 (b) The tax shall be imposed beginning the first calendar year the  
11 renewable energy generation facility is commissioned. A renewable energy  
12 generation facility that uses wind as the fuel source which was  
13 commissioned prior to July 15, 2010, shall be subject to the tax levied  
14 pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The  
15 amount of property tax on depreciable tangible personal property  
16 previously paid on a renewable energy generation facility that uses wind  
17 as the fuel source which was commissioned prior to July 15, 2010, which  
18 is greater than the amount that would have been paid pursuant to sections  
19 77-6201 to 77-6204 from the date of commissioning until January 1, 2010,  
20 shall be credited against any tax due under Chapter 77, and any amount so  
21 credited that is unused in any tax year shall be carried over to  
22 subsequent tax years until fully utilized.

23 (c)(i) The tax for the first calendar year shall be prorated based  
24 upon the number of days remaining in the calendar year after the  
25 renewable energy generation facility is commissioned.

26 (ii) In the first year in which a renewable energy generation  
27 facility is taxed or in any year in which additional commissioned  
28 nameplate capacity is added to a renewable energy generation facility,  
29 the taxes on the initial or additional nameplate capacity shall be  
30 prorated for the number of days remaining in the calendar year.

31 (iii) When a renewable energy generation facility is decommissioned

1 or made nonoperational by a change in law ~~or decertification from its~~  
2 ~~status as a certified renewable export facility~~ during a tax year, the  
3 taxes shall be prorated for the number of days during which the renewable  
4 energy generation facility was not decommissioned or was operational.

5 (iv) When the capacity of a renewable energy generation facility to  
6 produce electricity is reduced but the renewable energy generation  
7 facility is not decommissioned, the nameplate capacity of the renewable  
8 energy generation facility is deemed to be unchanged.

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

17 (b) The owner of a renewable energy generation facility is liable  
18 for the taxes under this section with respect to the facility, whether or  
19 not the owner of the facility is the owner of the land on which the  
20 facility is situated.

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

27 (8) The Department of Revenue shall enforce the provisions of this  
28 section. The department shall adopt and promulgate rules and regulations  
29 necessary for the implementation and enforcement of this section.

30 (9) The Department of Revenue shall separately identify the proceeds  
31 from the tax imposed by this section and shall pay all such proceeds over

1 to the county treasurer of the county where the renewable energy  
2 generation facility is located within thirty days after receipt of such  
3 proceeds.

4 Sec. 14. Original sections 70-670, 70-1012, and 70-1012.01, Reissue  
5 Revised Statutes of Nebraska, sections 70-1001, 70-1001.01, 70-1013,  
6 70-1014, 70-1014.01, 70-1014.02, 70-1015, and 70-1028, Revised Statutes  
7 Cumulative Supplement, 2014, and sections 70-1903 and 77-6203, Revised  
8 Statutes Supplement, 2015, are repealed.