

E AND R AMENDMENTS TO LB 399

Introduced by Ballard, 21, Chairman Enrollment and Review

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

3 Section 1. Section 70-1001.01, Revised Statutes Supplement, 2023, is
4 amended to read:

5 70-1001.01 For purposes of sections 70-1001 to 70-1028, unless the
6 context otherwise requires:

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

8 (2) Electric supplier or supplier of electricity means any legal
9 entity supplying, producing, or distributing electricity within the state
10 for sale at wholesale or retail;

11 (3) Private electric supplier means an electric supplier producing
12 electricity from a privately developed renewable energy generation
13 facility that is not a public power district, a public power and
14 irrigation district, a municipality, a registered group of
15 municipalities, an electric cooperative, an electric membership
16 association, any other governmental entity, or any combination thereof. A
17 private electric supplier is limited to the development of those
18 facilities as provided in subdivision (4) of this section;

19 (4) Privately developed renewable energy generation facility means
20 and is limited to a facility that (a) generates electricity using solar,
21 wind, geothermal, biomass, landfill gas, or biogas, including all
22 electrically connected equipment used to produce, collect, and store the
23 facility output up to and including the transformer that steps up the
24 voltage to sixty thousand volts or greater, and including supporting
25 structures, buildings, and roads, unless otherwise agreed to in a joint
26 transmission development agreement, (b) is developed, constructed, and
27 owned, in whole or in part, by one or more private electric suppliers,

1 and (c) is not wholly owned by a public power district, a public power
2 and irrigation district, a municipality, a registered group of
3 municipalities, an electric cooperative, an electric membership
4 association, any other governmental entity, or any combination thereof;

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

11 (6) Reliable or reliability means the ability of an electric
12 supplier to supply the aggregate electric power and energy requirements
13 of its electricity consumers in Nebraska at all times under normal
14 operating conditions, taking into account scheduled and unscheduled
15 outages, including sudden disturbances or unanticipated loss of system
16 components that are to be reasonably expected for any electric utility
17 following prudent utility practices, recognizing certain weather
18 conditions and other contingencies may cause outages at the distribution,
19 transmission, and generation level;

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

27 (8) State means the State of Nebraska; and

28 (9) Unbundled retail rates means the separation of utility bills
29 into the individual price components for which an electric supplier
30 charges its retail customers, including, but not limited to, the separate
31 charges for the generation, transmission, and distribution of

1 electricity.

2 Sec. 2. Section 70-1014, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 70-1014 (1) After hearing, the board shall have authority to approve
5 or deny the application. Except as provided in section 70-1014.01 for
6 special generation applications, before approval of an application, the
7 board shall find that:

8 (a) The ~~the~~ application will serve the public convenience and
9 necessity, and that the applicant can most economically and feasibly
10 supply the electric service resulting from the proposed construction or
11 acquisition, without unnecessary duplication of facilities or operations;
12 and -

13 (b)(i) For any proposed electric generation facility that has a
14 generating capacity that is greater than ten megawatts, the applicant has
15 held at least one public meeting with advanced publicized notice in one
16 of the counties in which the proposed facility will be located at which
17 (A) at least fifty percent of the governing body of the electric supplier
18 attends either in person or by videoconference, but with not less than
19 one member of the governing body physically present, (B) the applicant
20 explains the need for the proposed facility and the type of facility, and
21 (C) real property owners in any of the counties in which the proposed
22 facility will be located are provided an opportunity to comment on the
23 proposed facility. The applicant shall provide a report to the board
24 containing the minutes of any such meeting and how many people commented
25 on the proposed facility. Documentation received at any such meeting
26 shall be made available to the board upon its request. A meeting
27 described in this subdivision is not subject to the requirements
28 described in subdivision (2)(b)(iv) of section 84-1411.

29 (ii) This subdivision (b) shall not apply if the proposed facility
30 will be located on real property owned by the applicant at the time of
31 application.

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

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

12 Sec. 3. Section 70-1014.02, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 70-1014.02 (1) The Legislature finds that:

15 (a) Nebraska has the authority as a sovereign state to protect its
16 land, natural resources, and cultural resources for economic and
17 aesthetic purposes for the benefit of its residents and future
18 generations by regulation of energy generation projects;

19 (b) The unique terrain and ecology of the Nebraska Sandhills provide
20 an irreplaceable habitat for millions of migratory birds and other
21 wildlife every year and serve as the home to numerous ranchers and
22 farmers;

23 (c) The grasslands of the Nebraska Sandhills and other natural
24 resources in Nebraska will become increasingly valuable, both
25 economically and strategically, as the demand for food and energy
26 increases; and

27 (d) The Nebraska Sandhills are home to priceless archaeological
28 sites of historical and cultural significance to American Indians.

29 (2)(a) A privately developed renewable energy generation facility
30 that meets the requirements of this section is exempt from sections
31 70-1012 to 70-1014.01 if, no less than thirty days prior to the

1 commencement of construction, the owner of the facility:

2 (i) Notifies the board in writing of its intent to commence
3 construction of a privately developed renewable energy generation
4 facility;

5 (ii) Certifies to the board that the facility will meet the
6 requirements for a privately developed renewable energy generation
7 facility;

8 (iii) Certifies to the board that the private electric supplier will
9 (A) comply with any decommissioning requirements adopted by the local
10 governmental entities having jurisdiction over the privately developed
11 renewable energy generation facility and (B) except as otherwise provided
12 in subdivision (b) of this subsection, submit a decommissioning plan to
13 the board obligating the private electric supplier to bear all costs of
14 decommissioning the privately developed renewable energy generation
15 facility and requiring that the private electric supplier post a security
16 bond or other instrument, no later than the sixth ~~tenth~~ year following
17 commercial operation, securing the costs of decommissioning the facility
18 and provide a copy of the bond or instrument to the board;

19 (iv) Certifies to the board that the private electric supplier has
20 entered into or prior to commencing construction will enter into a joint
21 transmission development agreement pursuant to subdivision (c) of this
22 subsection with the electric supplier owning the transmission facilities
23 of sixty thousand volts or greater to which the privately developed
24 renewable energy generation facility will interconnect; ~~and~~

25 (v) Certifies to the board that the private electric supplier has
26 consulted with the Game and Parks Commission to identify potential
27 measures to avoid, minimize, and mitigate impacts to species identified
28 under subsection (1) or (2) of section 37-806 during the project planning
29 and design phases, if possible, but in no event later than the
30 commencement of construction; and -

31 (vi) For a proposed privately developed renewable energy generation

1 facility that has a generating capacity that is greater than ten
2 megawatts, certifies to the board that the private electric supplier has
3 held at least one public meeting with advanced publicized notice in one
4 of the counties in which the proposed facility will be located at which
5 (A) the private electric supplier explains the need for the proposed
6 facility and the type of facility and (B) real property owners in any of
7 the counties in which the proposed facility will be located are provided
8 an opportunity to comment on the proposed facility. The private electric
9 supplier shall provide a report to the board containing the minutes of
10 any such meeting and how many people commented on the proposed facility.
11 Documentation received at any such meeting shall be made available to the
12 board upon its request. A meeting described in this subdivision is not
13 subject to the requirements described in subdivision (2)(b)(iv) of
14 section 84-1411.

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

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

1 applicable transmission design and construction standards. The electric
2 supplier shall have the right to purchase and own transmission facilities
3 as set forth in the joint transmission development agreement. The private
4 electric supplier of the privately developed renewable energy generation
5 facility shall have the right to construct any necessary facilities or
6 improvements set forth in the joint transmission development agreement
7 pursuant to the standards set forth in the agreement at the private
8 electric supplier's cost.

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

15 (4) The exemption allowed under this section for a privately
16 developed renewable energy generation facility shall extend to and exempt
17 all private electric suppliers owning any interest in the facility,
18 including any successor private electric supplier which subsequently
19 acquires any interest in the facility.

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

30 (6) Only a consumer-owned electric supplier operating in the State
31 of Nebraska may exercise eminent domain authority to acquire the land

1 rights necessary for the construction of transmission lines and related
2 facilities. There is a rebuttable presumption that the exercise of
3 eminent domain to provide needed transmission lines and related
4 facilities for a privately developed renewable energy generation facility
5 is a public use.

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

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

14 Sec. 4. Section 84-1411, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 84-1411 (1)(a) Each public body shall give reasonable advance
17 publicized notice of the time and place of each meeting as provided in
18 this subsection. Such notice shall be transmitted to all members of the
19 public body and to the public.

20 (b)(i) Except as provided in subdivision (1)(b)(ii) of this section,
21 in the case of a public body described in subdivision (1)(a)(i) of
22 section 84-1409 or such body's advisory committee, such notice shall be
23 published in a newspaper of general circulation within the public body's
24 jurisdiction and, if available, on such newspaper's website.

25 (ii) In the case of the governing body of a city of the second class
26 or village or such body's advisory committee, such notice shall be
27 published by:

28 (A) Publication in a newspaper of general circulation within the
29 public body's jurisdiction and, if available, on such newspaper's
30 website; or

31 (B) Posting written notice in three conspicuous public places in

1 such city or village. Such notice shall be posted in the same three
2 places for each meeting.

3 (iii) In the case of a public body not described in subdivision (1)
4 (b)(i) or (ii) of this section, such notice shall be given by a method
5 designated by the public body.

6 (c) In addition to a method of notice required by subdivision (1)(b)
7 (i) or (ii) of this section, such notice may also be provided by any
8 other appropriate method designated by such public body or such advisory
9 committee.

10 (d) Each public body shall record the methods and dates of such
11 notice in its minutes.

12 (e) Such notice shall contain an agenda of subjects known at the
13 time of the publicized notice or a statement that the agenda, which shall
14 be kept continually current, shall be readily available for public
15 inspection at the principal office of the public body during normal
16 business hours. Agenda items shall be sufficiently descriptive to give
17 the public reasonable notice of the matters to be considered at the
18 meeting. Except for items of an emergency nature, the agenda shall not be
19 altered later than (i) twenty-four hours before the scheduled
20 commencement of the meeting or (ii) forty-eight hours before the
21 scheduled commencement of a meeting of a city council or village board
22 scheduled outside the corporate limits of the municipality. The public
23 body shall have the right to modify the agenda to include items of an
24 emergency nature only at such public meeting.

25 (2)(a) The following entities may hold a meeting by means of virtual
26 conferencing if the requirements of subdivision (2)(b) of this section
27 are met:

28 (i) A state agency, state board, state commission, state council, or
29 state committee, or an advisory committee of any such state entity;

30 (ii) An organization, including the governing body, created under
31 the Interlocal Cooperation Act, the Joint Public Agency Act, or the

1 Municipal Cooperative Financing Act;

2 (iii) The governing body of a public power district having a
3 chartered territory of more than one county in this state;

4 (iv) The governing body of a public power and irrigation district
5 having a chartered territory of more than one county in this state;

6 (v) An educational service unit;

7 (vi) The Educational Service Unit Coordinating Council;

8 (vii) An organization, including the governing body, of a risk
9 management pool or its advisory committees organized in accordance with
10 the Intergovernmental Risk Management Act;

11 (viii) A community college board of governors;

12 (ix) The Nebraska Brand Committee;

13 (x) A local public health department;

14 (xi) A metropolitan utilities district;

15 (xii) A regional metropolitan transit authority; and

16 (xiii) A natural resources district.

17 (b) The requirements for holding a meeting by means of virtual
18 conferencing are as follows:

19 (i) Reasonable advance publicized notice is given as provided in
20 subsection (1) of this section, including providing access to a dial-in
21 number or link to the virtual conference;

22 (ii) In addition to the public's right to participate by virtual
23 conferencing, reasonable arrangements are made to accommodate the
24 public's right to attend at a physical site and participate as provided
25 in section 84-1412, including reasonable seating, in at least one
26 designated site in a building open to the public and identified in the
27 notice, with: At least one member of the entity holding such meeting, or
28 his or her designee, present at each site; a recording of the hearing by
29 audio or visual recording devices; and a reasonable opportunity for
30 input, such as public comment or questions, is provided to at least the
31 same extent as would be provided if virtual conferencing was not used;

1 (iii) At least one copy of all documents being considered at the
2 meeting is available at any physical site open to the public where
3 individuals may attend the virtual conference. The public body shall also
4 provide links to an electronic copy of the agenda, all documents being
5 considered at the meeting, and the current version of the Open Meetings
6 Act; and

7 (iv) Except as otherwise provided in this subdivision, subsection
8 (1) of section 70-1014, subsection (2) of section 70-1014.02, or
9 subsection (4) of section 79-2204, no more than one-half of the meetings
10 of the state entities, advisory committees, boards, councils,
11 organizations, or governing bodies are held by virtual conferencing in a
12 calendar year. In the case of an organization created under the
13 Interlocal Cooperation Act that sells electricity or natural gas at
14 wholesale on a multistate basis or an organization created under the
15 Municipal Cooperative Financing Act, the organization may hold more than
16 one-half of its meetings by virtual conferencing if such organization
17 holds at least one meeting each calendar year that is not by virtual
18 conferencing. The governing body of a risk management pool that meets at
19 least quarterly and the advisory committees of the governing body may
20 each hold more than one-half of its meetings by virtual conferencing if
21 the governing body's quarterly meetings are not held by virtual
22 conferencing.

23 (3) Virtual conferencing, emails, faxes, or other electronic
24 communication shall not be used to circumvent any of the public
25 government purposes established in the Open Meetings Act.

26 (4) The secretary or other designee of each public body shall
27 maintain a list of the news media requesting notification of meetings and
28 shall make reasonable efforts to provide advance notification to them of
29 the time and place of each meeting and the subjects to be discussed at
30 that meeting.

31 (5) When it is necessary to hold an emergency meeting without

1 reasonable advance public notice, the nature of the emergency shall be
2 stated in the minutes and any formal action taken in such meeting shall
3 pertain only to the emergency. Such emergency meetings may be held by
4 virtual conferencing. The provisions of subsection (4) of this section
5 shall be complied with in conducting emergency meetings. Complete minutes
6 of such emergency meetings specifying the nature of the emergency and any
7 formal action taken at the meeting shall be made available to the public
8 by no later than the end of the next regular business day.

9 (6) A public body may allow a member of the public or any other
10 witness to appear before the public body by means of virtual
11 conferencing.

12 (7)(a) Notwithstanding subsections (2) and (5) of this section, if
13 an emergency is declared by the Governor pursuant to the Emergency
14 Management Act as defined in section 81-829.39, a public body the
15 territorial jurisdiction of which is included in the emergency
16 declaration, in whole or in part, may hold a meeting by virtual
17 conferencing during such emergency if the public body gives reasonable
18 advance publicized notice as described in subsection (1) of this section.
19 The notice shall include information regarding access for the public and
20 news media. In addition to any formal action taken pertaining to the
21 emergency, the public body may hold such meeting for the purpose of
22 briefing, discussion of public business, formation of tentative policy,
23 or the taking of any action by the public body.

24 (b) The public body shall provide access by providing a dial-in
25 number or a link to the virtual conference. The public body shall also
26 provide links to an electronic copy of the agenda, all documents being
27 considered at the meeting, and the current version of the Open Meetings
28 Act. Reasonable arrangements shall be made to accommodate the public's
29 right to hear and speak at the meeting and record the meeting. Subsection
30 (4) of this section shall be complied with in conducting such meetings.

31 (c) The nature of the emergency shall be stated in the minutes.

1 Complete minutes of such meeting specifying the nature of the emergency
2 and any formal action taken at the meeting shall be made available for
3 inspection as provided in subsection (5) of section 84-1413.

4 (8) In addition to any other statutory authorization for virtual
5 conferencing, any public body not listed in subdivision (2)(a) of this
6 section may hold a meeting by virtual conferencing if:

7 (a) The purpose of the virtual meeting is to discuss items that are
8 scheduled to be discussed or acted upon at a subsequent non-virtual open
9 meeting of the public body;

10 (b) No action is taken by the public body at the virtual meeting;
11 and

12 (c) The public body complies with subdivisions (2)(b)(i) and (2)(b)
13 (ii) of this section.

14 Sec. 5. Original section 70-1014, Reissue Revised Statutes of
15 Nebraska, sections 70-1014.02 and 84-1411, Revised Statutes Cumulative
16 Supplement, 2022, and section 70-1001.01, Revised Statutes Supplement,
17 2023, are repealed.

18 2. On page 1, strike lines 2 through 8 and insert "section 70-1014,
19 Reissue Revised Statutes of Nebraska, sections 70-1014.02 and 84-1411,
20 Revised Statutes Cumulative Supplement, 2022, and section 70-1001.01,
21 Revised Statutes Supplement, 2023; to redefine terms; to provide a public
22 meeting and report requirement for board approval of certain proposed
23 electric generation facilities; to change and provide certification
24 requirements for issuance of an acknowledgment of exemption by the board
25 of a proposed privately developed renewable energy generation facility;
26 to provide an exception to a virtual conferencing requirement under the
27 Open Meetings Act; to harmonize provisions; and to repeal the original
28 sections."