

AMENDMENTS TO LB349

Introduced by Prokop, 27.

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 conferred upon  
6 any district organized under or subject to Chapter 70, article 6, each  
7 such district ~~may shall have and~~ exercise the power of eminent domain to  
8 acquire from any person, firm, association, or private corporation any  
9 and all property owned, used, or operated, or useful for operation, in  
10 the generation, transmission, storage, 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 ~~that which~~ is an electric energy  
24 storage resource as defined in section 70-1001.01 or a renewable energy  
25 generation facility, including producing electricity with wind and any  
26 related facilities and associated electric energy storage resources as  
27 defined in section 70-1001.01 of such facility.

1 (4) No property owned, used, or operated as part of a privately  
2 developed renewable energy generation facility meeting the requirements  
3 of section 70-1014.02 or as part of an electric energy storage resource  
4 as defined in section 70-1001.01 shall be subject to eminent domain by  
5 any consumer-owned electric supplier operating in the State of Nebraska.

6 **Sec. 2.** Section 70-1001.01, Revised Statutes Cumulative Supplement,  
7 2024, is amended to read:

8 70-1001.01 For purposes of sections 70-1001 to 70-1028.02, unless  
9 the context otherwise requires:

10 (1) Associated electric energy storage resource means any electric  
11 energy storage resource that is electrically connected to an electric  
12 generation facility, located on the same premises or in the immediate  
13 vicinity of such facility, and primarily intended to store the electric  
14 energy produced at such facility;

15 (2) ~~(1)~~ Board means the Nebraska Power Review Board;

16 (3) ~~(2)~~ Commercial electric vehicle charging station means equipment  
17 designed to provide electricity for a fee for the charging of an electric  
18 vehicle or a plug-in hybrid electric vehicle, including an electric  
19 vehicle direct-current charger or a super-fast charger, any successor  
20 technology, and all components thereof. Commercial electric vehicle  
21 charging station does not include the residence of a person where an  
22 electric vehicle or a plug-in hybrid electric vehicle is charged if no  
23 customer usage fee is charged;

24 (4) ~~(3)~~ Commercial electric vehicle charging station operator means  
25 a person, partnership, corporation, or other business entity or political  
26 subdivision that operates a commercial electric vehicle charging station;

27 (5) ~~(4)~~ Direct-current, fast-charging station means a publicly  
28 available charging system capable of delivering at least fifty kilowatts  
29 of direct-current electrical power to an electric vehicle's rechargeable  
30 battery at a voltage of two hundred volts or greater;

31 (6) ~~(5)~~ Direct-current, fast-charging station operator means a

1 person, partnership, corporation, or other business entity that operates  
2 a direct-current, fast-charging station open to the public. The term does  
3 not include an electric supplier or a political subdivision;

4 (7)(a) Electric energy storage resource means a resource capable of  
5 receiving electric energy from the electrical grid, or from a generation  
6 source with which it is associated, and storing it for later injection of  
7 electric energy into the electrical grid; and

8 (b) Electric energy storage resource does not include any device or  
9 equipment intended solely to:

10 (i) Inject or absorb reactive power, including any capacitor or  
11 synchronous condenser; or

12 (ii) Provide power for electric vehicles;

13 (8) ~~(6)~~ Electric supplier or supplier of electricity means any  
14 public or private legal entity supplying, producing, storing, or  
15 distributing electricity within the state for sale at wholesale or  
16 retail. Electric supplier does not include a commercial electric vehicle  
17 charging station operator that is a private person or privately owned  
18 partnership, privately owned corporation, or other privately owned  
19 business;

20 (9) ~~(7)~~ Military installation means a military base other than a  
21 National Guard base where fixed-wing aircraft or strategic weapon assets  
22 are on a permanent or temporary basis assigned, stored, operated from, or  
23 otherwise located;

24 (10) ~~(8)~~ Plug-in hybrid electric vehicle has the same meaning as in  
25 section 60-345.01;

26 (11) ~~(9)~~ Private electric supplier means an electric supplier  
27 producing electricity from a privately developed renewable energy  
28 generation facility that is not a public power district, a public power  
29 and irrigation district, a municipality, a registered group of  
30 municipalities, an electric cooperative, an electric membership  
31 association, any other governmental entity, or any combination thereof. A

1 private electric supplier is limited to the development of privately  
2 developed renewable energy generation ~~these facilities, including any~~  
3 associated electric energy storage resources of such facilities, as  
4 provided in subdivision (12) ~~(10)~~ of this section and standalone electric  
5 energy storage resources;

6 (12) ~~(10)~~ Privately developed renewable energy generation facility  
7 means and is limited to a facility that (a) generates electricity using  
8 solar, wind, geothermal, biomass, landfill gas, or biogas, including all  
9 associated electric energy storage resources of the facility and all  
10 electrically connected equipment used to produce, collect, or ~~and~~ store  
11 the facility output up to and including the transformer that steps up the  
12 voltage to sixty thousand volts or greater, and including supporting  
13 structures, buildings, and roads, unless otherwise agreed to in a joint  
14 transmission development agreement, (b) is developed, constructed, and  
15 owned, in whole or in part, by one or more private electric suppliers,  
16 and (c) is not wholly owned by a public power district, a public power  
17 and irrigation district, a municipality, a registered group of  
18 municipalities, an electric cooperative, an electric membership  
19 association, any other governmental entity, or any combination thereof;

20 (13) ~~(11)~~ Regional transmission organization means an entity  
21 independent from those entities generating or marketing electricity at  
22 wholesale or retail, which has operational control over the electric  
23 transmission lines in a designated geographic area in order to reduce  
24 constraints in the flow of electricity and ensure that all power  
25 suppliers have open access to transmission lines for the transmission of  
26 electricity;

27 (14) ~~(12)~~ Reliable or reliability means the ability of an electric  
28 supplier to supply the aggregate electric power and energy requirements  
29 of its electricity consumers in Nebraska at all times under normal  
30 operating conditions, taking into account scheduled and unscheduled  
31 outages, including sudden disturbances or unanticipated loss of system

1 components that are to be reasonably expected for any electric utility  
2 following prudent utility practices, recognizing certain weather  
3 conditions and other contingencies may cause outages at the distribution,  
4 transmission, and generation level;

5 (15) ~~(13)~~ Representative organization means an organization  
6 designated by the board and organized for the purpose of providing joint  
7 planning and encouraging maximum cooperation and coordination among  
8 electric suppliers. Such organization shall represent electric suppliers  
9 owning a combined electric generation plant accredited capacity of at  
10 least ninety percent of the total electric generation plant accredited  
11 capacity constructed and in operation within the state;

12 (16) Standalone electric energy storage resource means any electric  
13 energy storage resource that is not an associated electric energy storage  
14 resource;

15 (17) ~~(14)~~ State means the State of Nebraska; and

16 (18) ~~(15)~~ Unbundled retail rates means the separation of utility  
17 bills into the individual price components for which an electric supplier  
18 charges its retail customers, including, but not limited to, the separate  
19 charges for the generation, transmission, and distribution of  
20 electricity.

21 **Sec. 3.** Section 70-1012, Revised Statutes Cumulative Supplement,  
22 2024, is amended to read:

23 70-1012 (1) Before any electric generation facilities, any electric  
24 energy storage resources, or any transmission lines or related facilities  
25 carrying more than seven hundred volts are constructed or acquired by any  
26 supplier, an application, filed with the board and containing such  
27 information as the board shall prescribe, shall be approved by the board,  
28 except that such approval shall not be required (a) for the construction  
29 or acquisition of a transmission line extension or related facilities  
30 within a supplier's own service area or for the construction or  
31 acquisition of a line not exceeding one-half mile outside its own service

1 area when all owners of electric lines located within one-half mile of  
2 the extension consent thereto in writing and such consents are filed with  
3 the board, (b) for any generation facility when the board finds that (i)  
4 such facility is being constructed or acquired to replace a generating  
5 plant owned by an individual municipality or registered group of  
6 municipalities with a capacity not greater than that of the plant being  
7 replaced, (ii) such facility will generate less than twenty-five thousand  
8 kilowatts of electric energy at rated capacity, and (iii) the applicant  
9 will not use the plant or transmission capacity to supply wholesale power  
10 to customers outside the applicant's existing retail service area or  
11 chartered territory, (c) for acquisition of transmission lines or related  
12 facilities, within the state, carrying one hundred fifteen thousand volts  
13 or less, if the current owner of the transmission lines or related  
14 facilities notifies the board of the lines or facilities involved in the  
15 transaction and the parties to the transaction, or (d) for the  
16 construction of a qualified facility as defined in section 70-2002.

17 (2)(a) Before any electric supplier commences construction of or  
18 acquires an electric generation facility or electric energy storage  
19 resource or transmission lines or related facilities carrying more than  
20 seven hundred volts that will be located within a ten-mile radius of a  
21 military installation, the owner of such proposed facility, resource,  
22 transmission lines, or related facilities shall provide written notice  
23 certifying to the board that such facility, resource, or facilities  
24 contain no materials, electronics, or other components manufactured by  
25 any foreign government or foreign nongovernment person determined to be a  
26 foreign adversary pursuant to 15 C.F.R. 7.4.

27 (b) Any electric supplier supplying, producing, storing, or  
28 distributing electricity within the state for sale at retail is exempt  
29 from subdivision (a) of this subsection if it is in compliance with the  
30 critical infrastructure protection requirements issued by the North  
31 American Electric Reliability Corporation. To receive such exemption, the

1 electric supplier shall submit written notice to the board certifying  
2 that it is in such compliance. The electric supplier shall also submit  
3 written notice to the board at any time such supplier is no longer in  
4 such compliance.

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

7 **Sec. 4.** Section 70-1012.01, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

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

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

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

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

3 **Sec. 5.** Section 70-1014.02, Revised Statutes Cumulative Supplement,  
4 2024, is amended to read:

5 70-1014.02 (1) The Legislature finds that:

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

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

14 (c) The grasslands of the Nebraska Sandhills and other natural  
15 resources in Nebraska will become increasingly valuable, both  
16 economically and strategically, as the demand for food and energy  
17 increases; and

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

20 (2)(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 sixth 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;

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 (vi) Certifies in writing to the board that the facility, if located  
23 within a ten-mile radius of a military installation:

24 (A) Contains no materials, electronics, or other components  
25 manufactured by any foreign government or foreign nongovernment person  
26 determined to be a foreign adversary pursuant to 15 C.F.R. 7.4; or

27 (B) Is in compliance with the critical infrastructure protection  
28 requirements issued by the North American Electric Reliability  
29 Corporation if connected to the transmission grid at one hundred  
30 kilovolts or higher voltage and has to have a nameplate rating of twenty  
31 megavolt amperes for a single generation unit or injecting at an

1 aggregate of seventy-five megavolt amperes or greater. The private  
2 electric supplier shall also submit written notice to the board at any  
3 time such private electric supplier is no longer in such compliance; and

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

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

25 (c) A joint transmission development agreement shall be entered into  
26 to address construction, ownership, operation, and maintenance of such  
27 additions or upgrades to the transmission facilities as required for the  
28 privately developed renewable energy generation facility. The joint  
29 transmission development agreement shall be negotiated and executed  
30 contemporaneously with the generator interconnection agreement or other  
31 directives of the applicable regional transmission organization with

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

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

19 (4) 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 (5) 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 (6) 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. There is a rebuttable presumption that the exercise of  
7 eminent domain to provide needed transmission lines and related  
8 facilities for a privately developed renewable energy generation facility  
9 is a public use.

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

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

18 (9)(a) This subsection applies to any associated electric energy  
19 storage resource that is constructed or installed for a privately  
20 developed renewable energy facility after such facility has already  
21 provided the notification and certification required under subdivision  
22 (2)(a) of this section.

23 (b) No less than thirty days prior to the commencement of  
24 construction of the associated electric energy storage resource, the  
25 owner of the resource shall provide notification and certification to the  
26 board that satisfies the notification and certification requirements of  
27 subdivision (2)(a) of this section with respect to such resource.

28 (10) Within ten days after receiving a written notice complying with  
29 subsection (9) of this section, the executive director of the board shall  
30 issue a written acknowledgment that the associated electric energy  
31 storage resource is part of the privately developed renewable energy

1 generation facility and is exempt from sections 70-1012 to 70-1014.01 if  
2 such facility remains in compliance with the requirements of this  
3 section.

4 **Sec. 6.** Section 70-1015, Revised Statutes Cumulative Supplement,  
5 2024, is amended to read:

6 70-1015 (1) If any supplier violates Chapter 70, article 10, by  
7 either (a) commencing the construction or finalizing or attempting to  
8 finalize the acquisition of any generation facilities, any electric  
9 energy storage resources, any transmission lines, or any related  
10 facilities without first providing notice or obtaining board approval,  
11 whichever is required, or (b) serving or attempting to serve at retail  
12 any customers located in Nebraska or any wholesale customers in violation  
13 of section 70-1002.02, such construction, acquisition, or service of such  
14 customers shall be enjoined in an action brought in the name of the State  
15 of Nebraska until such supplier has complied with Chapter 70, article 10.

16 (2) If the executive director of the board determines that a private  
17 electric supplier commenced construction of a privately developed  
18 renewable energy generation facility or any associated electric energy  
19 storage resource of a privately developed renewable energy generation  
20 facility less than thirty days prior to providing the notice required in  
21 subdivision (2)(a) or subsection (9) of section 70-1014.02, the executive  
22 director shall send notice via certified mail to the private electric  
23 supplier, informing it of the determination that the private electric  
24 supplier is in violation of such subdivision and is subject to a fine in  
25 the amount of five hundred dollars. The private electric supplier shall  
26 have twenty days from the date on which the notice is received in which  
27 to submit the notice described in ~~such~~ subdivision (2)(a) or subsection  
28 (9) of section 70-1014.02 and to pay the fine. Within ten days after the  
29 private electric supplier submits a notice compliant with subsection (2)  
30 or (9) of section 70-1014.02 and payment of the fine, the executive  
31 director of the board shall issue the written acknowledgment described in

1 subsection (3) or (10) of section 70-1014.02. If the private electric  
2 supplier fails to submit a notice compliant with subsection (2) or (9) of  
3 section 70-1014.02 and pay the fine within twenty days after the date on  
4 which the private electric supplier receives the notice from the  
5 executive director of the board, the private electric supplier shall  
6 immediately cease construction or operation of the privately developed  
7 renewable energy generation facility and any associated electric energy  
8 storage resources of the facility.

9 (3) If the private electric supplier disputes that construction was  
10 commenced less than thirty days prior to submitting the written notice  
11 required by subdivision (2)(a) or subsection (9) of section 70-1014.02,  
12 the private electric supplier may request a hearing before the board.  
13 Such request shall be submitted within twenty days after the private  
14 electric supplier receives the notice sent by the executive director  
15 pursuant to subsection (2) of this section. If the private electric  
16 supplier does not accept the certified mail sent pursuant to such  
17 subsection, the executive director shall send a second notice to the  
18 private electric supplier by first-class United States mail. The private  
19 electric supplier may submit a request for hearing within twenty days  
20 after the date on which the second notice was mailed.

21 (4) Upon receipt of a request for hearing, the board shall set a  
22 hearing date. Such hearing shall be held within sixty days after such  
23 receipt. The board shall provide to the private electric supplier written  
24 notice of the hearing at least twenty days prior to the date of the  
25 hearing. The board or its hearing officer may grant continuances upon  
26 good cause shown or upon the request of the private electric supplier.  
27 Timely filing of a request for hearing by a private electric supplier  
28 shall stay any further enforcement under this section until the board  
29 issues an order pursuant to subsection (5) of this section or the request  
30 for hearing is withdrawn.

31 (5) The board shall issue a written decision within sixty days after

1 conclusion of the hearing. All costs of the hearing shall be paid by the  
2 private electric supplier if (a) the board determines that the private  
3 electric supplier commenced construction of the privately developed  
4 renewable energy generation facility and any associated electric energy  
5 storage resources of the facility less than thirty days prior to  
6 submitting the written notice required pursuant to subsection (2) or (9)  
7 of section 70-1014.02 or (b) the private electric supplier withdraws its  
8 request for hearing prior to the board issuing its decision.

9 (6) A private electric supplier which the board finds to be in  
10 violation of the requirements of subsection (2) or (9) of section  
11 70-1014.02 shall either (a) pay the fine described in this section and  
12 submit a notice compliant with subsection (2) or (9) of section  
13 70-1014.02 or (b) immediately cease construction or operation of the  
14 privately developed renewable energy generation facility and any  
15 associated electric energy storage resources of the facility.

16 **Sec. 7.** Original sections 70-670 and 70-1012.01, Reissue Revised  
17 Statutes of Nebraska, and sections 70-1001.01, 70-1012, 70-1014.02, and  
18 70-1015, Revised Statutes Cumulative Supplement, 2024, are repealed.