

AMENDMENTS TO LB683

(Amendments to Standing Committee amendments, AM870)

Introduced by Brandt, 32.

1 1. Strike section 7 and insert the following new sections:

2 Section 1. Section 18-419, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 18-419 In addition to the powers authorized by sections 18-401 to
5 18-418 and any ordinances or resolutions relating to the provision of
6 electric service, any city or village owning or operating electric
7 generation or transmission facilities may sell, ~~or lease,~~ or license its
8 dark fiber pursuant to sections 86-574 to 86-577 ~~86-578~~.

9 Sec. 3. Section 70-625, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 70-625 (1) Subject to the limitations of the petition for its
12 creation and all amendments to such petition, a public power district has
13 all the usual powers of a corporation for public purposes and may
14 purchase, hold, sell, and lease personal property and real property
15 reasonably necessary for the conduct of its business. No district may
16 sell household appliances at retail if the retail price of any such
17 appliance exceeds fifty dollars, except that newly developed electrical
18 appliances may be merchandised and sold during the period of time in
19 which any such appliances are being introduced to the public. New models
20 of existing appliances shall not be deemed to be newly developed
21 appliances. An electrical appliance shall be considered to be in such
22 introductory period of time until the particular type of appliance is
23 used by twenty-five percent of all the electrical customers served by
24 such district, but such period shall in no event exceed five years from
25 the date of introduction by the manufacturer of the new appliance to the
26 local market.

1 (2) In addition to its powers authorized by Chapter 70 and specified
2 in its petition for creation, as amended, a public power district may
3 sell, lease, and service satellite television signal descrambling or
4 decoding devices, satellite television programming, and equipment and
5 services associated with such devices and programming, except that this
6 section does not authorize public power districts (a) to provide signal
7 descrambling or decoding devices or satellite programming to any location
8 (i) being furnished such devices or programming on April 24, 1987, or
9 (ii) where community antenna television service is available from any
10 person, firm, or corporation holding a franchise pursuant to sections
11 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on
12 April 24, 1987, or (b) to sell, service, or lease C-band satellite dish
13 systems or repair parts.

14 (3) In addition to the powers authorized by Chapter 70 and specified
15 in its petition for creation as amended, the board of directors of a
16 public power district may apply for and use funds available from the
17 United States Department of Agriculture or other federal agencies for
18 grants or loans to promote economic development and job creation projects
19 in rural areas as permitted under the rules and regulations of the
20 federal agency from which the funds are received. Any loan to be made by
21 a district shall only be made in participation with a bank pursuant to a
22 contract. The district and the participating bank shall determine the
23 terms and conditions of the contract. In addition, in rural areas of the
24 district, the board of directors of such district may provide technical
25 or management assistance to prospective, new, or expanding businesses,
26 including home-based businesses, provide assistance to a local or
27 regional industrial or economic development corporation or foundation
28 located within or contiguous to the district's service area, and provide
29 youth and adult community leadership training.

30 (4) In addition to the powers authorized by Chapter 70 and specified
31 in its petition for creation as amended, a public power district may

1 sell, ~~or lease,~~ or license its dark fiber pursuant to sections 86-574 to
2 86-577 ~~86-578~~.

3 (5) In addition to the powers authorized by Chapter 70 and specified
4 in its petition for creation as amended, a public power district may
5 develop, manufacture, use, purchase, or sell at wholesale advanced
6 biofuels and biofuel byproducts and other fuels and fuel byproducts so
7 long as the development, manufacture, use, purchase, or sale of such
8 biofuels and biofuel byproducts and other fuels and fuel byproducts is
9 done to help offset greenhouse gas emissions.

10 (6) Notwithstanding any law, ordinance, resolution, or regulation of
11 any political subdivision to the contrary, each public power district may
12 receive funds and extend loans pursuant to the Nebraska Investment
13 Finance Authority Act or pursuant to this section. In addition to the
14 powers authorized by Chapter 70 and specified in its petition for
15 creation, as amended, and without the need for further amendment thereto,
16 a public power district may own and operate, contract to operate, or
17 lease energy equipment and provide billing, meter reading, surveys, or
18 evaluations and other administrative services, but not to include natural
19 gas services, of public utility systems within a district's service
20 territory.

21 Sec. 4. Section 70-704, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 70-704 Each corporation shall have power: (1) To sue and be sued,
24 complain, and defend, in its corporate name; (2) to have perpetual
25 succession unless a limited period of duration is stated in its articles
26 of incorporation; (3) to adopt a corporate seal, which may be altered at
27 pleasure, and to use it or a facsimile thereof, as required by law; (4)
28 to generate, manufacture, purchase, acquire, and accumulate electric
29 energy and to transmit, distribute, sell, furnish, and dispose of such
30 electric energy; (5) to acquire, own, hold, use, exercise and, to the
31 extent permitted by law, to sell, mortgage, pledge, hypothecate, and in

1 any manner dispose of franchises, rights, privileges, licenses, rights-
2 of-way, and easements necessary, useful, or appropriate; (6) to purchase,
3 receive, lease as lessee, or in any other manner acquire, own, hold,
4 maintain, sell, exchange, and use any and all real and personal property
5 or any interest therein for the purposes expressed herein; (7) to borrow
6 money and otherwise contract indebtedness, to issue its obligations
7 therefor, and to secure the payment thereof by mortgage, pledge, or deed
8 of trust of all or any of its property, assets, franchises, revenue, or
9 income; (8) to sell and convey, mortgage, pledge, lease as lessor, and
10 otherwise dispose of all or any part of its property and assets; (9) to
11 have the same powers now exercised by law by public light and power
12 districts or private corporations to use any of the streets, highways, or
13 public lands of the state or its political subdivisions in the manner
14 provided by law; (10) to have and exercise the power of eminent domain
15 for the purposes expressed in section 70-703 in the manner set forth in
16 sections 76-704 to 76-724 and to have the powers and be subject to the
17 restrictions of electric light and power corporations and districts as
18 regards the use and occupation of public highways and the manner or
19 method of construction and physical operation of plants, systems, and
20 transmission lines; (11) to accept gifts or grants of money, services, or
21 property, real or personal; (12) to make any and all contracts necessary
22 or convenient for the exercise of the powers granted herein; (13) to fix,
23 regulate, and collect rates, fees, rents, or other charges for electric
24 energy furnished by the corporation; (14) to elect or appoint officers,
25 agents, and employees of the corporation and to define their duties and
26 fix their compensation; (15) to make and alter bylaws not inconsistent
27 with the articles of incorporation or with the laws of this state for the
28 administration and regulation of the affairs of the corporation; (16) to
29 sell, or lease, or license its dark fiber pursuant to sections 86-574 to
30 86-577 ~~86-578~~; and (17) to do and perform, either for itself or its
31 members or for any other corporation organized under the Electric

1 Cooperative Corporation Act or for the members thereof, any and all acts
2 and things and to have and exercise any and all powers as may be
3 necessary, convenient, or appropriate to effectuate the purpose for which
4 the corporation is organized. Notwithstanding any law, ordinance,
5 resolution, or regulation of any political subdivision to the contrary,
6 each corporation may receive funds and extend loans pursuant to the
7 Nebraska Investment Finance Authority Act.

8 Sec. 5. Section 70-1409, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 70-1409 Each joint authority shall have all the rights and powers
11 necessary or convenient to carry out and effectuate the purposes and
12 provisions of the Joint Public Power Authority Act including, but not
13 limited to, the right and power:

14 (1) To adopt bylaws for the regulation of the affairs and the
15 conduct of its business and to prescribe rules, regulations, and policies
16 in connection with the performance of its functions and duties;

17 (2) To adopt an official seal and alter the same at pleasure;

18 (3) To maintain an office at such place or places as it may
19 determine;

20 (4) To sue and be sued in its own name and to plead and be
21 impleaded;

22 (5) To receive, administer, and comply with the conditions and
23 requirements respecting any gift, grant, or donation of any property or
24 money;

25 (6) To acquire by purchase, lease, gift, or otherwise, or to obtain
26 options for the acquisition of, any property, real or personal, improved
27 or unimproved, including an interest in land less than an interest in
28 fee;

29 (7) To sell, lease, exchange, transfer, or otherwise dispose of, or
30 to grant options for any such purposes with respect to, any real or
31 personal property or interest in such property;

1 (8) To pledge or assign any money, rents, charges, or other revenue
2 and any proceeds derived by the joint authority from the sales of
3 property, insurance, or condemnation awards;

4 (9) To issue bonds of the joint authority for the purpose of
5 providing funds for any of its corporate purposes;

6 (10) To authorize the construction, operation, or maintenance of any
7 project or projects by any person, firm, or corporation, including
8 political subdivisions and agencies of any state or of the United States;

9 (11) To acquire by negotiated purchase or lease an existing project,
10 a project under construction, or other property, either individually or
11 jointly, with one or more public power districts in this state or with
12 any political subdivisions or agencies of this state or any other state
13 or with other joint authorities created pursuant to the Joint Public
14 Power Authority Act;

15 (12) To dispose of by negotiated sale or lease an existing project,
16 a project under construction, or other property, either individually or
17 jointly, with one or more public power districts in this state, with any
18 political subdivisions or agencies of this state or any other state or,
19 with other joint authorities created pursuant to the Joint Public Power
20 Authority Act, except that no such sale or lease of any project located
21 in this state shall be made to any private person, firm, or corporation
22 engaged in the business of generating, transmitting, or distributing
23 electricity for profit;

24 (13) To fix, charge, and collect rents, rates, fees, and charges for
25 electric power or energy, hydrogen, or ethanol and other services,
26 facilities, and commodities sold, furnished, or supplied through any
27 project;

28 (14) To generate, produce, transmit, deliver, exchange, purchase, or
29 sell for resale only electric power or energy, to produce, store,
30 deliver, or distribute hydrogen for use in fuel processes, or to produce,
31 deliver, or distribute ethanol and to enter into contracts for any or all

1 such purposes, subject to sections 70-1410 and 70-1413;

2 (15) To negotiate and enter into contracts for the purchase,
3 exchange, interchange, wheeling, pooling, or transmission of electric
4 power and energy with any public power district, any other joint
5 authority, any political subdivision or agency of this state or any other
6 state, any electric cooperative, or any municipal agency which owns
7 electric generation, transmission, or distribution facilities in this
8 state or any other state;

9 (16) To negotiate and enter into contracts for the sale or use of
10 electric power and energy, hydrogen, or ethanol with any joint authority,
11 electric cooperative, any political subdivision or agency or any public
12 or private electric utility of this state or any other state, any joint
13 agency, electric cooperative, municipality, public or private electric
14 utility, or any state or federal agency or political subdivision, subject
15 to sections 70-1410 and 70-1413;

16 (17) To make and execute contracts and other instruments necessary
17 or convenient in the exercise of the powers and functions of the joint
18 authority under the Joint Public Power Authority Act, including contracts
19 with persons, firms, corporations, and others;

20 (18) To apply to the appropriate agencies of the state, the United
21 States, or any other state and to any other proper agency for such
22 permits, licenses, certificates, or approvals as may be necessary to
23 construct, maintain, and operate projects in accordance with such
24 licenses, permits, certificates, or approvals, and to obtain, hold, and
25 use the same rights granted in any licenses, permits, certificates, or
26 approvals as any other person or operating unit would have under such
27 documents;

28 (19) To employ engineers, architects, attorneys, appraisers,
29 financial advisors, and such other consultants and employees as may be
30 required in the judgment of the joint authority and to fix and pay their
31 compensation from funds available to the joint authority. The joint

1 authority may employ technical experts and such other officers, agents,
2 and employees as it may require and shall assess their qualifications,
3 duties, compensation, and term of office. The board may delegate to one
4 or more of the joint authority's employees or agents such powers and
5 duties as the board may deem proper;

6 (20) To make loans or advances for long-term, supplemental, short-
7 term, and interim financing for both capital projects and operational
8 purposes to those member districts on such terms and conditions as the
9 board of directors of the joint authority may deem necessary and to
10 secure such loans or advances by assignment of revenue, receivables, or
11 other sums of the member district and such other security as the board of
12 directors of the joint authority may determine; and

13 (21) To sell, ~~or lease,~~ or license its dark fiber pursuant to
14 sections 86-574 to 86-577 ~~86-578~~.

15 Any joint authority shall have the same power of eminent domain as
16 the public power districts have under section 70-670.

17 Sec. 6. Section 75-132.01, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 75-132.01 (1) Notwithstanding the provisions of section 75-131, the
20 commission shall have exclusive original jurisdiction over any action
21 concerning a violation of any provision of ~~(a)~~ the Automatic Dialing-
22 Announcing Devices Act, the Emergency Telephone Communications Systems
23 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
24 Regulation Act, the Nebraska Telecommunications Regulation Act, the
25 Nebraska Telecommunications Universal Service Fund Act, the
26 Telecommunications Relay System Act, or the Telephone Consumer Slamming
27 Prevention Act by any person providing telecommunications service for a
28 fee in Nebraska intrastate commerce pursuant to such acts ~~or (b) sections~~
29 ~~86-574 to 86-578 by an agency or political subdivision of the state.~~

30 (2) If the commission enters an order declining jurisdiction under
31 subsection (1) of this section, any interested person may petition the

1 district court of the county in which such alleged violation has
2 occurred. If it appears to the court, after a hearing, that a provision
3 of such acts or sections has been violated, the court may issue an
4 injunction or other proper process to restrain the telecommunications
5 company and its directors, officers, employees, or agents or the agency
6 or political subdivision of the state from continuing such violation and
7 may order additional relief. Any party to the case shall have the right
8 to appeal the decision of the district court to the Court of Appeals
9 under the rules provided by law for appeals in civil cases.

10 Sec. 10. Section 86-416, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 86-416 (1) Notwithstanding any other provision of Nebraska law, any
13 city, county, village, public power district, or fire protection district
14 may enter into a service agreement with any joint entity created pursuant
15 to the Interlocal Cooperation Act or any joint public agency created
16 pursuant to the Joint Public Agency Act which owns or operates or
17 proposes to own or operate any public safety communication project for
18 obtaining communication services, including the use or right to use real
19 or personal property included in any such project. This subsection shall
20 not be construed to authorize any service agreements that conflict with
21 the provisions for the sale, ~~or lease,~~ or license of dark fiber pursuant
22 to sections 86-574 to 86-577 ~~86-578~~.

23 (2) Any such service agreement may provide for the following:

24 (a) The payment of fixed or variable periodic amounts for service or
25 the right to obtain service, including the use or right to use real or
26 personal property;

27 (b) That such service agreement may extend for a term of years as
28 determined by the governing body of the city, county, village, public
29 power district, or fire protection district and be binding upon such
30 city, county, village, public power district, or fire protection district
31 over such term of years;

1 (c) That fixed or variable periodic amounts payable may be
2 determined based upon any of the following factors:

3 (i) Operating, maintenance, and management expenses, including
4 renewals and replacements for facilities and equipment;

5 (ii) Amounts payable with respect to debt service on bonds or other
6 obligations, including margins of coverage if deemed appropriate; and

7 (iii) Amounts necessary to build or maintain operating reserves,
8 capital reserves, and debt service reserves;

9 (d) That any such service agreement may require payment to be made
10 in the agreed fixed or variable periodic amounts irrespective of whether
11 such public safety communication project or regional communication system
12 is completed or operational and notwithstanding any suspension,
13 interruption, interference, reduction, or curtailment of the services of
14 such project or system; and

15 (e) Such other provisions as the parties to the service agreement
16 deem appropriate in connection with providing and obtaining public safety
17 communication service, including the acquisition of real and personal
18 property, the construction of facilities, and the operation, maintenance,
19 and management of services, property, and facilities.

20 (3) In order to provide for the payments due under such service
21 agreement:

22 (a) Any city, county, village, or fire protection district may
23 provide that payments may be made from a special tax levied for such
24 purpose upon all taxable property within such city, county, village, or
25 fire protection district, if determined appropriate by the governing body
26 by a vote of three-fourths of the members of the governing body, if there
27 are four or more members of such body, or by a vote of two-thirds of the
28 members of the governing body, if there are less than four members of
29 such body. The special tax shall for all purposes of Nebraska law,
30 including limitations upon tax levies, budgets, revenue, and expenditures
31 of public funds, have the same status as a tax levied for the purpose of

1 paying the bonded indebtedness of such city, county, village, or fire
2 protection district; and

3 (b) Any public power district may pledge the revenue of the
4 district, subject to any existing pledges made for bonded indebtedness or
5 borrowings from the United States or any other party and existing
6 conditions relating to issuance of additional bonds or other
7 indebtedness, and, if deemed appropriate by the governing body, the
8 service agreement may have the status of revenue bond indebtedness issued
9 pursuant to sections 70-631 to 70-635.

10 Sec. 11. Section 86-574, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 86-574 For purposes of sections 86-574 to ~~86-577~~ ~~86-578~~, dark fiber
13 means any unused fiber optic cable through which no light is transmitted
14 or any installed fiber optic cable not carrying a signal.

15 Sec. 12. Section 86-575, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 86-575 (1) Any agency or political subdivision of the state may:

18 (a) Own dark fiber;

19 (b) Sell dark fiber pursuant to section 86-576; and

20 (c) Lease or license dark fiber pursuant to section 86-577.

21 (2) Any agency or political subdivision which sells, ~~or leases, or~~
22 licenses its dark fiber pursuant to sections 86-574 to ~~86-577~~ ~~86-578~~
23 shall not be deemed to be providing telecommunications services as
24 defined in section 86-593.

25 Sec. 13. Section 86-577, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 ~~86-577 (1) For purposes of this section:~~

28 ~~(a) Served location means a location receiving, or at the time the~~
29 ~~lease is filed with the Public Service Commission able to receive,~~
30 ~~communications service at a minimum download speed of twenty-five~~
31 ~~megabits per second and a minimum upload speed of three megabits per~~

1 ~~second or higher speeds, as determined by the Public Service Commission;~~
2 ~~and~~

3 ~~(b) Unserved location means a location not receiving, and at the~~
4 ~~time the lease is filed with the Public Service Commission not able to~~
5 ~~receive, communications service at a minimum download speed of twenty-~~
6 ~~five megabits per second and a minimum upload speed of three megabits per~~
7 ~~second or higher speeds, as determined by the Public Service Commission.~~

8 ~~(2) Any agency or political subdivision of the state may lease or~~
9 ~~license its dark fiber and related infrastructure under such terms as~~
10 ~~determined by such agency or political subdivision pursuant to its duly~~
11 ~~adopted and promulgated rules and regulations, issued orders, written~~
12 ~~policies, enacted ordinances, or adopted resolutions. if:~~

13 ~~(a) The lessee is a certificated telecommunications common carrier~~
14 ~~or a permitted telecommunications contract carrier pursuant to section~~
15 ~~86-128 or an Internet service provider;~~

16 ~~(b) The lease terms are fair, reasonable, and nondiscriminatory; and~~

17 ~~(c) The lease complies with this section.~~

18 ~~(3)(a) Before a lease of dark fiber under this section becomes~~
19 ~~effective, it shall be filed with the commission which shall~~
20 ~~expeditiously cause notice of the lease, including lease rates, to be~~
21 ~~published.~~

22 ~~(b)(i) The lease shall become effective fourteen business days after~~
23 ~~the date of the published notice unless a protest is filed with the~~
24 ~~commission, in which event the commission shall consider the lease as a~~
25 ~~contested matter and consider the contested lease according to the~~
26 ~~commission's rules of procedure.~~

27 ~~(ii) If the allocation of served location and unserved location in~~
28 ~~the lease is contested, the commission shall determine such allocation~~
29 ~~under the lease as a contested matter and consider the contested lease~~
30 ~~according to the commission's rules of procedure.~~

31 ~~(4) For the lease of dark fiber:~~

1 ~~(a) The commission shall establish a safe harbor range of market~~
2 ~~rates for all dark fiber leases using a competitive price determination~~
3 ~~comparison. When conducting a competitive price determination comparison,~~
4 ~~the commission, in its discretion, shall use rate schedules,~~
5 ~~interconnection agreements, or other documents within its regulatory~~
6 ~~oversight and shall gather other market rate information as deemed~~
7 ~~necessary. If a lease utilizes rates within the safe harbor range, such~~
8 ~~rates shall be deemed approved. Any other term of the lease may be~~
9 ~~contested pursuant to subdivision (3)(b) of this section; and~~

10 ~~(b) Fifty percent of the profit earned by the agency or political~~
11 ~~subdivision under a lease of dark fiber leased to serve a served location~~
12 ~~shall be remitted to the State Treasurer for credit to the Nebraska~~
13 ~~Telecommunications Universal Service Fund. For purposes of this~~
14 ~~subdivision, profit earned by the agency or political subdivision means~~
15 ~~the lease price less the cost of infrastructure deployment. This~~
16 ~~subdivision does not apply to a lease or portion of a lease of dark fiber~~
17 ~~leased to exclusively serve unserved locations.~~

18 ~~(5) The lessee shall make every reasonable effort to activate the~~
19 ~~maximum amount of the leased fiber as is possible, within one year after~~
20 ~~entering into the lease, unless good cause is shown.~~

21 Sec. 16. Original sections 18-419, 66-4,100, 70-704, 70-1409,
22 75-132.01, 86-416, 86-574, and 86-575, Reissue Revised Statutes of
23 Nebraska, and sections 70-625, 86-331, 86-333, 86-577, 86-1103, and
24 86-1309, Revised Statutes Cumulative Supplement, 2022, are repealed.

25 Sec. 17. The following section is outright repealed: Section
26 86-578, Reissue Revised Statutes of Nebraska.

27 2. Renumber the remaining sections and correct internal references
28 accordingly.