

AMENDMENTS TO LB399

(Amendments to Standing Committee amendments, AM2702)

Introduced by Blood, 3.

1           1. Strike sections 3 and 4 and all amendments thereto and insert the  
2 following new sections:

3           Sec. 3. Section 70-1014.02, Revised Statutes Cumulative Supplement,  
4 2022, 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; ~~and -~~

20          ~~(e) Local control, as vested in the county board for each respective~~  
21 ~~county, is the best mechanism for protecting local resources.~~

22          (2) ~~(2)(a)~~ A privately developed renewable energy generation  
23 facility that meets the requirements of this section is exempt from  
24 sections 70-1012 to 70-1014.01 if, no less than thirty days prior to the  
25 commencement of construction, the owner of the facility notifies the  
26 board and the county board of the county with zoning jurisdiction over

1 such facility : ~~(i) Notifies the board in writing of the owner's its~~  
2 ~~intent to commence construction of a privately developed renewable energy~~  
3 ~~generation facility and apply for a conditional use permit or special~~  
4 ~~exception if required by such county. ;~~

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 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.~~

31 ~~(b) The board may bring an action in the name of the State of~~

1 ~~Nebraska for failure to comply with subdivision (a)(iii)(B) of this~~  
2 ~~subsection. Subdivision (a)(iii)(B) of this subsection does not apply if~~  
3 ~~a local government entity with the authority to create requirements for~~  
4 ~~decommissioning has enacted decommissioning requirements for the~~  
5 ~~applicable jurisdiction.~~

6 ~~(c) The joint transmission development agreement shall address~~  
7 ~~construction, ownership, operation, and maintenance of such additions or~~  
8 ~~upgrades to the transmission facilities as required for the privately~~  
9 ~~developed renewable energy generation facility. The joint transmission~~  
10 ~~development agreement shall be negotiated and executed contemporaneously~~  
11 ~~with the generator interconnection agreement or other directives of the~~  
12 ~~applicable regional transmission organization with jurisdiction over the~~  
13 ~~addition or upgrade of transmission, upon terms consistent with prudent~~  
14 ~~electric utility practices for the interconnection of renewable~~  
15 ~~generation facilities, the electric supplier's reasonable transmission~~  
16 ~~interconnection requirements, and applicable transmission design and~~  
17 ~~construction standards. The electric supplier shall have the right to~~  
18 ~~purchase and own transmission facilities as set forth in the joint~~  
19 ~~transmission development agreement. The private electric supplier of the~~  
20 ~~privately developed renewable energy generation facility shall have the~~  
21 ~~right to construct any necessary facilities or improvements set forth in~~  
22 ~~the joint transmission development agreement pursuant to the standards~~  
23 ~~set forth in the agreement at the private electric supplier's cost.~~

24 (3) Within ten days after receipt of a written notice complying with  
25 subsection (2) of this section, the executive director of the board shall  
26 issue a written acknowledgment that the privately developed renewable  
27 energy generation facility is exempt from sections 70-1012 to 70-1014.01  
28 if: -

29 (a) The privately developed renewable energy facility meets the  
30 county's requirements for a conditional use permit or special exception;  
31 or

1           (b) The county does not require a conditional use permit or special  
2 exception for such privately developed renewable energy generation  
3 facility.

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

9           (5) No property owned, used, or operated as part of a privately  
10 developed renewable energy generation facility shall be subject to  
11 eminent domain by a consumer-owned electric supplier operating in the  
12 State of Nebraska. Nothing in this section shall be construed to grant  
13 the power of eminent domain to a private electric supplier or limit the  
14 rights of any entity to acquire any public, municipal, or utility right-  
15 of-way across property owned, used, or operated as part of a privately  
16 developed renewable energy generation facility as long as the right-of-  
17 way does not prevent the operation of or access to the privately  
18 developed renewable energy generation facility.

19           (6) Only a consumer-owned electric supplier operating in the State  
20 of Nebraska may exercise eminent domain authority to acquire the land  
21 rights necessary for the construction of transmission lines and related  
22 facilities. There is a rebuttable presumption that the exercise of  
23 eminent domain to provide needed transmission lines and related  
24 facilities for a privately developed renewable energy generation facility  
25 is a public use.

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

29           (8) Nothing in this section shall be construed to limit the  
30 authority of or require a consumer-owned electric supplier operating in  
31 the State of Nebraska to enter into a joint agreement with a private

1 electric supplier to develop, construct, and jointly own a privately  
2 developed renewable energy generation facility.

3 Sec. 4. Section 70-1015, Revised Statutes Cumulative Supplement,  
4 2022, is amended to read:

5 70-1015 ~~(1)~~ If any supplier violates Chapter 70, article 10, by (1)  
6 ~~either (a)~~ commencing the construction or finalizing or attempting to  
7 finalize the acquisition of any generation facilities, any transmission  
8 lines, or any related facilities without either first providing notice  
9 and meeting any county requirements for a conditional use permit or  
10 special exception, or without first ~~or~~ obtaining board approval,  
11 whichever is required, or (2) ~~(b)~~ serving or attempting to serve at  
12 retail any customers located in Nebraska or any wholesale customers in  
13 violation of section 70-1002.02, such construction, acquisition, or  
14 service of such customers shall be enjoined in an action brought in the  
15 name of the State of Nebraska until such supplier has complied with  
16 Chapter 70, article 10.

17 ~~(2) If the executive director of the board determines that a private~~  
18 ~~electric supplier commenced construction of a privately developed~~  
19 ~~renewable energy generation facility less than thirty days prior to~~  
20 ~~providing the notice required in subdivision (2)(a) of section~~  
21 ~~70-1014.02, the executive director shall send notice via certified mail~~  
22 ~~to the private electric supplier, informing it of the determination that~~  
23 ~~the private electric supplier is in violation of such subdivision and is~~  
24 ~~subject to a fine in the amount of five hundred dollars. The private~~  
25 ~~electric supplier shall have twenty days from the date on which the~~  
26 ~~notice is received in which to submit the notice described in such~~  
27 ~~subdivision and to pay the fine. Within ten days after the private~~  
28 ~~electric supplier submits a notice compliant with subsection (2) of~~  
29 ~~section 70-1014.02 and payment of the fine, the executive director of the~~  
30 ~~board shall issue the written acknowledgment described in subsection (3)~~  
31 ~~of section 70-1014.02. If the private electric supplier fails to submit a~~

1 ~~notice compliant with subsection (2) of section 70-1014.02 and pay the~~  
2 ~~fine within twenty days after the date on which the private electric~~  
3 ~~supplier receives the notice from the executive director of the board,~~  
4 ~~the private electric supplier shall immediately cease construction or~~  
5 ~~operation of the privately developed renewable energy generation~~  
6 ~~facility.~~

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

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

29 ~~(5) The board shall issue a written decision within sixty days after~~  
30 ~~conclusion of the hearing. All costs of the hearing shall be paid by the~~  
31 ~~private electric supplier if (a) the board determines that the private~~

1 ~~electric supplier commenced construction of the privately developed~~  
2 ~~renewable energy generation facility less than thirty days prior to~~  
3 ~~submitting the written notice required pursuant to subsection (2) of~~  
4 ~~section 70-1014.02 or (b) the private electric supplier withdraws its~~  
5 ~~request for hearing prior to the board issuing its decision.~~

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

12 2. On page 14, line 1, strike "subsection (2) of section  
13 70-1014.02,".