

AMENDMENTS TO LB1054

Introduced by Brewer, 43.

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

3 Section 1. (1) For purposes of this section:

4 (a) Wind energy generation project means any plant, works, system,
5 facility, and real and personal property of any nature whatsoever,
6 together with all parts thereof and appurtenances thereto, used or useful
7 in the generation of electric power and energy using wind turbines,
8 including the production, transmission, conservation, transformation,
9 distribution, purchase, sale, exchange, or interchange of such electric
10 power and energy, or any interest therein or right to capacity thereof,
11 any energy conservation system or device for reducing the energy demands
12 or any interest therein, and the acquisition of energy sources or fuel of
13 any kind, for any such purposes; and

14 (b) Wind turbine means a power generating device driven by the
15 kinetic energy of the wind consisting of propeller-type rotors fixed
16 around a central hub and facing the wind with a maximum output of over
17 sixteen hundred watts.

18 (2) No wind energy generation project shall be constructed in a
19 county after August 1, 2018, until the county has zoning regulations or a
20 zoning resolution as described in section 23-114 which addresses:

21 (a) Protection of property value for nonparticipating property
22 owners adjacent to or impacted by the wind energy generation project;

23 (b) Fixed-distance setbacks measured from buildings used for
24 residential purposes and setbacks measured from property lines. The
25 setbacks shall not be variable distances based on the height of a
26 turbine. The determination of setbacks based on surface danger area due
27 to issues such as collapse and ice-throw shall ensure that the surface

1 danger area does not overlap a nonparticipating property owner's
2 property;

3 (c) Noise standards restricting the low-level noise generated by the
4 operation of a wind turbine so that it does not exceed a specified A-
5 weighted, equivalent sound level or specified A-weighted decibels at the
6 property line of the wind energy generation project. The measure of noise
7 shall meet the following requirements:

8 (i) Any instrument used to measure noise shall meet sound level
9 meter performance specifications of the American National Standards
10 Institute or the International Electrotechnical Commission for wind class
11 I;

12 (ii) The procedures used to measure noise shall meet the
13 requirements of the American National Standards Institute, the
14 International Electrotechnical Commission, or the International
15 Organization for Standardization for the measurement of sound or its
16 characteristics; and

17 (iii) The procedures shall not include procedures based on the
18 International Electrotechnical Commission Standard IEC 61400-11 (2002)
19 regarding noise measurement techniques;

20 (d) Evaluation of adverse environmental impacts and mitigation plans
21 for the protection of the environment, including domesticated animals,
22 wildlife, wildlife habitat, water, vegetation, scenic areas, and historic
23 areas. The evaluation shall include consultation with local, state, and
24 federal agencies with jurisdiction over affected portions of the
25 environment; and

26 (e) Decommissioning terms and conditions which must be in place
27 before construction begins. The terms and conditions shall include a site
28 restoration plan and surety to be held by the county to pay for
29 decommissioning, which may include, but not be limited to, a performance
30 bond for each wind turbine.

31 Sec. 2. Section 70-1014.02, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 70-1014.02 (1)(a) A privately developed renewable energy generation
3 facility that meets the requirements of this section is exempt from
4 sections 70-1012 to 70-1014.01 if no less than thirty days prior to the
5 commencement of construction the owner of the facility:

6 (i) Notifies the board in writing of its intent to commence
7 construction of a privately developed renewable energy generation
8 facility;

9 (ii) Certifies to the board that the facility will meet the
10 requirements for a privately developed renewable energy generation
11 facility;

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

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

29 (v) Certifies to the board that the private electric supplier has
30 consulted with the Game and Parks Commission to identify potential
31 measures to avoid, minimize, and mitigate impacts to species identified

1 under subsection (1) or (2) of section 37-806 during the project planning
2 and design phases, if possible, but in no event later than the
3 commencement of construction.

4 (b) The board may bring an action in the name of the State of
5 Nebraska for failure to comply with subdivision (a)(iii)(B) of this
6 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if
7 a local government entity with the authority to create requirements for
8 decommissioning has enacted decommissioning requirements for the
9 applicable jurisdiction.

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

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

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

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

16 (5) Only a consumer-owned electric supplier operating in the State
17 of Nebraska may exercise eminent domain authority to acquire the land
18 rights necessary for the construction of transmission lines and related
19 facilities. ~~The exercise of eminent domain to provide needed transmission~~
20 ~~lines and related facilities for a privately developed renewable energy~~
21 ~~generation facility is a public use.~~

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

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

30 Sec. 3. Original section 70-1014.02, Revised Statutes Cumulative
31 Supplement, 2016, is repealed.