LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1048

FINAL READING

Introduced by Natural Resources Committee: Langemeier, 23, Chairperson; Carlson, 38; Cook, 13; Dubas, 34; Fischer, 43; Haar, 21; McCoy, 39; Schilz, 47; Mello, 5; Pirsch, 4; Sullivan, 41; Christensen, 44; Flood, 19; White, 8.

Read first time January 21, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to power generation; to amend sections 70-1001, 70-1001.01, 70-1013, 70-1014, 70-1014.01, 76-710.04, 77-105, 77-202, and 79-1018.01, Reissue Revised Statutes of Nebraska, and section 13-518, Revised Statutes Supplement, 2009; to define and redefine terms; to state intent regarding renewable energy facilities; to change provisions relating to hearings regarding electric generation facilities; to provide for approval of certified renewable export facilities as prescribed; to change provisions relating to eminent domain; to require registration and marking of certain wind measurement
equipment; to exempt certain property from property
taxation; to provide for a nameplate capacity tax as
prescribed; to harmonize provisions; to provide a duty
for the Revisor of Statutes; and to repeal the original
sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 13-518, Revised Statutes Supplement, 2009, is amended to read:

13-518 For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04 and after fiscal year 2004-05 until fiscal year 2007-08, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (iii) for fiscal year 2007-08 and each fiscal year thereafter, community college areas may exceed the base limitation to equal base revenue need calculated pursuant to section 85-2223;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any...
improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not
expected to be spent for capital improvements, (h) the tax provided
in sections 77-27,223 to 77-27,227 beginning in the second fiscal
year in which the county will receive a full year of receipts,
and (i) any excess tax collections returned to the county under
section 77-1776. Funds received pursuant to the nameplate capacity
tax levied under section 14 of this act for the first five years
after a wind energy generation facility has been commissioned are
nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant
to sections 60-3,202 and 77-3523;

(b) For municipalities, state aid to municipalities
paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190,
77-27,136, and 77-27,139.04 and insurance premium tax paid to
municipalities;

(c) For counties, (i) until July 1, 2011, state aid to
counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01,
60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium
tax paid to counties, and reimbursements to counties from funds
appropriated pursuant to section 29-3933, and (ii) beginning on
July 1, 2011, state aid to counties paid pursuant to sections
39-2501 to 39-2520, 60-3,184 to 60-3,190, and 77-27,137.03,
insurance premium tax paid to counties, and reimbursements to
counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, state aid to community
 colleges paid under the Community College Foundation and Equalization Aid Act;

(e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136;

(f) For educational service units, state aid appropriated under sections 79-1241.01 to 79-1241.03; and

(g) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Sec. 2. Section 70-1001, Reissue Revised Statutes of Nebraska, is amended to read:

70-1001 In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing and form
of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the State of Nebraska to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

It is also the policy of the state to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities intended primarily for export from the state under a statutory framework which protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates.

Sec. 3. Section 70-1001.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-1001.01 For purposes of sections 70-1001 to 70-1027 and section 6 of this act, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;

(2) Certified renewable export facility means a facility approved under section 6 of this act that (a) will generate electricity using solar, wind, biomass, or landfill gas, (b) will be constructed and owned by an entity other than a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental
entity, and (c) has a power purchase or similar agreement or
agreements with an initial term of ten years or more for the
sale of at least ninety percent of the output of the facility
with a customer or customers located outside the State of Nebraska
and maintains such an agreement or agreements for the life of
the facility. Output sold pursuant to subdivision (2)(a)(iv) of
section 6 of this act shall not be included when calculating
such ninety percent. Certified renewable export facility includes
all generating equipment, easements, and interconnection equipment
within the facility and connecting the facility to the transmission
grid;

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

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

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

(6) State means the State of Nebraska; and
(7) Stranded asset means a generation or transmission
facility owned by an electric supplier as defined in subsection (1)
of section 6 of this act which cannot earn a favorable economic
return due to regulatory or legislative actions or changes in the
market and, at the time an application is filed with the board
under such section, either exists or has been approved by the board
or the governing body of an electric supplier as defined in such
subsection; and

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

Sec. 4. Section 70-1013, Reissue Revised Statutes of
Nebraska, is amended to read:

70-1013 Upon application being filed under section
70-1012, the board shall fix a time and place for hearing and shall
give ten days’ notice by mail to such alternate power suppliers
as it deems to be affected by the application. The hearing shall
be had within thirty sixty days unless for good cause sho
the applicant shall request in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not be more than ninety one hundred twenty days from the filing of the application, and the board shall give its decision within thirty sixty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. The provided, the board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 70-1014 can be made without a hearing. Such hearing shall be conducted as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

Sec. 5. Section 70-1014, Reissue Revised Statutes of Nebraska, is amended to read:

70-1014 After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications and except as provided in section 6 of this act, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

Sec. 6. (1) For purposes of this section, electric supplier means a public power district, a public power and
irrigation district, an individual municipality, a registered

group of municipalities, an electric membership association, or

a cooperative.

(2)(a) The board shall conditionally approve an

application for a certified renewable export facility if it

finds that only the criteria described in subdivisions (a)(i)

through (iv) of this subsection are met: (i) The facility will

provide reasonably identifiable and quantifiable public benefits,

including economic development, to the residents of Nebraska or the

local area where the facility will be located; (ii) the facility

meets the requirements of subdivisions (2)(a) and (b) of section

70-1001.01; (iii) the facility has a memorandum of understanding

or other written evidence of mutual intent to negotiate a power

purchase agreement or agreements with a purchaser or purchasers

outside the State of Nebraska for at least ninety percent of

the output of the facility for ten years or more; and (iv)

the applicant offers electric suppliers serving loads greater

than fifty megawatts at the time the initial application is

filed an option to purchase in the aggregate an amount of power

up to ten percent of the output of any facility with greater

than eighty megawatts of nameplate capacity contingent upon the

applicant and electric suppliers negotiating in good faith a

power purchase agreement and any other necessary agreements. Such

electric suppliers shall be entitled to a minimum of their pro-

rata share based on the load ratio share of Nebraska electric
load served among those electric suppliers eligible under this subdivision (iv). If an electric supplier declines to contract for some or all of its pro rata share, the remaining eligible electric suppliers may share the balance on a pro rata basis. The ten percent may be above the total generation amount proposed in the application for a certified renewable export facility and shall require no separate approval by the board. Any transmission studies, additions, or upgrades due to participation by electric suppliers serving loads greater than fifty megawatts shall be the responsibility of the participating electric supplier. Upon receiving the initial application under this section, the board shall notify electric suppliers identified in this subdivision (iv) of a pending application with a nameplate capacity greater than eighty megawatts. Such suppliers shall have forty-five days following the date of the board’s notice to notify the applicant of an interest in exercising the option to purchase power, except that such suppliers may withdraw their option to purchase power once the costs of the transmission additions and upgrades are determined. Electric suppliers withdrawing their option to purchase power are responsible for their pro rata share of any costs resulting from their participation in and withdrawal from the generation interconnection and transmission delivery studies.

(b) Following the board’s conditional approval of an application under subdivision (a) of this subsection, the applicant shall notify the board within eighteen months that it is prepared
to proceed to consideration of the criteria in subdivision (c) of
this subsection. The board may extend such eighteen-month deadline
not more than twelve additional months for good cause shown. If the
applicant fails to notify the board within such time that it is so
prepared, the conditional approval granted under this subdivision
is void.

(c) Upon finding that the criteria described in
subdivisions (c)(i) through (viii) of this subsection have also
been met by the applicant and after the board has fulfilled the
requirements of subsection (3) of section 37-807, the board shall
grant final approval of an application for a certified renewable
export facility:

(i) The facility will not have a materially detrimental
effect on the retail electric rates paid by any Nebraska
ratepayers, except that, notwithstanding subdivisions (c)(v) and
(vi) of this subsection, the determination of a materially
detrimental effect on rates shall not include regional transmission
improvements dictated by a regional transmission operator or
transmission improvements required due to participation by an
eligible entity pursuant to subdivision (2)(a)(iv) of this section;

(ii) The applicant has obtained the necessary generation
interconnection and transmission service approvals from and
has executed agreements for such generation interconnection and
transmission service with the appropriate regional transmission
organization, transmission owner, or transmission provider;
(iii) There has been no demonstration that the proposed facility will result in a substantial risk of creating stranded assets;

(iv) The applicant has certified that it has applied for and is actively pursuing the required approvals from any other federal, state, or local entities with jurisdiction or permitting authority over the certified renewable export facility;

(v) The applicant and the electric supplier owning the transmission facilities to which the certified renewable export facility will be interconnected, along with any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, have entered into a joint transmission development agreement on reasonable terms and conditions consistent with and subject to the notice to construct or other directives of any regional transmission organization with jurisdiction over the addition or upgrade to transmission facilities or, for any electric supplier that is not a member of a regional transmission organization with which the facility will interconnect, covers the addition or upgrade to transmission facilities required as a result of the certified renewable export facility. Such joint transmission development agreement shall include provisions addressing construction, ownership, operation, and maintenance of such additions or upgrades to transmission facilities. The electric supplier or suppliers shall have the right to purchase and own
transmission facilities as set forth in the joint transmission
development agreement;

(vi) The applicant agrees to reimburse any costs that are
not covered by a regional transmission organization tariff or that
are allocated through the tariff to the electric suppliers as a
result of the certified renewable export facility or not covered
by the tariff of a transmission owner or transmission provider
that is not a member of a regional transmission organization,
costs incurred by any electric supplier as a result of adding the
certified renewable export facility, including, but not limited
to, renewable integration costs, and costs which allow the
interconnected electric supplier to operate and maintain the
transmission facilities under reasonable terms and conditions
agreed to by the parties within the joint transmission development
agreement;

(vii) The applicant shall submit a decommissioning
plan. The applicant or owner of the facility shall establish
decommissioning security by posting an instrument, a copy of which
is given to the board, no later than the tenth year following
final approval of the facility to ensure sufficient funding is
available for removal of the facility and reclamation at the end of
the useful life of such facility pursuant to the decommissioning
plan. The owner of the certified renewable export facility shall
be solely responsible for decommissioning. If the applicant or any
subsequent owner of the facility intends to transfer ownership of
the facility, the proposed new owner shall provide the board with
adequate evidence demonstrating that substitute decommissioning
security has been posted or given prior to transfer of ownership.
The requirements of this subdivision (vii) shall be waived if a
local governmental entity with authority to create requirements for
decommissioning has enacted decommissioning requirements for the
applicable jurisdiction; and

(viii) The facility meets the requirements of
subdivisions (2)(a) through (c) of section 70-1001.01.

(3) If the applicant does not commence construction of
the certified renewable export facility within eighteen months
after receiving final approval from the board under subsection (2)
of this section, the approval is void. Upon written request filed
by the applicant, the board may, for good cause shown, extend the
time period during which an approval will remain valid. Good cause
includes, but is not limited to, national or regional economic
conditions, lack of transmission infrastructure, or an applicant’s
inability to obtain authorization from other required governmental
regulatory authorities despite the applicant’s exercise of a
good-faith effort to obtain such approvals.

(4) The applicant shall remit an application fee of five
thousand dollars with the application. The fee shall be remitted
to the State Treasurer for credit to the Nebraska Power Review
Fund. The board shall use the application fee to defray the board’s
reasonable expenses associated with reviewing and acting upon the
application, including the costs of the hearing. If the board
incurs expenses of more than five thousand dollars associated with
the application, the board shall provide written notification to
the applicant of the additional sum needed or already expended,
after which the applicant shall promptly submit an additional sum
sufficient to cover the board’s anticipated or incurred expenses
or shall file an objection with the board. If, after completion of
the application process and any subsequent legal action, including
appeal of the board’s decision, the board’s expenses associated
with processing and acting upon the application do not equal the
amount submitted by the applicant, the board shall return the
unused funds to the applicant if the amount is fifty dollars or
more. The applicant shall reimburse the board for any reasonable
expenses the board incurs as a result of an appeal of the board’s
decision or shall file an objection with the board. The board shall
rule on any objection brought pursuant to this subsection within
thirty days. The applicant may request a hearing on its objection,
in which case the board shall hold such hearing within thirty days
after the request and shall rule within forty-five days after the
hearing.

(5) No facility or part of a facility which is a
certified renewable export facility is subject to eminent domain by
an electric supplier or by any other entity if the purpose of the
eminent domain proceeding is to acquire the facility for electric
generation or transmission.
(6) Except as provided in subsection (5) of this section, only an electric supplier may exercise its eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities to provide transmission services for a certified renewable export facility. The exercise of eminent domain to provide needed transmission lines and related facilities for a certified renewable export facility is a public use. Nothing in this section shall be construed to grant the power of eminent domain to a private entity.

(7) If any transmission facilities serving a certified renewable export facility are proposed to cross the service area of any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, then such electric supplier may elect to be a party to a joint transmission development agreement for such transmission facilities.

(8) If a certified renewable export facility no longer meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01, the owner of the facility shall notify the board. An electric supplier or a governmental entity with regulatory jurisdiction over the certified renewable export facility may apply to the board or the board may file its own motion to have the certification of a certified renewable export facility revoked upon a showing by the applicant for decertification that the facility no longer meets the requirements
of such subdivisions. Upon the filing of such application
and making of a prima facie showing by the applicant for
decertification that the facility no longer meets the requirements
of such subdivisions, the board shall set the matter for hearing.
The hearing shall be held within forty-five days unless an
extension is necessary for good cause shown. The applicant for
decertification shall have the burden of proof. Within forty-five
days after the conclusion of the hearing, the board shall enter
an order to either reaffirm the facility's status as a certified
renewable export facility or to revoke the certification. During
the pendency of the application for decertification and before the
board's final order on decertification, the facility may continue
to operate if the electricity generated at the facility is sold to
customers outside the State of Nebraska, or to an electric supplier
pursuant to a power purchase agreement or similar agreement. The
board shall retain jurisdiction over the decertification action for
at least thirty days after entry of such an order. Within thirty
days after a final order revoking certification, the owner of the
facility may apply for recertification, with the time period for
recertification being no longer than one year unless the board
extends the time period for good cause shown. Such application
for recertification shall extend the board's jurisdiction over the
decertification action until the board completes its review of
the application for recertification and enters an order granting
or denying the application. If the applicant for recertification
demonstrates to the board that it is working diligently and in
good faith to restore its compliance with subdivisions (2)(a)
through (c) of section 70-1001.01, the board shall not terminate
the application for recertification. During the pendency of the
application for recertification and before the board’s final order
on recertification, the facility may continue to operate if the
electricity generated at the facility is sold to customers outside
the state, or to an electric supplier pursuant to a power purchase
agreement or similar agreement. If the board retains jurisdiction
over the decertification action, the prohibition on eminent domain
set forth in subsection (5) of this section shall remain in full
force and effect. If the board enters an order decertifying a
certified renewable export facility and such order becomes final
due to a failure to timely seek recertification or judicial review,
the prohibition on eminent domain set forth in subsection (5) of
this section shall no longer apply. Nothing in this section shall
prohibit a decertified facility from being recertified in the same
manner as a new facility.

Sec. 7. Section 70-1014.01, Reissue Revised Statutes of
Nebraska, is amended to read:

70-1014.01 (1) Except as provided in subsection (2)
of this section, an application by a municipality, a registered
group of municipalities, a public power district, a public power
and irrigation district, an electric cooperative, an electric
membership association, or any other governmental entity for
a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2)(a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding
sales from such projects to other electric-generating entities, does not exceed ten percent of total energy sales as shown in the producer’s Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant’s governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer’s total energy sales as described in subdivision (2)(a) of this section, and (iii) the applicant’s governing body has conducted at least one advertised public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act which intends to develop renewable energy sources for sale to one or more Nebraska electric utilities described in this section may also make an application to the board pursuant to subsection (2) of this section if (a) the purchasing electric utilities conduct a public hearing described in such subsection and (b) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least
twenty years.

(4) No facility or part of a facility which is approved pursuant to this section is subject to eminent domain by any electric supplier, or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

Sec. 8. (1) All wind measurement equipment associated with the development or study of wind-powered electric generation, whether owned or leased, shall be registered with the Department of Aeronautics if the equipment is at least fifty feet in height above the ground and is located outside the boundaries of any incorporated city or village.

(2)(a) On or before January 1, 2013, all such equipment installed prior to the effective date of this act shall be either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet.

(b) All such equipment installed on or after the effective date of this act shall be either lighted or painted.

(3) The person or firm that owns or leases equipment described in subsection (1) of this section shall register it within fifteen days after the effective date of this act in the case of equipment installed before such date or within thirty days after installation in the case of equipment installed on or
after such date. Such registration shall include the equipment’s 
exact location and height above the ground, the name of the 
person or firm registering the equipment, the method used to make 
the equipment recognizable as provided in subsection (2) of this 
section, and the name and telephone number of a contact person 
for any issues related to such equipment. Within five days after 
receiving such registration, the department shall make all data 
included in the registration available to the public.

(4) Any person or firm that removes equipment subject 
to the registration requirements of this section shall report the 
removal to the department within thirty days after such removal.

Sec. 9. Section 76-710.04, Reissue Revised Statutes of 
Nebraska, is amended to read:

76-710.04 (1) A condemnor may not take property through 
the use of eminent domain under sections 76-704 to 76-724 if the 
taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development 
purpose means taking property for subsequent use by a commercial 
for-profit enterprise or to increase tax revenue, tax base, 
employment, or general economic conditions.

(3) This section does not affect the use of eminent 
domain for:

(a) Public projects or private projects that make all 
or a major portion of the property available for use by the 
general public or for use as a right-of-way, aqueduct, pipeline,
transmission line, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad; and

(g) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359; and-

(h) Taking private property for a transmission line to serve a privately developed facility generating electricity using wind, solar, biomass, or landfill gas. Nothing in this subdivision shall be construed to grant the power of eminent domain to a private entity.

Sec. 10. Section 77-105, Reissue Revised Statutes of Nebraska, is amended to read:

77-105 The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree
of attachment to real property, used directly in commercial,
manufacturing, or processing activities conducted on real property,
regardless of whether the real property is owned or leased, and
all property used in the generation of electricity using wind as
the fuel source, including, but not limited to, that listed in
subsection (9) of section 77-202. The term intangible personal
property includes all other personal property, including money.

Sec. 11. Section 77-202, Reissue Revised Statutes of
Nebraska, is amended to read:

77-202 (1) The following property shall be exempt from
property taxes:

(a) Property of the state and its governmental
subdivisions to the extent used or being developed for use by
the state or governmental subdivision for a public purpose. For
purposes of this subdivision, public purpose means use of the
property (i) to provide public services with or without cost to the
recipient, including the general operation of government, public
education, public safety, transportation, public works, civil and
criminal justice, public health and welfare, developments by a
public housing authority, parks, culture, recreation, community
development, and cemetery purposes, or (ii) to carry out the
duties and responsibilities conferred by law with or without
consideration. Public purpose does not include leasing of property
to a private party unless the lease of the property is at fair
market value for a public purpose. Leases of property by a public
housing authority to low-income individuals as a place of residence
are for the authority’s public purpose;

(b) Unleased property of the state or its governmental
subdivisions which is not being used or developed for use for
a public purpose but upon which a payment in lieu of taxes is
paid for public safety, rescue, and emergency services and road
or street construction or maintenance services to all governmental
units providing such services to the property. Except as provided
in Article VIII, section 11, of the Constitution of Nebraska,
the payment in lieu of taxes shall be based on the proportionate
share of the cost of providing public safety, rescue, or emergency
services and road or street construction or maintenance services
unless a general policy is adopted by the governing body of the
governmental subdivision providing such services which provides for
a different method of determining the amount of the payment in
lieu of taxes. The governing body may adopt a general policy by
ordinance or resolution for determining the amount of payment in
lieu of taxes by majority vote after a hearing on the ordinance
or resolution. Such ordinance or resolution shall nevertheless
result in an equitable contribution for the cost of providing such
services to the exempt property;

(c) Property owned by and used exclusively for
agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable,
or cemetery organizations, or any organization for the exclusive
benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable
tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

(9) Any property used directly in the generation of
electricity using wind as the fuel source shall be exempt
from the property tax. Personal property used directly in the
generation of electricity using wind as the fuel source includes,
but is not limited to, wind turbines, rotors and blades,
towers, trackers, generating equipment, transmission components,
substations, supporting structures or racks, inverters, and other
system components such as wiring, control systems, switchgears, and
generator step-up transformers.

Sec. 12. The Legislature finds and declares:
   (1) The purpose of the nameplate capacity tax levied
under section 14 of this act is to replace property taxes currently
imposed on wind infrastructure and depreciated over a short period
of time in a way that causes local budgeting challenges and
increases upfront costs for wind developers;
   (2) The nameplate capacity tax should be competitive
with taxes imposed directly and indirectly on wind generation and
development in other states;
   (3) The nameplate capacity tax should be fair and
nondiscriminatory when compared with other taxes imposed on other
industries in the state; and
   (4) The nameplate capacity tax should not be singled
out as a source of General Fund revenue during times of economic
hardship.

Sec. 13. For purposes of sections 12 to 15 of this act:
   (1) Commissioned means the wind turbine of a wind
generation facility has been in commercial operation for at least
twenty-four hours. A wind turbine is not in commercial operation
unless the wind energy generation facility is connected to the
electrical grid;

(2) Nameplate capacity means the capacity of a wind
turbine to generate electricity as measured in megawatts, including
fractions of a megawatt; and

(3) Wind energy generation facility means a facility that
generates electricity using wind as the fuel source.

Sec. 14. (1) The owner of a wind energy generation
facility annually shall pay a nameplate capacity tax equal to the
total nameplate capacity of the commissioned wind turbine of the
wind energy generation facility multiplied by a tax rate of three
thousand five hundred eighteen dollars per megawatt.

(2) No tax shall be imposed on a wind energy generation
facility:

(a) Owned or operated by the federal government, the
State of Nebraska, a public power district, a public power and
irrigation district, an individual municipality, a registered
group of municipalities, an electric membership association, or
a cooperative; or

(b) That is a customer-generator as defined in section
70-2002.

(3) No tax levied pursuant to this section shall be
construed to constitute restricted funds as defined in section
13-518 for the first five years after the wind energy generation
facility is commissioned.

(4) The presence of one or more wind energy generation
facilities or supporting infrastructure shall not be a factor in
the assessment, determination of actual value, or classification
under section 77-201 of the real property underlying or adjacent to
such facilities or infrastructure.

(5)(a) The Department of Revenue shall collect the tax
due under this section.

(b) The tax shall be imposed beginning the first calendar
year the wind turbine is commissioned. A wind energy generation
facility commissioned prior to the effective date of this act shall
be subject to the tax levied pursuant to sections 12 to 15 of
this act on and after January 1, 2010. The amount of property tax
previously paid on a wind energy generation facility commissioned
prior to the effective date of this act which is greater than the
amount that would have been paid pursuant to sections 12 to 15
of this act from the date of commissioning until January 1, 2010,
shall be credited against any tax due under Chapter 77, and any
amount so credited that is unused in any tax year shall be carried
over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be
prorated based upon the number of days remaining in the calendar
year after the wind turbine is commissioned.

(ii) In the first year in which a wind energy generation
facility is taxed or in any year in which additional commissioned
nameplate capacity is added to a wind energy generation facility,
the taxes on the initial or additional nameplate capacity shall be
prorated for the number of days remaining in the calendar year.

(iii) When a wind turbine is decommissioned or made
nonoperational by a change in law or decertification from its
status as a certified renewable export facility during a tax year,
the taxes shall be prorated for the number of days during which the
wind turbine was not decommissioned or was operational.

(iv) When the capacity of a wind turbine to produce
electricity is reduced but the wind turbine is not decommissioned,
the nameplate capacity of the wind turbine is deemed to be
unchanged.

(6)(a) On March 1 of each year, the owner of a wind
ergy generation facility shall file with the Department of
Revenue a report on the nameplate capacity of the facility for
the previous year from January 1 through December 31. All taxes
shall be due on April 1 and shall be delinquent if not paid on a
quarterly basis on April 1 and each quarter thereafter. Delinquent
quarterly payments shall draw interest at the rate provided for in
section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a wind energy generation facility is
liable for the taxes under this section with respect to the
facility, whether or not the owner of the facility is the owner of
the land on which the facility is situated.
(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department shall adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the wind energy generation facility is located within thirty days after receipt of such proceeds.

Sec. 15. (1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 14 of this act to local taxing entities which, but for such personal property tax exemption, would have received distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(2) A local taxing entity’s status as eligible for distribution under subsection (1) of this section shall not be affected when and if the net book value of personal property used
directly in the generation of electricity using wind as the fuel source becomes zero. A local taxing entity’s status as eligible for distribution under such subsection shall be affected by the disposal of all of the exempt depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(3) The distribution to each eligible local taxing entity shall be calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax levied by all of the eligible local taxing entities during the year. Each eligible entity’s resulting fraction shall then be multiplied by the revenue distributed to the county treasurer by the department to determine the portion of such revenue due each local taxing entity.

(4) The Department of Revenue shall not retain any revenue collected pursuant to sections 12 to 15 of this act for distribution, use, transfer, pledge, or allocation to or from the General Fund.

Sec. 16. Section 79-1018.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-1018.01 Except as otherwise provided in this section, local system formula resources include other actual receipts available for the funding of general fund operating expenditures as determined by the department for the second school fiscal year immediately preceding the school fiscal year in which aid
is to be paid. Receipts from the Community Improvements Cash Fund and receipts acquired pursuant to the Low-Level Radioactive Waste Disposal Act shall not be included. Other actual receipts include:

1. Public power district sales tax revenue;
2. Fines and license fees;
3. Tuition receipts from individuals, other districts, or any other source except receipts derived from adult education, receipts derived from summer school tuition, receipts derived from early childhood education tuition, and receipts from educational entities as defined in section 79-1201.01 for providing distance education courses through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, to such educational entities;
4. Transportation receipts;
5. Interest on investments;
6. Other miscellaneous noncategorical local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;
7. Special education receipts;
8. Special education receipts and non-special education receipts from the state for wards of the court and wards of the state;
9. All receipts from the temporary school fund.

Beginning with the calculation of aid for school fiscal year 2002-03 and each school fiscal year thereafter, receipts from
the temporary school fund shall only include receipts pursuant
to section 79-1035 and the receipt of funds pursuant to section
79-1036 for property leased for a public purpose as set forth in
subdivision (1)(a) of section 77-202;
(10) Motor vehicle tax receipts received on or after
January 1, 1998;
(11) Pro rata motor vehicle license fee receipts;
(12) Other miscellaneous state receipts excluding revenue
from the textbook loan program authorized by section 79-734;
(13) Impact aid entitlements for the school fiscal year
which have actually been received by the district to the extent
allowed by federal law;
(14) All other noncategorical federal receipts;
(15) All receipts pursuant to the enrollment option
program under sections 79-232 to 79-246;
(16) Receipts under the federal Medicare Catastrophic
Coverage Act of 1988, as such act existed on May 8, 2001, as
authorized pursuant to sections 43-2510 and 43-2511 but only to the
extent of the amount the local system would have otherwise received
pursuant to the Special Education Act; and
(17) Receipts for accelerated or differentiated
curriculum programs pursuant to sections 79-1106 to 79-1108.03;
and-
(18) Revenue received from the nameplate capacity tax
distributed pursuant to section 15 of this act.
Sec. 17. The Revisor of Statutes shall assign section 6 of this act within sections 70-1001 to 70-1027.

Sec. 18. Original sections 70-1001, 70-1001.01, 70-1013, 70-1014, 70-1014.01, 76-710.04, 77-105, 77-202, and 79-1018.01, Reissue Revised Statutes of Nebraska, and section 13-518, Revised Statutes Supplement, 2009, are repealed.