

# Dirt Alert

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ATTORNEYS AT LAW

## **103rd Nebraska Legislature, 1st Session: Real Estate, Renewable Energy and Municipal Law Highlights**

The first session of the 103rd Nebraska Legislature began on January 9, 2013. In the ten-day bill introduction period, Nebraska's state senators introduced 655 new bills. The Legislature is considering a number of issues that may affect our clients, including numerous bills related to real property, renewable energy and municipal law. We are tracking potentially relevant bills and are directly lobbying for and against some legislation as well.

### **Amendment to C-BED Statute would incentivize development of wind energy facilities.**

**LB 402** would amend Nebraska's one existing incentive for wind energy development, the Community Based Energy Development or C-BED statute. The current law exempts the component parts of a wind energy generation facility from sales tax if 33 percent of the revenues from that facility flow to Nebraska residents or a limited liability company comprised entirely of Nebraska residents.

The concept is to ensure that the wind energy project contributes

to the state beyond its direct infusion of property taxes and jobs. Unfortunately, the existing statute has proven ineffective for utility scale projects because the investment required to receive 33 percent of the project revenues is very large.

Appropriations Committee Chairman Senator Heath Mello introduced LB 402 to retain and expand on this concept by lowering the 33 percent threshold to 25 percent, and by expanding the contributors to that threshold to include payments for parts manufactured in Nebraska or by Nebraska companies and services provided by Nebraska companies. LB 402 also extends this opportunity to all forms of renewable energy. This both incentivizes the development of renewable energy facilities, and incentivizes the development of the supporting industries. Those supporting industries will create jobs for Nebraskans and tax revenue for Nebraska municipalities and the State of Nebraska. Over time, those additional revenues will offset the foregone sales tax on the original renewable energy project.

### **Nebraska Mainstreet Revitalization and Job Creation Act would create historic tax credit.**

**LB 191**, the Nebraska Mainstreet Revitalization and Job Creation Act would create a state level historic tax credit. This would be a credit against state income tax of 20 percent for the first \$10,000,000 in investment to rehabilitate a historic building or a contributing building in a historic district, and 10 percent for investment above that level. Thirty-one out of 41 states with income tax have similar tax credits. These programs have proven to be extremely effective, typically repaying the state's investment of income tax revenue in approximately five to seven years, and generating a windfall to the state in property tax, sales tax and income tax revenues thereafter. This particular legislation is designed to ensure that it is effective in both small towns and big cities by allowing rehabilitation of buildings in locally designated historic districts to qualify for the tax credit.

Senator Jeremy Nordquist of Omaha introduced the bill. In addition to Senator Nordquist as the primary introducer, Senators Mello (Appropriations Committee Chair), Schilz (Agriculture Committee Chair), Dubas (Transportation Committee Chair), Lathrop (Business and Labor Committee Chair), Ashford (Judiciary Committee Chair), Howard and Coash signed on as co-introducers.

### **New definition for “continuum of care” facilities would recognize their unique nature for property tax purposes.**

**LB 43**, introduced by Senator Tanya Cook, would ensure proper treatment of senior care facilities known as “continuum of care” facilities for property tax purposes. Historically, “independent living” facilities offered no health care services, and they were subject to property tax. On the other hand, “assisted living” facilities offered health care services, and thus were exempt from property tax. In the continuum of care model, all residents have access to health care services. Therefore, the premise underlying the taxation of the “independent living” portion of these facilities no longer holds, and the definitions in statute need to be updated to properly reflect the evolving industry.

### **State production tax credit for renewable energy would provide tax credits.**

**LB 411** would create a state production tax credit for renewable energy projects. This credit against state income tax would start in 2014 at 0.5 cents per kilowatt hour produced. It would

then increase to 1.5 cents per kilowatt hour in 2015 and 2016 to offset the impact of the likely end of the federal production tax credit during that time period. Thereafter, the credit would decrease to 0.75 cents per kilowatt hour and then to 0.5 cents per kilowatt hour, until after eight years of operation, the facility would no longer receive a credit. The bill limits the credit to any one taxpayer to \$2,000,000 per year.

### **Community Enhancement Financing Assistance Act would provide mechanism for state-assisted financing for community projects.**

**LB 571** would provide a mechanism for state assisted financing of new or “revitalizing” projects that are intended primarily to provide cultural, recreational, educational, or public purposes that will enhance the quality of life in the community and that are available for use by the public. If the board approves the application, a project would be eligible for state assistance in an amount up to increased sales tax collected by nearby retailers in the defined project area, and not to exceed the private funds invested in the project.

### **Nebraska Municipal Land Bank Act would assist municipalities in developing vacant, abandoned properties.**

**LB 97**, the Nebraska Municipal Land Bank Act, would allow for the creation of a land bank by a municipality or group of municipalities. A land bank is a public authority designed to acquire, hold, manage, and develop vacant, abandoned

and tax-delinquent properties and return them to productive use. Land banks focus on negatively impacted areas and aim to increase property values, encourage property ownership, increase tax revenues, promote economic development, and reduce criminal activity.

### **Bill proposes to enhance tax increment financing opportunities.**

**LB 529** and **LR 29CA** propose to amend the Community Redevelopment Law and the constitutional authorization for Tax Increment Financing. **LB 529** would prohibit a governing body from approving a redevelopment plan if (i) TIF funds used to fund the project would cause the city’s total value of TIF funded projects to exceed one and one-half percent of the city’s taxable value for the current tax year, or (ii) the (a) taxable value of property located within the city financed by TIF funds minus (b) the project valuation for projects financed by TIF funds exceeds five percent of the total taxable value of such city for the current tax year.

**LR 29CA** would increase the maximum permitted period for TIF financing from 15 to 20 years. Additionally, the proposed amendment would re-designate the property that is eligible for TIF funds as “in need of rehabilitation or redevelopment” instead of “substandard and blighted.”

## **Bill would substantially expand airport zoning authority.**

**LB 140** would impose on political subdivisions certain zoning restrictions related to airports. In particular, LB 140 would expand the airport zoning jurisdiction for any airport with an instrument runway (precision or non precision) to an area extending ten miles from the end of such a runway, and three miles wide at that point. LB 140 would impose a height limit within that area that rises from the end of the runway to 889 feet at the ten-mile point, but which is measured at all points from the elevation at the end of the runway. Therefore, where the terrain goes up as it goes away from the airport, that height limit could decrease greatly, or even go to zero. Construction within this area that violates that height limit would require a variance from the local board of adjustment, which that board may only grant by a four-fifths vote. The restrictions LB 140 proposes would exceed those recommended by the Federal Aviation Administration or imposed by most other states. The Government, Veterans and Military Affairs Committee held a public hearing on this bill on January 25, 2013.

## **Other Bills of Potential Interest**

**LB 3** would require a nonconsensual lien claimant, upon filing of the lien with the recording office, to submit an envelope addressed to the owner with postage attached, and would require the recording office to mail a certified copy of the lien to the owner.

**LB 13** would amend the Radiation Control Act to require radon resistant construction in all new residential construction, require radon mitigation statements for sales of residential real property and create the Radon-Resistant Building Code Task Force. Radon resistant construction requirements under LB 13 include the installation of a passive pipe to allow flow of air upward for soil gas depressurization. LB 13 would also require that only certified radon contractors install active radon mitigation systems.

**LB 66** would allow any city of the first class to annex tracts of land owned by the city or other noncontiguous tracts of lands. LB 66 would also allow any owner of property which is part of a development project to petition a city of first class to have the property included within the corporate limits of the city. The Legislature's Urban Affairs Committee will hold a public hearing on this bill on January 29, 2013.

**LB 90** would exempt electricity services to a customer-generator from sales and use taxes.

**LB 101** and **LB 145** would modify the valuation of agricultural land and horticultural land and

amend school aid provisions. LB 101 provides that valuation of agricultural and horticultural land, for purposes of school district taxation, will be at a lower percentage than valuation for property taxation and special valuation. LB 145 would lower the rate for agricultural and horticultural land with respect to property taxation, special valuation, property valuation and school district state aid valuation.

**LB 104 and 501** would modify the Nebraska Advantage Act to exempt the components of a renewable energy generation facility from sales tax. LB 104 provides for different levels of exemption depending on the levels of investment and the levels of Nebraska sourced inputs into the project. LB 501 adds a renewable energy facility to the definitions of projects eligible for credit under the Advantage Act.

**LB 150** would exempt retail sales of natural gas as vehicular fuel and purchases for purposes of sales and use taxes and would exempt any revenue gained by such sales for purposes of determining the amount owed by metropolitan utilities districts to the city of the metropolitan class.

**LB 152** would provide that a condemner in eminent domain cannot negotiate with a condemnee unless the condemner has a present plan and a present public purpose for the property. LB 152 would entitle condemnees to injunctive relief, attorney's fees and actual damages if a court finds a condemnor's actions were coercive or threatening.

**LB 153** would amend the Civic and Community Center Financing Act to support development of recreation centers, change provisions for the evaluation of grants, and require additional annual reporting for grants. Support for recreation centers would extend to facilities used for athletics, fitness, sport activities or other recreation activities. LB 153 would allow grants from the Civic and Community Financing Fund to assist in the conversion, rehabilitation or reuse of historic buildings.

**LB 237** would add a property tax exemption for retirement communities that are owned and used for low-income housing.

**LB 289** would allow construction liens to be filed for services provided pursuant to a written agreement with a designated broker when services relate to real property other than residential real estate. Such liens would be effective for two years after the date payment was due. The Legislature's Judiciary Committee will hold a public hearing on this bill on February 1, 2013.

**LB 348** would modify provisions relating to the county assessor's assessment of certain rent-restricted housing projects.

**LB 373** would amend the Nebraska Construction Prompt Pay Act by (i) defining when a project is substantially complete, (ii) requiring subcontractor payments to be placed in a separate trust account, and (iii) capping contract retainage at five percent of the total project. Additionally, the bill would require a court to award attorney fees and

costs to the prevailing party in a dispute under the Prompt Pay Act, and would authorize a court to provide the prevailing party equitable relief.

**LB 388** would make terms consistent throughout the statutes relating to the Power Review Board and would codify the current review requirements of the Power Review Board relating to the construction of transmission lines. LB 388 would provide local public power districts a right of first refusal to construct transmission lines approved as part of a regional transmission organization plan. With regard to electric cooperatives, LB 388 would limit the board's review to cooperatives serving loads greater than fifty megawatts. The Legislature's Natural Resources Committee has scheduled a public hearing for this bill on February 1, 2013.

**LB 442** would change provisions relating to liens of condominium and homeowner associations. LB 442 would remove a condominium or homeowner associations' statutory lien for fines imposed against the owner and would limit the priority given to liens for assessments on the unit or home. LB 442 provides that the declaration, agreements, bylaws, or regulations of a condominium or homeowner association may not provide that an assessment lien dates back to the filing of the association's declaration or that a lien take priority over mortgages or deeds of trust recorded subsequent to the association's declaration but prior to recording notice of the lien. LB 442 requires associations record notice of a lien, including the dollar amount of such lien, in the office where mortgages are

recorded. LB 442 would allow associations to require payments into an escrow account not to exceed six months of assessments. The association may use these funds to pay assessments and may require the owner replenish the escrow deposit.

**LB 516** would adopt the Nebraska Water Legacy Act. LB 516 would create the Nebraska Water Legacy Commission and appropriate funds to Nebraska Water Legacy Fund from sales and use taxes. The commission would distribute funds to water management plans and projects, and activities aimed at achieving water sustainability, water use productivity and maximization of Nebraska's water resources.

**LB 557** would amend the net metering statutes to allow community solar gardens to qualify for net metering. A community solar garden would include a solar electric generation facility with a rating of two megawatts or less.

**LB 567** would adopt additional requirements and considerations for the Power Review Board to review and consider prior to approving a facility or transmission line application. LB 567 would require that, prior to approval of a transmission line, the Power Review Board must find that benefits of constructing the line outweigh risks including consideration of health, environmental and economic impacts.

**LB 598** would modify provisions relating to net metering to increase the allowable rated capacity of a customer-generator qualified facility to one hundred kilowatts. Currently, it is 25 kilowatts.

**LB 622** would modify power supply plan research and conservation reporting requirements to require biennial reports to provide information regarding areas where renewable energy projects of less than twenty megawatts could be added without major additional transmission improvements.

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Copies of bills, and information regarding bill status and committee hearings can be found on the Nebraska Legislature's website at <http://www.nebraskalegislature.gov/bills/>.

Please do not hesitate to contact us if you have any questions about any of the these bills, or if you desire assistance understanding, tracking, or pursuing any of these bills. ■

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