

# Nebraska State Legislature

SENATOR TOM BREWER

District 43  
550 West 10th Street  
Gordon, Nebraska 69343

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## COMMITTEES

Chairperson - Government, Military and  
Veterans Affairs  
Agriculture  
General Affairs  
State-Tribal Relations

February 16, 2021

Noreen Walsh  
USFWS Mountain-Prairie Region Office  
134 Union Blvd.  
Lakewood, Colorado 80228

RECEIVED  
MAR 15 2021  
*Chapman*

Dear Ms. Walsh,

I am the Nebraska State Senator whose district encompasses most of the planned route for a new power line known as the Nebraska Public Power District's (NPPD) "R-Project." My legislative aide and I visited you in your Denver office and discussed this with you some years ago.

This power line will cut through the heart of Nebraska's one and only environmentally unique area known as "The Sandhills." Aside from the irreparable harm that will be done to this very fragile area, the project poses a serious threat to a number of endangered plant and animal species. The project is strongly opposed by most land owners and the majority of my constituents. It is on their behalf that I write you again today.

Citing the numerous problems with the environmental impact study, many of which I warned you about, the federal court vacated the flawed permit your office issued to NPPD and stopped this project. I write you today to make sure you understand that more lawsuits by citizens are in the offing should you ever again grant approval for the construction of this wrong-headed power line. I have also introduced legislation in the Nebraska Legislature to place a moratorium on the construction of this and similar projects. It is my sincere hope the Mountain Prairie Region of the US Fish and Wildlife Service takes careful note of these facts and avoids any resumption of the permit process for the R-Project.

Sincerely,

A blue ink handwritten signature of Senator Tom Brewer, written in a cursive style.

Senator Tom Brewer  
tbrewer@leg.ne.gov  
Personal cell phone: 402-416-6459



CC:

Secretary of the Interior

Rep. Adrian Smith

Director, US Fish & Wildlife Service

Sen. Sen. Bruce Bostelman, Chairman Natural Resources Committee



LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 409**

Introduced by Brewer, 43; Wayne, 13.

Read first time January 14, 2021

Committee: Executive Board

- 1 A BILL FOR AN ACT relating to public power; to amend section 70-1012,
- 2 Reissue Revised Statutes of Nebraska, and section 70-1015, Revised
- 3 Statutes Cumulative Supplement, 2020; to change provisions relating
- 4 to construction and unauthorized construction of electric
- 5 transmission lines; to provide a moratorium on the construction of
- 6 certain electric transmission lines as prescribed; to create the
- 7 Electric Transmission Line Study Committee of the Legislature; and
- 8 to repeal the original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1       Section 1. Section 70-1012, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3       70-1012 (1) Except as provided in section 3 of this act, before  
4 ~~Before~~ any electric generation facilities or any transmission lines or  
5 related facilities carrying more than seven hundred volts are constructed  
6 or acquired by any supplier, an application, filed with the board and  
7 containing such information as the board shall prescribe, shall be  
8 approved by the board, except that such approval shall not be required  
9 (a) for the construction or acquisition of a transmission line extension  
10 or related facilities within a supplier's own service area or for the  
11 construction or acquisition of a line not exceeding one-half mile outside  
12 its own service area when all owners of electric lines located within  
13 one-half mile of the extension consent thereto in writing and such  
14 consents are filed with the board, (b) for any generation facility when  
15 the board finds that (i) such facility is being constructed or acquired  
16 to replace a generating plant owned by an individual municipality or  
17 registered group of municipalities with a capacity not greater than that  
18 of the plant being replaced, (ii) such facility will generate less than  
19 twenty-five thousand kilowatts of electric energy at rated capacity, and  
20 (iii) the applicant will not use the plant or transmission capacity to  
21 supply wholesale power to customers outside the applicant's existing  
22 retail service area or chartered territory, (c) for acquisition of  
23 transmission lines or related facilities, within the state, carrying one  
24 hundred fifteen thousand volts or less, if the current owner of the  
25 transmission lines or related facilities notifies the board of the lines  
26 or facilities involved in the transaction and the parties to the  
27 transaction, or (d) for the construction of a qualified facility as  
28 defined in section 70-2002.

29       (2) A privately developed renewable energy generation facility is  
30 exempt from this section if it complies with section 70-1014.02.

31       Sec. 2. Section 70-1015, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 70-1015 (1) If any supplier violates Chapter 70, article 10, by  
3 ~~either~~ (a) commencing the construction or finalizing or attempting to  
4 finalize the acquisition of any generation facilities, any transmission  
5 lines, or any related facilities without first providing notice or  
6 obtaining board approval, whichever is required, (b) commencing or  
7 continuing construction of any transmission lines in violation of section  
8 3 of this act, or (c) ~~(b)~~ serving or attempting to serve at retail any  
9 customers located in Nebraska or any wholesale customers in violation of  
10 section 70-1002.02, such construction, acquisition, or service of such  
11 customers shall be enjoined in an action brought in the name of the State  
12 of Nebraska until such supplier has complied with Chapter 70, article 10.

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

1 operation of the privately developed renewable energy generation  
2 facility.

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

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

25 (5) The board shall issue a written decision within sixty days after  
26 conclusion of the hearing. All costs of the hearing shall be paid by the  
27 private electric supplier if (a) the board determines that the private  
28 electric supplier commenced construction of the privately developed  
29 renewable energy generation facility less than thirty days prior to  
30 submitting the written notice required pursuant to subsection (2) of  
31 section 70-1014.02 or (b) the private electric supplier withdraws its

1 request for hearing prior to the board issuing its decision.

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

8 Sec. 3. Beginning on the effective date of this act, and until  
9 January 1, 2023, no electric supplier as defined in section 70-1001.01  
10 which is a public power district, public irrigation district, or public  
11 power and irrigation district organized under Chapter 70, article 6,  
12 shall commence or continue construction of any transmission line project  
13 for which such line extends two hundred or more miles in length, or  
14 expend any funds relating to such project during such time period and  
15 prior to obtaining any required federal permits.

16 Sec. 4. (1) The Executive Board of the Legislative Council shall  
17 appoint a special committee of the Legislature to be known as the  
18 Electric Transmission Line Study Committee of the Legislature. The  
19 committee shall consist of seven members of the Legislature as follows:  
20 (a) Three members of the Government, Military and Veterans Affairs  
21 committee of the Legislature, (b) three members of the Natural Resources  
22 Committee of the Legislature, and (c) one member of the Executive Board  
23 of the Legislative Council.

24 (2) The Electric Transmission Line Study Committee of the  
25 Legislature shall elect a chairperson and vice-chairperson from the  
26 membership of the committee. The executive board may provide the  
27 committee with a legal counsel, committee clerk, and other staff as  
28 required by the committee from existing legislative staff. The committee  
29 shall hold at least three public hearings at the call of the chairperson  
30 at such locations as the committee may decide.

31 (3) The Electric Transmission Line Study Committee of the

1 Legislature shall examine the following:

2 (a) The need and necessity for construction of long-distance  
3 transmission lines;

4 (b) The process of routing transmission lines;

5 (c) The sufficiency of statutory and regulatory requirements;

6 (d) Customer and ratepayer interests;

7 (e) Private property rights; and

8 (f) Preservation of historical, cultural, and ecological resources.

9 (4) The Electric Transmission Line Study Committee of the  
10 Legislature shall report its findings and any recommendations  
11 electronically to the Legislature on or before December 15, 2022. The  
12 committee shall terminate on December 31, 2022.

13 Sec. 5. Original section 70-1012, Reissue Revised Statutes of  
14 Nebraska, and section 70-1015, Revised Statutes Cumulative Supplement,  
15 2020, are repealed.