

# Legislature - First Session - 2019

## Introducer's Statement of Intent

### LB606

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**Chairperson: Senator Dan Hughes**

**Committee: Natural Resources**

**Date of Hearing: March 13, 2019**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

In *Upper Republican Natural Resources District v. Dundy County Board of Equalization*, 300 Neb. 256, 912 N.W.2d 796 (2018), the Nebraska Supreme Court addressed the issue of whether land purchased by a natural resources district as part of its ground water integrated management plan should be exempt from taxation. In his concurring opinion, Nebraska Supreme Court Justice William Cassel wrote, “Only the Legislature is empowered to determine whether current law is adequate or whether the law should be changed to balance the competing public interests differently.”

Justice Cassel’s statement is consistent with prior decisions concerning ground water management in Nebraska. See *Olson v. Wahoo*, 124 Neb. 802, 248 N.W. 304 (1933); *Sorensen v. Lower Niobrara Natural Resources District*, 221 Neb. 180, 376 N.W.2d 539 (1985); *Chadd v. Lower Platte South Natural Resources District*, 261 Neb. 90, 621 N.W.2d 299 (2001); and *Estermann v. Bose*, 296 Neb. 228, 892 N.W.2d 857 (2017). In each of these cases, the Nebraska Supreme Court maintained that the Legislature has the power to establish state policy on ground water. The intent of LB606 is to establish such policy with respect to property acquired for water augmentation projects.

Neb. Rev. Stat. § 46-715 requires natural resources districts (NRDs) encompassing a river basin, subbasin or reach which has been designated as overappropriated or fully appropriated to develop an integrated management plan (IMP). Under Neb. Rev. Stat. § 46-715(3):

- The IMP must provide procedures to track depletion and gains to streamflows resulting from new, retired, or other changes to uses.
- The procedures must identify “potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projections, conjunctive use management, and use retirement.”

Regarding the augmentation projects described in Neb. Rev. Stat. § 46-715(3)(e), LB606 clarifies that NRDs may develop water augmentation projects for streamflow enhancement,

and may acquire real property for such projects. The bill also requires NRDs to allocate the amount of ground water which may be withdrawn for the project.

In addition, LB606 sets forth provisions for project owners selling real property purchased for an augmentation project. Following such a sale, the project owner(s) will still be permitted to pump for beneficial use, as before, the necessary ground water for augmentation purposes. Such ability to pump the necessary ground water is not contingent upon land area or acres owned.

Therefore, LB606 establishes that ongoing ownership of the property is not a prerequisite to the project owner's pumping of ground water for beneficial use.

**Principal Introducer:** \_\_\_\_\_

Senator Mike Groene