

One Hundred Sixth Legislature - Second Session - 2020

Introducer's Statement of Intent

LB845

Chairperson: Senator Dan Hughes

Committee: Natural Resources

Date of Hearing: February 20, 2020

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 LB845 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.”

LB845 sets forth provisions for project owners selling real property purchased for augmentation projects as described in Neb. Rev. Stat. § 46-715(3)(e). Following a sale, the project owner(s) will still be permitted to pump ground water in the amount necessary for augmentation purposes. Such ability to pump the necessary ground water is subject to Neb.

Rev. Stat. § 46-739(1)(a) (which provides that an NRD may allocate the amount of ground water that may be withdrawn) and is not contingent upon land area or acres owned.

LB845 is the culmination of extensive discussions with stakeholders and water law experts in response to our bill LB606 (2019). LB845 effectively establishes that ongoing ownership of the property is not a prerequisite to the project owner's pumping of ground water for beneficial use, thereby enabling owners to sell land without fearing the loss of water rights.

Principal Introducer: _____

Senator Mike Groene