

# **One Hundred Seventh Legislature - First Session - 2021**

## **Introducer's Statement of Intent**

**LB589**

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**Chairperson: Senator Bruce Bostelman**

**Committee: Natural Resources**

**Date of Hearing: February 04, 2021**

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

LB 589's intent is to place in statute the case law established in *Estermann v. Bose*, 296 Neb. 228, 892 N.W.2d 857 (2017) allowing water augmentation projects that aren't guaranteeing a certain amount of water but are simply adding water to a natural stream in order to offset water depletion, without regard to the common law's beneficial use over the amount of land owned, rented or leased by the natural resource district.

Two Nebraska Supreme court cases, *Estermann vs. Bose* cited above, and *Upper Republican Natural Resources District v. Dundy County Board of Equalization*, 300 Neb. 256, 912 N.W.2d 796 (2018), have been litigated since LB 54 was enacted in 2009. This allows Natural Resource Districts to use augmentation projects to mitigate their Integrated Management Plans. Those court decisions have clearly defined augmentation projects as public purposes. In *Sorensen v. Lower Niobrara Natural Resources District*, 221 Neb. 180, 376 N.W.2d 539 (1985), the court ruled the Legislature's act of creating a public purpose for ground water use has removed use on overlying land as an index for the "reasonable and beneficial use" required by common law.

There is confusion among taxpayers, ground water users and Natural Resource districts over if the amount of land ownership is a factor in matters concerning augmentation projects.

Lb 589 seeks to clarify in law what the Nebraska Supreme Court has established in case-law.

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

**Senator Mike Groene**