

Transcript Prepared by Clerk of the Legislature Transcribers Office
Agriculture Committee January 26, 2021
Rough Draft

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HALLORAN: Well, good afternoon, welcome to the Agriculture Committee. I'm Senator Steve Halloran. I'm from Hastings, Nebraska, and I represent the 33rd Legislative District. I serve as Chair of this committee. For the safety of our committee members, staff, pages, and public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exit doors to the hearing room. You're all familiar with the entrance because you came in, in the proper entrance, the exit is to this side of the room. We request that you wear a face covering while in the hearing room, testifiers may remove their face covering during testimony to assist the committee members and transcribers in clearly hearing and understanding the testimony. For committee members, I will leave it to your discretion to wear a face covering, because we are adequately protected by plexiglass dividers and we have adequate social distancing from both testifier and the public audience. I'm choosing not to wear a face covering so that the transcribers can clearly hear my statements. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, which is clearly not the case today, the entrance door will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have availability due to the HVAC project of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we request only testifiers enter the hearing room. We ask that you please limit or eliminate handouts. Committee will take up the bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Committee members might come and go during the hearing. This is just

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part of the process as we have bills to introduce to other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs, which are the chairs on either side of the aisle, as you come up to testify in advance. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you're planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to a page or committee clerk. This will help us to make a more accurate public record. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify and they will distribute those to the committee. If you do not have enough copies, the page will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. We be using the light system for all testifiers. You will have five minutes to make initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining. And the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, are allowed at public hearings. Committee members with us today will introduce themselves, starting on my far left, Senator Cavanaugh.

J. CAVANAUGH: John Cavanaugh. I represent District 9 in midtown Omaha.

GRAGERT: Tim Gragert, District 40, northeast Nebraska: Cedar, Dixon, Knox, Holt, Rock, and Boyd Counties.

LATHROP: Steve Lathrop, District 12, which is Ralston and parts of southwest Omaha.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster.

B. HANSEN: Ben Hansen.

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HALLORAN: And Senator Brandt is our Vice Chair. I'm sorry, let's start at our far right, please.

BREWER: Tom Brewer, District 43, 13 counties of western Nebraska.

GROENE: Mike Groene, Lincoln County.

B. HANSEN: Ben Hansen, District 16: Washington, Burt, and Cuming County.

HALLORAN: And to my right is committee research analyst, Rick Leonard. And to my far left is committee clerk, Rod Krogh. All right, we will proceed with LB91. Senator Brandt. Good afternoon, Senator.

BRANDT: Good afternoon, Chairman Halloran and the AG Committee. My name is Tom Brandt, T-o-m B-r-a-n-d-t. I represent District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County. Today I am here to present LB91, an act relating to Nebraska Seed Law. LB91 is a bill to allow for a 15-month testing period for germination of native seeds. This bill is not directing the Nebraska Department of Agriculture to set the testing directly. Our intent is that the department will allow for a 15-month test period for native seeds. Right now, germination testing for these native plants is set at a nine-month interval, which is set in department regulations. This frequency of testing becomes expensive for people and businesses, especially for smaller and specialty seed suppliers. Germination testing is not as imperative to native seeds as it is for crop-producing seeds, and often they have been found to be viable even after 15 months. This bill was introduced last year and passed out of committee, but was not heard on the floor due to the interruption of COVID-19. So we have reintroduced it. Changes have been made to the bill to allow tetrazolium, TZ, testing in lieu of germination percentage testing in applicable cases. There are also changes to specify that the testing changes apply only to native seeds of North America. In the last week, we have become aware of concerns with the language from the Nebraska Department of Agriculture and we have been working with them on possible amendments to the bill. There were also concerns brought about corn and soybeans being affected by this bill. This bill does not affect any seed that is non-native. Corn and soybeans are non-native seeds. Dr. Kay Kottas, who is testifying after me, is far more knowledgeable than I am on this subject. She brought

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us the idea for this bill and is well-suited to answer any technical questions. Thank you for your time and I would be happy to answer any questions.

HALLORAN: Thank you, Senator Brandt. Any questions from the committee? Seeing none, thank you, sir. Now we'll proceed to proponents for LB90. Excuse me, LB91. Good afternoon.

KAY KOTTAS: Good afternoon, Chairperson Halloran, members of the AG Committee. My name is Dr. Kay Kottas, K-a-y K-o-t-t-a-s. My residence is 3910 South 32nd Place, Lincoln, Nebraska. I'm the owner of Prairie Legacy Inc., a botanical consulting company specializing in environmental surveys and prairie restoration. I own and manage Witt's End Homestead LLC, a small farm providing native seed production in Saline County. I'm chair of the Nebraska Native Seed and Plant Producers, a small group of native seed producers and proponents of a local ecotype seed. I became proficient with the use of TZ and germination testing when I did a life stages modeling on the endangered blowout penstemon in the Nebraska Sandhills. More recently, I collect environmental research data. I work with ecologists, preserving other habitats and healthy soils. I've worked in the Loess Hills of North Platte, the Platte River Recovery Program, and the critically imperiled Tallgrass Prairie ecosystems. That's what this bill is about, getting good genetic diversity of local seed into the hands of restorationists and general public to help preserve those ecosystems. One obstacle is the nine-month testing interval. Scientific literature and my own testing bear out that native seed has natural dormancies that allow it to remain viable for many years. These dormancies include hard seed coats and other chemical inhibitors. A small change in the testing interval from 9 to 15 months, such as Michigan law allows, will help producers sell seed in the fall of the year produced as well as in the spring and fall of the following year using the same test. Purity and germination tests cost approximately \$150 per lot. Diverse and customized seed mixes require working with as many as 150 to 200 species of seed per year. That's a cost of between \$22,000 and \$30,000 per year per lot for the first test. Then in nine months, if you haven't sold that lot, it requires another \$75 test for germination. The total then is \$45,000 per year. We often have two or more lots for each species. Now we're up to \$90,000 per year. Many of the species in a, in a mix might use a fraction of an ounce of seed. So it's very difficult to recoup the

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cost of testing on those species. This bill passed committee last year, but COVID stopped progress. We had the blessing of the Nebraska Seed Lab and the Agriculture Department. This year, we're able to do a better job of editing the text, but the words-- wording in some of these changes has confused a few. You may have written testimony of opponents who suggest this bill affects other agricultural seed. That's not the case, nor the intent. There's also concern about a non-native species, *Bothriochloa*. That species already existed in seed law. It was in a table with native species. The table became obsolete with the new wording. So now *Bothriochloa* is listed separately. This is a non-native invasive species that I don't know how it got in seed law in the first place. But again, our changes don't affect it. If someone wants to remove it, I'm totally in favor. TZ testing is also a part of this bill. It's already allowed in lieu of germination for many grass seed species, for those species that exhibit an extreme dormancy. This bill allows TZ testing for native seed exhibiting extreme dormancy. In fact, TZ testing is already required for those species. But right now, germination tests are conducted on all seed. Those with extreme dormancies do not germinate during those tests. So a TZ test is then required to determine viability. There's often a problem with fungal growth after a few weeks, which can skew the TZ tests. By allowing the TZ test initially on these types of extremely dormant seed, we can get accurate results more quickly and avoid fungal interference with the test. And that's my testimony, if you have questions.

HALLORAN: Well, you did that on time. That was very good. Thank you, Dr. Kottas. Are there any questions from the committee for Dr. Kottas? Yes.

GRAGERT: I have a question.

HALLORAN: Senator Gragert.

GRAGERT: Thank you, Chairman Halloran. Dr. Kottas, thank you for your testimony. I just have a couple of questions, you know, as far as looking at TZ test versus a germination test.

KAY KOTTAS: Correct, um-hum.

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GRAGERT: And just to confirm for myself, TZ test would be utilized on a mixture of seeds with a lot of different seeds in it versus like a switchgrass seed?

KAY KOTTAS: No, it's, it's used on individual species. And so when you do a mix of species, what you do is germination tests on each species that's going into the-- so if you have 60 species in the mix, each of those species has its own test, its own germination test or tetrazolium test to determine viability. Then the seed is mixed after that. You can do testing on a mix. But what's done then is they separate those different species and do individual tests on those. So, so it's always an individual seed that's being tested.

GRAGERT: Whether using the germination and/or the TZ test?

KAY KOTTAS: Correct. Yeah.

GRAGERT: OK. Can I continue with--

HALLORAN: I'm sorry?

GRAGERT: Can I continue with other questions?

HALLORAN: Yes, please. That's fine.

GRAGERT: Well, currently right now then the forbs and the flowers are 9 months and the grasses are 12 months as far as a, a germination test is required?

KAY KOTTAS: Certain grasses, I think they're specified which ones. There was a-- for tetrazolium, for instance, there was a, a table that listed seven or eight different grass species that had some extreme dormancy that could be-- it could be used on. Wildflowers were considered like all other agricultural seed and had the nine-month test applied.

GRAGERT: So then I understand we were going to take the 9-month and the 12-month periods and just put all the seeds together and give it a 15-month germination?

KAY KOTTAS: Only-- so we're only changing the native wildflower and grass seed and giving those the 15-month test.

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GRAGERT: Just the-- OK.

KAY KOTTAS: Just the native.

GRAGERT: So working with producers, you know, in pasture and rangeland seedings, there was always a, you know, the germination test had to be within nine months. And legally, somebody, you know, a dealer could sell a producer a grass seed that had an eight month-- you know, was one month out. If he was-- if he or she was going to seed that grass in the fall when it-- and then things went south and he bought that seed at 8 months out into the germination and we go to 15 now. I just see that we're going to-- that seed is going to be pushed out or potentially pushed out if he doesn't get it seeded till the following fall, another year. What, what would you, what-- would you have many concerns about that seed now being almost two years out of test for a germination?

KAY KOTTAS: I, I don't. My tests thus far on well over 120 species have shown that they all are lasting longer than three years and many of them will last longer than that. So if there are seed tests, for instance, somebody buys seed from me and I've-- it's been 14 months, I'm quite certain they're going to be-- have a good success, you know, in the next year or two when they, when they seed it. A lot of these seeds actually germinate better after two or three years in storage. So I, I really am not concerned about that. If someone is, there is no reason why they can't go to that dealer and say, I want a seed that's tested within the last couple of months or something. I mean, I don't, I don't see any problem with somebody asking for that as well, so.

GRAGERT: Yeah, I, I understand that. But they would have to know that, you know, have that knowledge that-- I mean, you're perfectly legal--

KAY KOTTAS: Yeah. Yeah.

GRAGERT: --selling the seed with eight-month tests on it, but it's not going to-- you know, it may not get seeded till the following year. Now, let's-- let me go back to then the germination of, you know, always had to meet like a 90 percent germination, you know, a seed stock or an individual that's going to go in and, and buy seed that when I, when I checked it out, you know, for the cost sharing perk, it had to have like a 90 percent germination rate on that, on that tested

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seed. So if that seed sets over, are you not concerned that it, you know, depending on how he stores it, he or she stores it, how that germination may lower over that or, or what-- how many years do you think that it'll go from 90 percent germination to 80 percent to 70 percent?

KAY KOTTAS: It's really going to depend on the species. Now the, the seed law right now has specified for certain species what that germination percentage has to be. And so it has to meet that each time that it goes through the seed test. Most of those, I think, are around 60 percent. But it takes a long time for a seed to get down that far. So-- and, and again, but it depends on the species, how long that takes.

GRAGERT: OK, thank you. One last question and I'll stop, but I guess I'm concentrating more in the state of Nebraska with rangeland and pastureland seedings and you may be, you may be talking about garden or pollinator species or--

KAY KOTTAS: No, I'm talking very much about-- yeah.

GRAGERT: Pasture and rangelands like our big blue, little blue, the switchgrass the, you know, that [INAUDIBLE], that kind-- that's the seeds that you're talking about, that you feel-- be comfortable with?

KAY KOTTAS: Yes.

GRAGERT: OK, thanks a lot.

KAY KOTTAS: Yep.

GRAGERT: Appreciate it.

HALLORAN: Thank you, Senator. Any further questions? Yes, Senator Groene.

GROENE: When you say it's still viable after two to three years, do you mean it's, it's still 90 percent? It doesn't decrease?

KAY KOTTAS: It, it typically goes down, it typically goes down a little bit each year. So it would be--

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GROENE: So rule of thumb, would you lose 10 percent a year?

KAY KOTTAS: It wouldn't be 10 percent a year. No. Typically what I'm seeing is-- and, and again, it depends on the species and-- but I'm seeing anywhere from 2 to 5 percent, maybe per year.

GROENE: I don't know that-- in existing law, does the date have to be on it when it was tested on the tag?

KAY KOTTAS: Yes.

GROENE: The date of testing--

KAY KOTTAS: Yes. Yes.

GROENE: --and the viability?

KAY KOTTAS: Yes.

GROENE: You know, one of the things farmers are really good at is blending years. You know, the moisture.

KAY KOTTAS: Um-hum.

GROENE: You're, you're, you're encompassing two crop years here now. So now they can take the old crop that bags it and sell and blend it with a new crop to keep that viability of the bag and basically use the old crop as a filler. Do you see any potential for that?

KAY KOTTAS: So I guess I'm not quite understanding what you're saying. You're saying--

GROENE: Well, when you go nine months, that's, that's one-crop year. You go 15 months--

KAY KOTTAS: Oh, yeah.

GROENE: --you're talking about two harvests that they could be blending-- you know, test the stuff that returned to them that was 70 percent blended with stuff that is 95 to get--

KAY KOTTAS: Oh, I see what you're saying.

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GROENE: --use it as a filler.

KAY KOTTAS: Yeah, each, each-- yeah, but each species has to have its own test date on it. And if it's more than--

GROENE: That's what I'm talking about, the same species, two crop years blending it.

KAY KOTTAS: Oh, oh, no, that becomes a new lot. That needs-- that requires a new test.

GROENE: Oh, it does. The crop year has to be--

KAY KOTTAS: Yeah, OK, I see what you're saying. Yeah.

GROENE: --has to be noticed on the label, the crop year it was?

KAY KOTTAS: Yeah, each-- the testing year is required. I don't believe the, the actual year it was harvested is required on there, just the testing year.

GROENE: When it becomes a new lot.

KAY KOTTAS: But, yeah, if you, if you, if you put-- take seed from, from one lot and combine it with another, then you're, you're required to get a new test on that. It becomes a new lot.

GROENE: Understand that, but you could blend, blend and use it as a filler, a lower tested filler of seed.

KAY KOTTAS: Oh, just as a filler. Yeah, I don't see any problem with using, using a filler.

GROENE: Thank you.

HALLORAN: Thank you, Senator Groene. Any further questions? Seeing none, thank you, Doctor. Are there any other proponents for LB91? Are there any opponents for LB91? Good afternoon, and welcome.

SCOTT MERRITT: Good afternoon, Mr. Chairman, members of the AG Committee. My name is Scott Merritt, spelled S-c-o-t-t M-e-r-r-i-t-t, and I'm here today on behalf of the Nebraska Agri-Business Association. We're a trade association that represents manufacturers,

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wholesales, distributors, and retailers of ag input products, including seed. When we reviewed this bill, we asked for some advisory from some of our seed folks and they've identified several areas of concern. And I put them in our statement, a little more detail. So I'll just kind of skim over the top. The first thing that came up was that, as we refer to as the TZ testing, there's a lot of mixed ideas and thoughts in the science community on how it's effective and where it's effective. As one adviser told me, he said, you know, there's about a 50/50 opinion on that as how, how, how well it works, how efficient it is. But at the end of the day, we-- we're comfortable with the TZ testing being used in these, in these native species and as outlined in the bill. The second area of concern was the definition of native and non-native. We went back and forth on that as a committee. Here, again, we had several opinions of that. And they did identify a couple of the species that were in the bill that were controversial, so to say, whether they were in that. Here, again, I think that's something that could, that could be addressed and corrected. I think the thing that was most concerning to our, our folks was the extension of the date from the 12 months to the 15 months. We work a lot in what I call a crop and soybean world where seed is, you know, tested and, and, and labeled and sold to, to Nebraska's farmers and ranchers on a nine month with the germination test. As we start looking at changing all these rules, number one, it becomes confusing to folks. We understand that there is a 12-month testing label currently for some of these species. And to extend it out 15 months, I-- sitting in the back, I've already heard the concern-- or our concern is if we start going to two crop years. In summary, is that I was reminded that, you know, when we start working with, with, with seed, we're, we're working with a, a living entity and seed can be variable from the time it's grown by the plant as it's harvested, conditioned, packaged, tested, and stored of all the environment and all the other factors that come in. So we are concerned as we start going into a two-year period. Number one, we're changing a lot of rules, making it confusing for the consumer and the rancher and, and farmers in Nebraska. But also we're opening ourselves up to a lot more chance of change in that seed, as it sat in storage and just depending on how it was handled all through the pipeline. With that, we just had a lot of good discussion. These are points of concern of us and we'd be willing to work to maybe address some of these going forward or, or whatever steps the committee or, or the

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body may take. With that, I'll, I'll be glad to answer any questions, but I am not of technical nature, so, or science-based person, I'm just kind of summarizing what our, our folks have expressed to me.

HALLORAN: OK, thank you, Mr. Merritt. Any questions from the committee? OK, seeing none, appreciate your testimony. Are there any additional opponents for LB91? Seeing none, are there any testifiers in the neutral? OK, seeing none, Senator Brandt, if you'd like to close.

BRANDT: I think what Dr. Kottas probably failed to mention is how hard these seeds are. And to use a standard germination test, and I think Senator Gragert probably has as much experience as anybody, you put them on a, on a wet cloth and try and germinate them. And these seeds are so hard they don't germinate, they get moldy. And that's sort of why they were leaning toward this TZ test. And that's why as these seeds get older, they get softer. I can remember when I took my agronomy classes at the university, we talked about scarification. Some of these seeds actually have to go through animals to germinate. There's seeds like that out there. There's a history when you go out into some of these fields and you plow deep and you turn it over, fields that have never been worked, stuff that will, will grow from three feet down. I think the University of Illinois had tests like that. All that's very interesting. We are willing to work with anybody on this on the seed testing. Right now, the native seeds are on 9 months, not 12 months. Corn and soybeans are on 12 months. So, I mean, at the very least, if we would move all the seed up to 12, although we do think 15 isn't a problem for the native seeds, we're willing to work with them on that. I guess we were sort of unaware of their opposition to that till, till today. So-- and I don't think we're changing a lot of rules. All we're really changing is the time period of, of testing and what qualifies for TZ testing. So with that, I would take any questions.

HALLORAN: OK, thank you, Senator. Any questions for Senator Brandt? Seeing none, thank you.

BRANDT: OK, thank you.

HALLORAN: That concludes our hearing for LB91. I will be carrying LB90 and so Senator Brandt as Vice Chair will conduct the hearing.

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BRANDT: Welcome, Senator Halloran. You're ready to begin on LB90.

HALLORAN: It's good to be here. Thank you, Senator Brandt and members of the committee. I'm Senator Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, representing Legislative District 33. I've introduced LB90 on behalf of the Department of Agriculture. LB90 affects the fee structure supporting two programs administered by the department, the Fertilizer and Soil Conditioner Act and the Nebraska Pesticide Program. Both of these programs are supported in large measure through licensure, inspection, and registration fees. First, LB90 would reallocate a portion of the pesticide product registration fee under the Nebraska Pesticide Act. The fee is paid by manufacturers or distributors of pesticide products for each pesticide product that is sold or are distributed in Nebraska. Currently, the registration fee is \$160, but only \$15 of that fee is currently allocated to the pesticide administrated cash fund, which is utilized by the department to support its pesticide administrative and enforcement program. While LB90 would not increase the overall fee, it would reduce the portion of the fee currently allocated to the buffer strip incentive fund from \$60 to \$50. This would result in \$25 of the fee flowing to the pesticide administrative fund rather than the current \$15. I will defer to Director Wellman to go into detail about the history of the fund. The current budget projects this fund falling into negative balance by the end of fiscal year '22-23. LB90 also adjusts the statutory annual inspection fee cap under the Fertilizer and Soil Conditioner Program. The fee is paid by distributors of fertilizer and soil conditioners based on the tons of product delivered to the consumers. Currently, the statutory maximum is 10 cents per ton. LB90 would increase the maximum to 15 cents. I would point out that the fee has been set at 10 cents per ton since at least 1989. I will also note that this fund has been subject to transfers and additional funding uses that have drawn down the balance. I anticipate the director will go into that in more detail. Finally, LB90 would couple the fee increase with a fund management tool that we put into a number of other fee-supported programs administered by the department. Essentially, the bill would direct the department to annually set the fee, but would limit the director to establish a fee that would not be expected to result in revenues more than 100 per-- 107 percent of cash fund appropriations, nor result in a carryover balance of more than 17 percent of the cash fund appropriations. This mechanism is one we have

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utilized in other programs to avoid accumulation of large carryover balances that could be available to be swept for other uses while still leaving sufficient fee authority to meet expenses over time. Thank you for your attention and I will be willing to entertain questions. But as I said earlier, I'm confident that Director Wellman can better address most of your questions.

BRANDT: Any questions for Senator Halloran? Seeing none, thank you. Now we'll ask for any proponents. Good afternoon.

STEVE WELLMAN: And good afternoon. Vice Chairman Senator Brandt and Agriculture Committee, I'm Steve Wellman, S-t-e-v-e W-e-l-l-m-a-n, and I'm the director of the Nebraska Department of Agriculture. I'm here today to testify in favor of LB90. Thank you, Senator Halloran, for introducing the bill on behalf of the Department of Agriculture. LB90 amends both the Nebraska Pesticide Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act by reallocating and adjusting registration and inspection fees. The Pesticide Act was originally adopted in 1993 and the pesticide registration fees were last amended in 2013. Currently, the pesticide registration fee is set at \$160 and is remitted to four different funds: \$30 to the Noxious Weed Cash Fund; \$60 to the Buffer Strip Incentive Fund; \$55 to the Natural Resources Water Quality Fund; and the remaining \$15 goes to the Pesticide Administrative Cash Fund. NDA is requesting an adjustment to the allotment of the fees by decreasing the transfer to the buffer strip fund for-- by \$10 for each registration, resulting in an increase to the pesticide fund. Overall, it is projected that the pesticide fund would receive an additional approximately \$131,000 each year. We are requesting this shift in allocation to sufficiently fund the Pesticide Program without increasing the cost of registering the products. The buffer strip fund is projected to remain adequately funded. A fund analysis was included as part of the agency's biennial budget request. The Nebraska Commercial Fertilizer and Soil Conditioner Act was adopted in 1955. LB90 allows for an increase in the maximum inspection fee for commercial fertilizers and soil conditioners from 10 cents per ton to 15 cents per ton. LB90, as proposed, only raises the maximum or the cap on the inspection fee. This would be the first increase of the maximum since the Act was adopted in 1955. The bill further authorizes the director to set the fee each year based on a specific formula as used in other NDA statutes. This formula allows the director to, to adjust the fee up or

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down within the maximum to manage the funding for administering the program. Our three-year cash flow projections show there may be a need to increase the actual per ton fee in the near future. For reference, Iowa's fee is set at 17 cents per ton; Missouri is 50 cents per ton; Kansas is \$1.67 per ton; and South Dakota is 65 cents per ton. I ask for your support in enacting LB90 this year. If there are any questions, I'd be happy to answer those. Thank you.

BRANDT: Thank you, Director Wellman. Questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chair Brandt. And thank you, Director Wellman. Is that correct?

STEVE WELLMAN: Yes.

J. CAVANAUGH: I guess I've got a couple of general questions. But the first one is for the buffer strip fund, you, you project that that will be adequately funded in the future. Do you have an idea of how much money is in that fund and how much is expended?

STEVE WELLMAN: I do. The, the Buffer Strip Incentive Fund currently has around \$300,000 in cash. We-- the general funds, the, the revenue from the past years runs approximately \$790,000 per year. And we've been expending anywhere from \$725 to \$787,000.

J. CAVANAUGH: So if I could ask a follow up? So if you're spending about what you're taking in and you decrease the amount you're taking by \$131,000, how does it remain solvent?

STEVE WELLMAN: So we do have additional revenue. We're actually-- there's some investment income. So the total revenue is around \$800,000, but we're, we're currently spending \$725,000. So we have current-- on this current year, we have \$75,000 of positive cash flow on that. So obviously, if we do decrease \$131,000, there'll have to be probably some scale back on the Buffer Strip Incentive Program. But that is a program-- our main focus here is, is on the Pesticide Program because that's our match to the EPA federal funds that we get for pesticide regulation, regulatory programs. So we're most concerned about that regulate-- the pesticide fund so we can continue to match the, the federal funds that we get.

J. CAVANAUGH: Can I ask another?

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BRANDT: Yes.

J. CAVANAUGH: Thank you. You currently-- this, this new law would increase the cap for the per ton fee. In the current statute for the pesticide fee, the cap is not \$160, it's \$210. Correct?

STEVE WELLMAN: Correct. The, the, the cap that we're talking about is on the fertilizer and soil conditioner.

J. CAVANAUGH: Right.

STEVE WELLMAN: Right.

J. CAVANAUGH: And so my question is, you, you currently have regulatory authority to increase the amount of money going to the pesticide fund regardless if this statute-- this law passes.

STEVE WELLMAN: Through proper-- yeah, if, if we decide that the right thing to do is increase the fees on the registrations and we do have that option to go up to 2-- \$210 dollars in the statute.

J. CAVANAUGH: So I guess my question is, if this law doesn't pass, we wouldn't necessarily be risking our federal match because there is a regulatory outlet to address that shortfall?

STEVE WELLMAN: What we've tried to do with the department is really control our spending and, and control raising the fees for the industry. So our request here is to leave the fee to the industry flat. Because when, when we raise a fee, if we're talking about a permit for registration for a product, yeah, somebody else is paying that, but in the end, the producer's paying the bill. Because any of those products get billed out, eventually sold to the producers. So our effort is to not increase those costs and to shift the funding.

J. CAVANAUGH: Yeah, I mean, I understand the motivation, but I'm just-- the question is whether you have an ability to do it, whether this law passes or not?

STEVE WELLMAN: We can-- we have a cap, yeah, we can go up to \$210. I'm not sure that's the right thing to do here, right? I mean, we, we looked at that decision and, and after our discussion, we decided it

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was more appropriate to stay at the \$160 and shift some funding around.

J. CAVANAUGH: I have more questions, if I can--

BRANDT: Let's see if anybody else has a question first. Other questions? Senator Hansen.

B. HANSEN: An observation, a question. It sounds like you just don't want to raise the fee on people spraying pesticides, but you'd rather shift the funds around to make it more efficient. Sounds like, right?

STEVE WELLMAN: Correct.

B. HANSEN: OK.

STEVE WELLMAN: We want to utilize the same amount of money that we're generating and use it in different ways.

B. HANSEN: Without increasing costs on, you know, agriculture. OK.

STEVE WELLMAN: Correct.

B. HANSEN: Do you know why there's such a disparity between, like, Iowa and Missouri and Kansas and South Dakota when it's cost per ton? Is it just because the, the type of agriculture has a different per state?

STEVE WELLMAN: You know, that's a good question. I don't, I don't know the exact answer to that.

B. HANSEN: Just curious. All right, thank you.

BRANDT: OK. Other questions? Senator Groene.

GROENE: Thank you, Vice Chair Brandt. This is to the court-- the companies who produce the products and they want to sell them in our state, that's a \$160 fee?

STEVE WELLMAN: That is a per product registration fee. So a pesticide product that they want to sell in the state of Nebraska has to be registered and permitted.

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GROENE: So that's all of them in the lawn and garden centers to-- and fertilizer, ag retailers, it's all of them?

STEVE WELLMAN: Correct.

GROENE: Every single one? And it generates--

STEVE WELLMAN: By the-- by product, per product.

GROENE: There's that many different products that you generate that much money a year that sold--

STEVE WELLMAN: We have 13,000, about 13,100 products registered in the state each year.

GROENE: And you say you use that money to match the-- if I'm going on-- Senator Brandt, interrupt me, but you use that to match the EPA's matching money?

STEVE WELLMAN: On the Pesticide Program, we are-- we fund one-third of the total cost of the program. EPA con-- we have a contract with the EPA that actually funds the other two-thirds and we're required to fund the one-third.

GROENE: Well, why do we even-- do all states have this program? Why do we even duplicate what the EPA already does?

STEVE WELLMAN: Well, I think if, if I remember right, this-- the law creating the program goes back to 1990 when the EPA said that they were going to regulate the pesticide industry and this portion. So the decision was made back then to make it a state program so there's more state control and, and not rely on a federal agency to--

GROENE: Can we license a product that the EPA has not done?

STEVE WELLMAN: No, it has to be a-- we can double check this, but it has to be a registered product by EPA and then the product is submitted to the State of Nebraska Department of AG for registration and approval here in the state.

GROENE: Does our list mirror the EPA's list?

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STEVE WELLMAN: I don't know the exact answer to that, Senator Groene. I'm, I'm--

GROENE: One last question and then I'll--

STEVE WELLMAN: My thought would be that there'd be some EPA products that are not registered in Nebraska.

GROENE: Can we change the label for Nebraska like they had the Banvel situation with soybeans here a year or two ago? Can we alter--

STEVE WELLMAN: There's a few exceptions to-- that the state has a little bit of flexibility, but there's not really a lot of flexibility. Mostly there's a flexibility to-- for the state to give a-- an exemption to use a product in, in Nebraska that's not currently labeled for a certain practice. For example, when sorghum aphid became a problem in the past, I remember a product that currently wasn't permitted in Nebraska, was exempt, was allowed to be permitted and used for, for control at pest.

GROENE: Thank you.

BRANDT: OK. Other questions? Senator Gragert.

GRAGERT: Thank you. Just wondering on the-- all of the four categories, and are most of them, the money spent out of those categories for grant matching federal monies? For instance, the Buffer Strip Incentive Program, is that-- would those monies be spent also matching federal monies put towards that type of program? Or, or how do you spend monies out of all four of these categories?

STEVE WELLMAN: Sure. So-- well, the Buffer Strip Incentive Program itself usually is combined with a CRP program filter strip or something through the NRDs. So it, it's-- there, there's monies from this that are added to other programs for buffer strips. And when we look at the, the usage of the Buffer Strip Program, we've had a significant drop in data from 2002 up to 2020. We've had a significant drop in the number of filter strips in Nebraska. But funding has had to be increased to incentivize land to be set aside for this filter strip. So even though we've dropped from over almost 11,000 acres in 2002 to 3,840 acres in 2020, our spending has been fairly constant. Because it's-- and then some of that changes as the, the economics of

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farming goes right. But-- so-- and there's the other funds that's-- I, I believe the pesticide fund is the only one that we have a requirement for a federal program that we have to spend-- we have to match for the-- our grants or contracts.

GRAGERT: So I caught earlier that the Buffer Strip Incentive Program has like \$300,000 in it. So you don't spend all that money every year.

STEVE WELLMAN: Correct, we have not been spending the-- we've not been spending the full amount of revenue each year.

GRAGERT: OK.

STEVE WELLMAN: The cash fund has been building. So we're at \$300,000 basically now for balance.

GRAGERT: And like in the noxious weed then, have you been spending that? I mean, there's quite--

STEVE WELLMAN: Yeah, it's-- I, I checked it's about a \$50,000 balance.

GRAGERT: OK. All right, thank you.

STEVE WELLMAN: Sure.

BRANDT: Any other questions? Senator Brewer.

BREWER: Thank you, Mr. Vice Chair. And I may missed this earlier, did you use the term investments? Is that-- do you guys actually invest some of the resources?

STEVE WELLMAN: We do have some investment income for each of these cash funds. So that's-- I mean, the funds are with the secretary-- or the Treasurer of the state.

BREWER: And then they determine what that investment is?

STEVE WELLMAN: Yeah, I, I can't explain that, sir.

BREWER: Got you. All right, thank you.

BRANDT: Senator Cavanaugh.

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J. CAVANAUGH: Thank you, Vice Chairman. Again, thank you, Director Wellman. And I want to apologize for coming in-- if I came in hot on you. You're my first person I've questioned and I came here from being a courtroom lawyer. So I cross examine people a lot.

STEVE WELLMAN: I'm fine. Don't worry about it.

J. CAVANAUGH: So I apologize if I came in hot to start. But the only other question I had was kind of-- is about the buffer strip program that you're talking about was-- those are under contract for five to ten years, correct?

STEVE WELLMAN: Those are longer term contracts. Right.

J. CAVANAUGH: And so when we are decreasing the amount of money going in, are we going to have any problems meeting the current contract obligations?

STEVE WELLMAN: We project that we can meet all the obligations that we currently have and still continue to offer some new contracts in the future.

J. CAVANAUGH: Thank you.

STEVE WELLMAN: Sure.

BRANDT: Senator Groene, did you have a question?

GROENE: Yes, I did. Thank you, Vice Chair. To the other issue on here, the 50 percent increase in tonnage tax to the retail dealers. Explain where that money goes, does that fund-- those inspectors go out and check on fertilizer plants?

STEVE WELLMAN: Yeah, so that's a, a regulatory effort for the department where we actually sample fertilizer and soil conditioner products and, and test them and make sure that the product is labeled correctly that 4600 dry fertilizer has 46 percent nitrogen in it. So the, the industry pays those fees. And then in turn, we have inspectors that pull samples and our lab tests those products.

GROENE: This isn't part of the bill, but it says except custom blended products. In my experience, and I used to run retail plants, that's

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where the fraud is in the custom-built blended products, where you-- short story, I got chewed out because I sold the product one time and the guy called me and said, you cheated me because it isn't red. And I explained to him that red was potash and it was \$60 a ton and the green stuff was \$240 a ton. But anyway, that's the one that bothers me that you don't charge a fee on the custom blended products or test those.

STEVE WELLMAN: Well, and I guess my answer to that is, I mean, we're testing the individual products. It kind of goes back to your question on, on the seed. We're testing the individual fertilizer products. And if they're mixed, a custom blend-- I mean, my experience as a producer is when I go to the, the local retailer and, and get a blended product, they're pulling from 4600 and, and 0060 for potash and they're blending it together for the mix that I requested. So, yeah, we're not-- and that's on the go type of thing. So I'm not sure how you would actually implement testing for that.

GROENE: But on your budget-- one last-- on your budget, how, how much of your budget is paid for, for this division by the fees and how much is it by the General Fund appropriations?

STEVE WELLMAN: On the, on the fertilizer and soil conditioner?

GROENE: Or, or actually as a general question of your entire budget. How much is, is funded by fees versus General Fund appropriations?

STEVE WELLMAN: Well, it's going to vary from cash fund to cash fund. I mean, some programs are totally funded and operated by the cash fees and some are not. Some we do use General Funds for. This particular one on the fertilizer program, we have a General Fund of 28 percent.

GROENE: And 72 percent comes from the fees?

STEVE WELLMAN: Correct.

GROENE: Would that change now if you go to 15 cents or--

STEVE WELLMAN: I think the intention is to keep-- we, we, we really intend to keep those splits consistent from year to year. Now, some of that's money management, we are an umbrella agency so we have the ability to, to manage our budget as, as we need and, and move some

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funds around. But we intend to be consistent from one year to the next. Again, not saying that it can't be [INAUDIBLE].

GROENE: Just one last quick question. You said that the max is 15-- where you've been, is it-- has it been 10 cents, 8 cents? What's it-- what recent history?

STEVE WELLMAN: On the actual fee, it's been 10 cents. It's been that way since-- I think that was in my testimony here. It's been that way--

GROENE: You, you said something about it was a lid not a--

STEVE WELLMAN: The cap has been since '55, but the fee at 10 cents has been since the '80s. I don't remember the exact date.

GROENE: So you have kept it-- maxed it out at 10 cents?

STEVE WELLMAN: It's been [INAUDIBLE].

GROENE: Do you perceive--

STEVE WELLMAN: I think that's accurate. If that's not accurate, we'll get you the right answer.

GROENE: --do you perceive it going to 15 cents right away because you need the money?

STEVE WELLMAN: No, we, we intend to, to follow no more than like a 2 to 4 percent increase per year.

GROENE: Thank you.

BRANDT: OK. Any other questions? I guess I've got just one on, when we refer to the Pesticide Act, is that all things pesticide or is that, when we talk about the match, is that just the training portion for, like the sprayer operators out there or what is the Pesticide Act that you refer to?

STEVE WELLMAN: Its enforcement and the regulatory aspect of it and the licensing portion.

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BRANDT: So it's when your inspectors go out to the field and the neighbor says, I've got dicamba drift onto my beans, the Pesticide Act is what pays for the inspector.

STEVE WELLMAN: Correct.

BRANDT: OK. Thank you, Director Wellman. Seeing no other questions, we would ask are there any other proponents for the bill? Good afternoon.

SCOTT MERRITT: Good afternoon, Mr. Vice Chairman, members of the AG Committee. My name is Scott Merritt. I represent the Nebraska Agri-Business Association. It's spelled S-c-o-t-t M-e-r-r-i-t-t. Just a real brief history of in the early '50s, retailers and distributors and manufacturers of fertilizer organized themselves together because at that time, there was no regulation, there was no oversight, there was no quality control in our industry. In the early '50s, they formed together what was the predecessor of the Agri-Business Association, the Fertilizer Institute. Their number one goal was to standardize, put a testing process in place, put regulation on their industry so that their consumers would know and have confidence in purchasing, purchasing fertilizer products. So over the years, we have been very supportive of a third party, NDA, with their inspection, their testing of the products that our, our people sell-- or our members sell to consumers in Nebraska, the farmers and ranchers and homeowners. So we support the program. We support it being adequately funding. So it's-- it has substance. And we also support in this bill the director's ability to adjust these fees within the guidelines and the checks and balances that is in this bill. In regard to the buffer strip allocation of the pesticide part of the bill, I was around when Senator Elaine Stuhr brought the original buffer strip bill back in the early '90s. It was a bit of a novel concept that you would put buffer strips in, and that's why the funding was structured through the pesticide. Over the years, we've seen a reduction in the amount of money that's drawn from this fund and we attribute that, that NRCS, USDA, and NRDs have now put these programs in place. And that was the long-term goal, was to kind of jumpstart this whole best management practices for water quality. So we're very comfortable that if the director feels he can reallocate this and use it in a better way without raising the fees that we talked about, we'd be very supportive of that. We want to maintain the stability in the inspection service, not only in, in crop inputs through pesticides, but also through our

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soil conditioners and fertilizers. If there's any questions, I'll be glad to take those. If not, we'd hope that the committee would advance this bill.

BRANDT: Questions? Seeing none, thank you, Mr. Merritt. Any further proponents? Are there any opponents? Is there anybody testifying in the neutral capacity? And Senator Halloran already-- oh, I'm sorry, we have one letter, this was in opposition from the Nebraska Wildlife Federation, and that's all in the back of everybody's book right here. OK, Senator Halloran had to go introduce a bill over at Transportation and Technology [SIC]. He told me he was going to waive closing. And with that, we are closing the AG hearings today. Thank you, everybody, for coming.