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## Bill Proposes Changes to Fence Viewer Statutes

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## Bill Proposes Changes to Fence Viewer Statutes

In Nebraska, if I want to make a neighbor pay for part of a division fence, I can ask him or her to do so. If they refuse, I can request fence viewers to determine how much of the division fence each neighbor should pay for. I can also build the fence myself and assume full responsibility for the costs of construction and maintenance. Ideally, neighbors should have a written agreement (filed with the land deeds) identifying how the costs of building and maintaining the fence will be shared. But written fence agreements are rare.

LB934, introduced by the Agriculture Committee, proposes major changes to the Nebraska fence viewer statutes. Under current law, if neighbors cannot agree on what type of fence to build, how to maintain the fence and/or how to pay for it, either neighbor can request a fence view. The three-person fence view committee is appointed by the local county clerk. The fence viewers determine what type of fence should be built, and how construction and maintenance costs will be shared. Typically, fence viewers will establish a portion of the fence for each neighbor to maintain. A common rule of thumb is for neighbors to face each other in the middle of the fence and to take care of the fence to their right. If either landowner objects, they may appeal to district court.

LB934 would make several changes to current fence viewer statutes. First, the entire fence viewer process would be replaced with a mediation and litigation process. A court order would be required to go onto a neighbor's property to remove trees, buildings, and any other obstacles or personal property without the owner's permission. If both neighbors have

| Market Report   | Yr<br>Ago | 4 Wks<br>Ago | 1/13/06 |
|---|-----------|--------------|---------|
| <b><u>Livestock and Products,</u></b>   |           |              |         |
| <b><u>Weekly Average</u></b>  |           |              |         |
| Nebraska Slaughter Steers,<br>35-65% Choice, Live Weight . . . . .                                | \$89.81   | \$94.19      | \$92.04 |
| Nebraska Feeder Steers,<br>Med. & Large Frame, 550-600 lb . . . . .                               | 123.85    | 135.82       | 138.95  |
| Nebraska Feeder Steers,<br>Med. & Large Frame 750-800 lb . . . . .                                | 108.07    | 118.05       | 113.48  |
| Choice Boxed Beef,<br>600-750 lb. Carcass . . . . .   | 151.97    | 158.28       | 154.06  |
| Western Corn Belt Base Hog Price<br>Carcass, Negotiated . . . . .                                 | 73.10     | 57.59        | 50.37   |
| Feeder Pigs, National Direct<br>45 lbs, FOB . . . . .   | 66.09     | 57.33        | 64.54   |
| Pork Carcass Cutout, 185 lb. Carcass,<br>51-52% Lean . . . . .                                    | 74.41     | 66.01        | 61.36   |
| Slaughter Lambs, Ch. & Pr., 90-160 lbs.,<br>Shorn, Midwest . . . . .                              | 106.00    | 84.00        | 79.00   |
| National Carcass Lamb Cutout,<br>FOB . . . . .  | 244.05    | 243.70       | 230.80  |
| <b><u>Crops,</u></b>  |           |              |         |
| <b><u>Daily Spot Prices</u></b>   |           |              |         |
| Wheat, No. 1, H.W.<br>Omaha, bu . . . . .   | 3.36      | *            | *       |
| Corn, No. 2, Yellow<br>Omaha, bu . . . . .  | 1.73      | 1.86         | 1.89    |
| Soybeans, No. 1, Yellow<br>Omaha, bu . . . . .  | 5.13      | 5.66         | 5.42    |
| Grain Sorghum, No. 2, Yellow<br>Columbus, cwt . . . . .   | 2.45      | 2.48         | 2.93    |
| Oats, No. 2, Heavy<br>Minneapolis, MN, bu . . . . .   | 1.87      | 2.18         | 2.14    |
| <b><u>Hay</u></b>   |           |              |         |
| Alfalfa, Large Square Bales,<br>Good to Premium, RFV 160-185<br>Northeast Nebraska, ton . . . . . | 115.00    | 120.00       | 130.00  |
| Alfalfa, Large Rounds, Good<br>Platte Valley, ton . . . . .                                       | 62.50     | 65.00        | 65.00   |
| Grass Hay, Large Rounds, Good<br>Northeast Nebraska, ton . . . . .                                | 57.50     | 52.50        | 52.50   |
| * No market.  |           |              |         |



livestock they would divide the fencing expense equally; otherwise each neighbor would pay “a just proportion” as determined by agreement, through mediation, or in court. The obligation to pay for part of a division fence would apply only if one of the land parcels is zoned agricultural or if both parcels are used for agricultural or horticultural purposes. LB934 is a significant revision to current Nebraska fence viewer statutes.

Under LB934, the division fence provisions will continue to apply only where neighbors cannot agree regarding division fence construction and/or maintenance, or where one neighbor wants to make the other neighbor share the division fence costs. If the neighbors can agree on division fence issues, or where one neighbor owns and maintains the fence, LB934 would not apply.

Under LB934, if both neighbors will use the division fence to confine livestock, they will equally divide the expense of the division fence. Under current law the decision regarding how much each neighbor should contribute towards the division fence is made by fence viewers. Under LB934, if one neighbor has livestock (or if neither have livestock), each neighbor is responsible for an undetermined “just proportion” of the division fence cost. Under LB934, what is a just proportion would be determined either through mediation or in court. Under current law that decision is made by the fence viewers.

Under LB934, at least one land parcel must be zoned agricultural, or else both land parcels must be used for agricultural or horticultural purposes. Under current law there are no restrictions on how land subject to a fence view is used. Under LB934 fencing disputes between an agricultural producer and an acreage owner or a town resident could be addressed through the proposed fencing mediation-litigation process if the farmland was zoned agricultural. In unzoned counties, if one parcel is not used for agricultural or horticultural purposes, the division fence statutes would not apply. Disputes between ag producers and acreage owners (or town residents) could be addressed in zoned counties if the agricultural land is in an agricultural district, but could not be addressed in unzoned counties (of which there are a handful in Nebraska). If LB934 were enacted, there is no automatic right of contribution for division fences in these unzoned counties unless both land parcels are agricultural or horticultural. Acreage owners and town

residents in unzoned counties would not be required to pay for part of the ag neighbor’s division fence, and could not receive contribution from their ag producer neighbor if they wanted to install a division fence.

If the division fencing statutes apply to a fencing dispute under LB934, a landowner would be entitled to enter upon adjacent land to construct or maintain a division fence without the neighbor’s permission, but only to the extent that such access is “reasonably necessary” to allow the neighbor to fulfill his fencing obligations. However, if the neighbor doing the fencing construction or maintenance was going to remove trees, buildings, other obstacles or personal property, the neighbor would need the owner’s permission or a court order.

The LB934 fencing dispute process would be initiated by giving written notice to the neighbor that the landowner wishes to build, maintain or repair a division fence and wants the neighbor to share the cost. If the owner receiving notice agrees, the owner sending the notice can proceed with the fence construction, maintenance or repair. If the person receiving the notice fails to respond or refuses the request, the landowner sending the notice may file a lawsuit in county court on a form provided by the state court administrator. The defendant will receive a notice of the lawsuit, and the county court will order the parties to attempt voluntary mediation to resolve the fencing dispute. If the defendant fails to appear in court the defendant would lose by default. If either party declines mediation, the case proceeds to trial as an ordinary civil lawsuit.

LB934 was introduced primarily because Nebraska counties requested that county clerks be removed from the current fence viewer process. LB934 attempts to encourage voluntary resolution of division fence disputes, and also provides for direct court action if voluntary dispute resolution fails. In such cases, Nebraska judges will be resolving division fence disputes instead of citizen fence viewers.

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