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LB108 Repeals Fence Viewer Process

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CORNHUSKER ECONOMICS

March 7, 2007

University of Nebraska–Lincoln Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://www.agecon.unl.edu/Cornhuskereconomics.html>

LB108 Repeals Fence Viewer Process

| Market Report | Yr Ago | 4 Wks Ago | 3/2/07 |
|---|-----------|--------------|---------|
| <u>Livestock and Products,</u> | | | |
| <u>Weekly Average</u> | | | |
| Nebraska Slaughter Steers, 35-65% Choice, Live Weight | \$88.19 | \$86.34 | \$93.09 |
| Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb | 137.51 | 110.47 | 120.43 |
| Nebraska Feeder Steers, Calves Med. & Large Frame 750-800 lb | 110.08 | * | 101.24 |
| Choice Boxed Beef, 600-750 lb. Carcass | 152.64 | 143.06 | 149.29 |
| Western Corn Belt Base Hog Price Carcass, Negotiated | 60.48 | 63.24 | 61.73 |
| Feeder Pigs, National Direct 50 lbs, FOB | 57.73 | * | 71.58 |
| Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean | 67.43 | 64.75 | 68.51 |
| Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct | 79.50 | * | 80.00 |
| National Carcass Lamb Cutout, FOB | 213.23 | 233.64 | 240.84 |
| <u>Crops,</u> | | | |
| <u>Daily Spot Prices</u> | | | |
| Wheat, No. 1, H.W. Imperial, bu | 4.00 | 4.38 | 4.61 |
| Corn, No. 2, Yellow Omaha, bu | 1.98 | 3.77 | 3.91 |
| Soybeans, No. 1, Yellow Omaha, bu | 5.58 | 6.86 | 6.50 |
| Grain Sorghum, No. 2, Yellow Columbus, cwt | 2.93 | 6.16 | 7.00 |
| Oats, No. 2, Heavy Minneapolis, MN, bu | 2.03 | 2.72 | 2.61 |
| <u>Hay</u> | | | |
| Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton | 130.00 | 135.00 | * |
| Alfalfa, Large Rounds, Good Platte Valley, ton | 65.00 | 92.50 | * |
| Grass Hay, Large Rounds, Good Northeast Nebraska, ton | 55.00 | 90.00 | * |
| * No market. | | | |

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, for over a century I could have requested fence viewers to determine how much of the division fence each neighbor should pay for. Now if I want to do that I must go to court. 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 real estate deeds) identifying how the costs of building and maintaining the fence will be shared. But written fence agreements are rare.

LB108, enacted by the Unicameral on March 1, 2007, made major changes to the Nebraska division fence statutes. LB108 will take effect one day after it is signed by Gov. Heineman (which I assume the Governor will do). Under prior law, if neighbors could not agree on what type of fence to build, how to maintain the fence and/or how to pay for it, either neighbor could have requested a fence view. The three-person fence view committee was appointed by the local county clerk. The fence viewers determined what type of fence should be built, and how construction and maintenance costs would be shared. Typically, fence viewers established a portion of the fence for each neighbor to maintain. The rule of thumb was for neighbors to face each other in the middle of the fence and to each take care of the fence to their right. If either landowner objected, they could appeal to district court.

LB108 made several changes to the division fence statutes. First, the entire fence viewer process has been replaced with a mediation and litigation process. A court order is now required to go onto a neighbor's property to remove trees, buildings, any other obstacles or personal property without the owner's permission. If both neighbors have livestock they will divide the fencing expense equally; otherwise each neighbor would pay "a just proportion" as

determined by agreement, through mediation, or in court. Finally, the obligation to pay for part of a division fence would apply only if at least one of the land parcels is zoned agricultural or horticultural, or if both parcels are used for agricultural or horticultural purposes. LB108 is a significant revision to longstanding Nebraska division fence statutes.

Under LB108, 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 entire fence, LB108 does not apply. Remember, LB108 applies only where at least one parcel is zoned agricultural or else when both parcels are used for agricultural or horticultural purposes.

Under LB108, if both neighbors will use the division fence to confine livestock, they will equally divide the expense of the division fence. Under prior law the decision regarding how much each neighbor should contribute towards the division fence was made by fence viewers. Under LB108, 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 LB108, what is a just proportion would be determined either through mediation or in court. Under prior law that decision was made by the fence viewers.

Under LB108, at least one land parcel must be zoned agricultural or horticultural, or else both land parcels must be used for agricultural or horticultural purposes. Under prior law there were no restrictions on how land subject to a fence view was used. Under LB108 fencing disputes between an agricultural producer and an acreage owner or a town resident are addressed through the fencing mediation-litigation process only if the farmland is zoned agricultural. In unzoned counties, if one parcel is not used for agricultural or horticultural purposes, the division fence statutes do 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 zoning district, but cannot be addressed in unzoned counties (of which there are still a handful in Nebraska). Under LB108, 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 are not required to pay for part of the ag neighbor’s division fence, and cannot receive a forced contribution from their ag producer neighbor if they install a division fence.

Where the division fence statutes apply to a fencing dispute under LB108, a landowner is entitled to enter the 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 build, repair or maintain the fence. However, if the neighbor doing the fencing construction, repair or maintenance is going to remove trees, buildings, other obstacles or personal property, that neighbor needs the owner’s permission or a court order.

The LB108 fencing dispute process is 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.

LB108 was introduced primarily because Nebraska counties requested that county clerks be removed from the former (sometimes contentious) fence viewer process. LB108 encourages 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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