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Agriculture Committee
January 30, 2018

[LB766]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 30, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB766. Senators present: Lydia Brasch, Chairperson; Carol Blood, Vice Chairperson; Joni Albrecht; Ernie Chambers; Steve Halloran; and Theresa Thibodeau. Senators absent: Bob Krist; John Lowe.

SENATOR BRASCH: Good afternoon, everyone. I believe we are at 1:30 on the dot here, and I want to welcome you to the Agriculture Committee and first, I'm Lydia Brasch. I'm the Chairwoman of this committee. And we will be hearing LB766, my bill, shortly but I wanted to introduce you to members of the committee. And to my right is Rick Leonard, the research analyst for the committee. To my left is committee clerk, Courtney McClellan. Joe Gruber is here again, we will thank Joe. He is a student at UNL and he is from Omaha. I would like the committee members to self-introduce themselves, but I do want to start with my Vice Chairwoman, who will be conducting the meeting shortly and she is from District 3 in Omaha. So thank you, and go ahead. [LB766]

SENATOR ALBRECHT: Great. Hi, I'm Joni Albrecht. I'm from District 17, Wayne, Thurston, and Dakota Counties. [LB766]

SENATOR HALLORAN: Good afternoon. Steve Halloran, District 33, Adams and part of Hall County. [LB766]

SENATOR THIBODEAU: Good afternoon. Theresa Thibodeau, District 6 in Omaha. [LB766]

SENATOR BRASCH: Senator Krist is introducing bills in another committee today and will not be joining us, and I have also heard that Senator Lowe is introducing a bill. Senator Chambers may be joining us later, and I believe that covers the committee here. And as always, we ask the audience to be respectful of each other and of the testifiers. Please keep your conversations among yourselves to a minimum and, if necessary, please take your conversations into the hallway. We're going to ask the audience to refrain from any outwardly expressions of support or objection during testimony. No one may address the committee except as a testifier while seated at the testifier's table. Please turn off your cellphones and any electronic devices or put them on silent or vibrate. Any phone conversations, please, should be taken out into the hallway. If you do not plan to testify on a bill but would like to record your position on a bill, there is a yellow sheet that's located outside the door where you can do so. These will be a part of the hearing record. However, only persons who testify will be included on the committee statement. Testifiers' testimony on each bill are going to be...how many are testifying today? Okay, I will

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not limit the time. Normally, we would go to five or three minutes, but please try to be brief and not exceed the five-minute...we will not use the lights. When you...first we'll have the proponents come forward, then the opponents, and then neutral testimony. As you come forward, please state your name and spell your name. And if you plan to testify, fill out a green sheet before you come to testify. And these are located on the table outside the door. Please indicate your name and contact information and whether you are testifying in support, in opposition, or neutral. And please indicate if you are testifying as an individual or on behalf of an organization. When you do come forward, please give your green sheet to the page and, again, if you have any handouts please gesture the page who will take any copies that need to be distributed to the committee. We ask that ten copies be made of any of the handouts. And as I said, today we will not limit the length unless it seems to exceed more than five minutes. I think I have covered all of the information we need to proceed, and I will ask Madam Vice Chair to be Chair moving forward and I will move to the other side. [LB766]

SENATOR BLOOD: Thank you, Chairwoman Brasch. And, Senator Brasch, welcome to your committee, the Agriculture Committee. And please spell and say your name for the record. [LB766]

SENATOR BRASCH: My name is Lydia Brasch, spelled L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District of the Nebraska Legislature. [LB766]

SENATOR BLOOD: And you're here today to speak on LB766? [LB766]

SENATOR BRASCH: I am. [LB766]

SENATOR BLOOD: Will you please begin? [LB766]

SENATOR BRASCH: LB766 makes two clarifications to subsection 34-112.02 of the Nebraska fence law. The Nebraska Law of Division Fences, which is in subsection 34-101 through 34-117, recognizes the mutual duty of adjoining rural landowners for the construction and maintenance of division fences occurring on the boundary of the adjoining properties. Subsection 34-112.02 provides a mechanism whereby a landowner may compel an adjoining landowner's fulfillment of the mutual fencing obligation by filing a fence dispute claim in county court. Current law provides that--to have recourse to initiating a fence dispute claim--a landowner shall first give written notice to the adjacent landowner or landowners of intent to build or repair a division fence and such notice will include a request for the adjacent landowner to fulfill his or her obligation by monetary contribution to fencing costs or by physical fence construction or repair. If the adjacent landowner refuses or ignores the request, the landowner may file a fence claim, provided at least seven days have elapsed since giving notice. Current law states seven days.

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LB766 would make the following changes: new wording will be inserted to make it clear that a landowner must give written notice to the adjacent landowners prior to beginning the fence construction or repair to have recourse to filing a fence dispute claim. Also, it provides that a fence dispute claim could not be filed until at least 30 days have elapsed since giving written notice instead of the current 7 days. In briefing, items provided by staff prior to the hearing that we distributed, information regarding a case study decided recently in Lancaster County Court that found that a landowner could file a dispute claim after beginning fence construction but prior to its completion. The court's decision indicates that the landowner who filed the fence claim had not discussed with neighbors before starting the work on the fence that he intended the neighbors to contribute to the construction of the fence. The first notice that those neighbors received was written notice, required under subsection 34-112.02, sent only after the construction began and it was almost completed. The fence law has always served as a remedy of last resort in the event that neighbors were unable to reach private agreement on allocation fencing responsibilities. The law contemplates that neighbors first attempt good-faith efforts to reach agreement before making use of the fence dispute remedy. The ruling interprets the fence law as allowing the fencing claim to be filed anytime prior to the completion of the fence. In other words, as happened in this case, a landowner could unilaterally begin building a fence without first attempting to reach agreement with the neighbor or even giving the neighbor notice that the landowner's request...is requesting the neighbor's participation and simply ask the court to order the neighbor to reimburse the landowner after the fact. This sequence denies neighboring landowners an opportunity to mitigate the cost to fulfill their responsibility by constructing the fence themselves or a portion thereof or reaching agreement on materials and/or labor or disputing the responsibility to contribute to the fence construction or the maintenance. The changes proposed in LB766 are intended to facilitate an opportunity for neighbors to have more timely notice and a conversation of a neighbor's intent to invoke their share responsibility under the fence law. This matter was brought to my attention by staff, and we have reached out to some of the groups affected by the fence law who I anticipate will speak on the bill. Thank you, members of the committee. [LB766]

SENATOR BLOOD: Thank you, Senator Brasch. Do any members of the committee have questions at this time? Senator Halloran. [LB766]

SENATOR HALLORAN: Madam Chair. I think it was Robert Frost, wasn't it, that said that good fences make good neighbors? I just wanted to beat Senator Chambers to that. [LB766]

SENATOR BRASCH: Very good. And Vice Chair will recognize that Senator Chambers has joined the meeting. [LB766]

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SENATOR BLOOD: What she said, Senator Chambers. Please identify that he has joined the committee. Will you be staying for your closing, Senator Brasch? [LB766]

SENATOR BRASCH: I will, thank you. [LB766]

SENATOR BLOOD: With that we ask that any proponents come forward. [LB766]

JOHN HANSEN: Madam Vice Chair, members of the committee, for the record, my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and I'm also our lobbyist. During the course of service work, I was sent this case that was in Lancaster County Court and it seemed to everyone that I had talked to and was involved with that the outcome of that decision was odd in that the normal effort to try to do the appropriate notification in advance of embarking on building a new division fence around a property didn't really...the spirit of it at least, was not followed. And so in this case, to give you an idea of the money, the court did award \$12,102 to the folks on the other end of the fence dispute. And so that's a substantial amount of money and if you're going to spend that amount of money you should have a little more say, I would think, as an adjoining landowner over maybe the particulars of the fence that gets built based on what your livestock needs are or are not. And you ought to have the option, if you have your own fencing materials and are in the habit of fixing and building your own fences, to put in the...furnish the materials and furnish the labor. So when you bring in a contractor, that would be the most expensive way to build a fence. Not necessarily always the best, but it will be the most expensive. And so I appreciate the efforts of the Chairman of the committee and I thank her for bringing this bill forward. It's a very simple bill and it addresses a part of the notification part of the law. But having been involved in this issue for a very long time, we used to just look at our fence and whoever's right-hand side of the fence that you were facing that was the side that was your job to make sure was fixed and adequate and up to snuff. And so we have some very different land ownership patterns and we have some very different kinds of interactions or lack thereof and competing interests and differences in perspective between landowners these days. So we've been through this process a number of times. But the thought did strike me that we're seeing...it has become so legalistic relative to conflicts and that the mediation process that we have identified doesn't seem to get used very often, that I wonder if before we go to court, in addition to paying folks to build fences that we pay folks to defend us in court. And by most accounts, based on the price of corn these days, I think it'd be fair to say that most folks in either the livestock or grain production area think that lawyers get paid too much money, certainly a lot more than farmers or ranchers do. So now we're incurring a lot of additional expense...is that maybe some sort of interim process that we used to use, which is the fence viewer system, might be more appropriate. Just something to think about on down the road. But I felt badly for everyone involved in this case, and things didn't go as they should, so I think...we are in support of this bill. I think it's a common-sense solution to what wasn't necessarily a common-sense process. So with that I would end my comments and say, it's

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good to see my good friend, Senator Chambers, again, before the Ag Committee. I think we've been doing this for about 28 years, and welcome to the new member of the committee, Senator Thibodeau. [LB766]

SENATOR THIBODEAU: Thank you. [LB766]

JOHN HANSEN: Thank you. [LB766]

SENATOR BLOOD: Does the committee have any questions for Mr. Hansen? Thank you. Any other proponents? Please say and spell your name for the record. [LB766]

LAURA FIELD: Sure. Good afternoon, Vice Chairman Blood, members of the committee. My name is Laura Field, L-a-u-r-a F-i-e-l-d, and I'm appearing before you today in support of this bill on behalf of Nebraska Cattlemen. I don't really have much to add. I would agree with Senator Brasch that this clarification is something that will help with these recent court actions that have interpreted the words "or complete" to mean that a landowner still has recourse to demand contribution for the work after the fence has begun. This bill would require written notice prior to initiating that action under the statutory language and this clarification would help encourage landowners to help reach consensus, which is always a good thing when we're working on these fences. So I appreciate you hearing the bill and letting me speak to it, and we certainly lend our support. [LB766]

SENATOR BLOOD: Thank you, Mrs. Field. Does anyone have a question? Okay, thank you very much. Any other proponents? Please say and spell your name for the record. [LB766]

JIM PAPPAS: Thank you, Miss Cochairman. Vice Chairman, committee members, my name is Jim Pappas, J-i-m P-a-p-p-a-s. I'm here to represent the Independent Cattlemen of Nebraska, commonly called ICON to abbreviate. This is my first time testifying to this committee for a couple of years and I was amazed when I kind of looked over the makeup and composition of the committee. And I looked around and I said, there's four women on this committee, three middle-aged men, and one old guy. And I said, this is a committee, because the women is on it, but they're not going to put out anything that's this emotional-charged thing that some man made up for a bill, so it'd be a lot of common sense. This would be a good committee to be in front of. But basically we're just here to say, "me too." But one thing I may add is sometime in the future you're going to have more bills coming in front of the body dealing with the fence as the composition of demographics change as rural area comes closer and closer to urban area and the difference in the farming techniques to difference in fencing, from horse fence to barbed wire fence to other structural fence. You're probably going to get a lot more bills in the future dealing with fences. [LB766]

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SENATOR BLOOD: Okay, thank you. Senator Chambers, you have a question? [LB766]

SENATOR CHAMBERS: Mr. Pappas, you're looking hale and hearty today. I'm glad to see you. It really has been awhile, but I do see you on other occasions. I'm looking at this bill and I'm thinking about what some members on this committee did to that bill that I had where a disgruntled neighbor could cause all kind of grief for the neighbor with no court intervention at all, none whatsoever. So I think this bill ought to be dealt with the same way that one was. Let the two people shoot it out or go to the common board and say you ought to work it out, but don't let them go to court. Naturally, you know, that's not going to be my reaction. But I look at these kinds of bills as being of a (inaudible). They're talking about a fence between two adjacent pieces of land. In the other they were talking about what happens on one person's land affecting another person's land. And there's no need to establish that what the allegation says is true. It's taken as true, and then all these other terrible things happen. So maybe what I need to do is stop all of these bills, and then when enough outcry occurs about not allowing appropriate judicial remedies to come into play they'll apply everywhere instead of letting their opposition to one senator, namely me, in one context say we don't need to worry about absence of judicial process. And then this one where some people seem to think that the court did not rule the way the Legislature intended, so they want to do something about it. But I'm not sure if I want to let them, so I'm just using you as my sounding board. Maybe you can persuade me to do otherwise, but none of them can. [LB766]

JIM PAPPAS: Well, because you're old and gray... [LB766]

SENATOR CHAMBERS: Very... [LB766]

JIM PAPPAS: ...but you're still wise... [LB766]

SENATOR CHAMBERS: ...Very... [LB766]

JIM PAPPAS: ...when it comes to judicial matters I'm not going to argue very much with you, Senator. So whatever you say I'll probably go along with. [LB766]

SENATOR CHAMBERS: (Laugh) Okay. I don't have anything else. He's still sharp. [LB766]

SENATOR BLOOD: (Exhibit 1) Any other questions from the committee? No? Thank you, Mr. Pappas. Any other proponents? Any proponents? Any opposition? Any opposition? Anybody here to testify in the neutral? We do have one letter that is neutral from Steve Wellman, director for the Department of Agriculture, that will be added to the record. With that, we would ask that

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Senator Brasch come forward and close on her LB766. She waives closing. With that, the hearing for LB766 is officially completed. [LB766]