



*Since 1894*

To: The Senate Agriculture Committee  
Senator Mark Taddiken, Chair

From: Aaron Popelka, Vice President of Legal and Governmental Affairs, Kansas Livestock Association

Re: **Testimony in opposition to Senate Bill No. 357, a bill concerning agriculture; relating to soil erosion caused by wind; duties of county commissioners, conservations districts; amending K.S.A. 2-2004 and repealing the existing section.**

Date: February 7, 2012

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,300 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Thank you, Mr. Chairman and members of the Committee, for allowing me to represent the views of KLA on SB 357. KLA is opposed to SB 357 in its current form, but would support a substitute amendment endorsed by the Kansas Farm Bureau, the Kansas Association of Counties, and Riley County. The substitute amendment is attached for your review.

KLA membership owns a significant portion of Kansas farm and ranchland. As a result, it has adopted association policies aimed at preserving the private property rights of landowners. KLA policies also oppose environmental regulations that disrupt livestock operations and are not based on sound science.

Current Kansas laws concerning "Soil Erosion Caused by Wind," found in Chapter 2, Article 20 of Kansas Statutes Annotated, are antiquated regulations that pose an unnecessary threat to livestock operations across the state. The laws were enacted during the Dust Bowl years of the Great Depression when Kansas was trying to desperately stop the large dust storms that rolled across the state. At that time, farming practices were different, science surrounding soil conservation was just starting to develop, and federal conservation policies were in their infancy.

In addition to being out of date, the authorities referenced in the Article 20 grant nearly limitless authority to county commissions in developing corrective action. While this wide sweeping authority may not have been a problem 75 years ago when the State had a general population that

was rural-based and knowledgeable about a[Type a quote from the document or the summary of an interesting point. You can position the text box anywhere in the document. Use the Text Box Tools tab to change the formatting of the pull quote text box.]  
gricuture, it now poses a problem in the State's more urban counties.

Since Article 20 was adopted, farming and ranching practices have changed incorporating new science that has resulted in conservation practices like no-till. Federal law has also changed since 1937. At that time, Congress had just enacted the first farm bill in history and participation was not linked to conservation practices. As a result of the 1985 Farm Bill, federal law now requires the United States Department of Agriculture (USDA) to ensure that all producers stay in compliance with a conservation plan if any portion of a producer's land consists of highly erodible land. If the producer fails to meet the conservation plan, the producer will not be eligible to participate in and receive benefits from a number of USDA programs.

It is KLA's preference, because we are no longer trying to end the Dust Bowl, agricultural conservation practices are now overseen by the federal government, and new soil conservation science and technologies have evolved, to repeal Article 20 of Chapter 2 in its entirety. However, KLA realizes this view is not shared by all and in the spirit of compromise has reached an agreement with the aforementioned groups to bring these statutes into the 21<sup>st</sup> century. If the Committee were to accept the substitute amendment attached to this testimony, KLA would support SB 357.

### **Analysis of Proposed Changes to SB 357**

The changes we are proposing to SB 357 accomplish the goals of limiting government intervention on private property and make certain that if any intrusion occurs, it is based on necessity and sound science. The first portion of the substitute amendment prohibits unilateral action by the county commission. The commission can only act upon receiving a complaint. Next, the amendment eliminates reference to antiquated dust prevention methods like discing or chiseling. In some instances, like where land is under a no-till conservation system, these practices could actually damage soil structure and exacerbate the erosion problem. The antiquated practices currently listed in statute are replaced by conservation practices developed by the USDA Natural Resources Conservation Service (NRCS) for the applicable region.

The substitute amendment sets forth a structure that allows immediate action by the county commission only if the situation "poses an extreme and immediate physical danger to public safety. . . ." In the absence of such a threat, further action is subject to hearings and review by the local conservation district. The local conservation district, acting in an advisory capacity only, then submits recommendations to the county commission for either approval or rejection. The local conservation district recommendation is to be based on the applicable NRCS technical guide, which represents the best available conservation practices in the region. In addition, if the local conservation district finds the land owner to be in compliance with the land owner's federal highly erodible land conservation plan, referenced in 7 C.F.R. § 12.5 (2011), the local conservation district must recommend no corrective action to the county commission.

In the instance where the county commission rejects the local conservation board's original recommendation, but believes some corrective action may still be necessary, the county commission can ask the local conservation district for an alternative recommendation. Upon receiving the alternative recommendation, the county commission must either accept or reject the alternative recommendation.

If the county commission accepts a recommendation for corrective action, it can order the corrective action be taken. The county commission, however, must give the land owner the opportunity to complete the corrective action before employing someone else to accomplish the task.

Finally, the substitute amendment repeals K.S.A. § 2-2005, that requires counties to do an annual soil survey, and repeals K.S.A. § 2-2006 because those authorities are being incorporated into our amendments to K.S.A. § 2-2004.

Thank you for hearing the views of KLA and KLA stands ready to assist the Committee as it moves forward on this topic.

**Substitute Amendment to SB 357 Proposed by the Kansas Livestock Association, the Kansas  
Farm Bureau, the Kansas Association of Counties, and Riley County**

**2012 SENATE BILL NO. 357**

By Committee on Agriculture

AN ACT concerning agriculture; relating to soil erosion caused by wind; duties of county commissioners, conservations districts; amending K.S.A. 2-2004 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2-2004 is hereby amended to read as follows: 2-2004. (a) Further to administer, carry out and make effective the purposes of this act-section, the board of county commissioners of each county upon receiving a complaint that dust, any plant, or weed is blowing from any particular land in the county, are hereby authorized and directed immediately to inspect such land. If it is determined the soil, any plant or weed is blowing therefrom in sufficient quantity to be injurious to the land because of erosion thereof, to nearby land because of dirt blown thereon, to nearby land because of any plant or weed blown thereon or to the public health because of dust therefrom blown into the air, they shall determine what, if anything, can be done to prevent or materially lessen the soil, any plant or weed blowing from such land, and if in their judgment that can be accomplished by prompt cultivation of the soil in some manner, they are authorized and directed to order work to be done and the time when and the type of work to be done. The board of county commissioners may order that the land be disced, listed, chiseled, cultivated, chopped or worked by any other method of control approved by the board. If the board of county commissioners determines a sustained, dust-laden wind is occurring which poses an extreme and immediate physical danger to public safety unless immediate corrective action is taken, such board of county commissioners shall

order the owner of the land at issue to take immediate corrective action that shall include any recognized method of dust control in the applicable field office technical guide of the Natural Resources Conservation Service. If such board of county commissioners receive a complaint and determine no sustained, dust-laden wind posing an extreme and immediate physical danger to public safety is occurring, the board of county commissioners shall direct the complaining citizen to present such complaint to the local conservation district with jurisdiction over the land at issue.

(b) If a complaint is referred by the board of county commissioners to the local conservation district, and if the complaining party wishes to proceed with such complaint, the board of county commissioners shall request that such local conservation district schedule the complaint for a hearing at such local conservation district's next regularly scheduled meeting.

(1) The board of county commissioners shall advise the owner and any tenant of the land at issue, no less than 10 calendar days prior to such meeting, of the date and time the complaining party will appear before the local conservation district.

(2) The local conservation district shall have authority to hear such complaint and any response from the owner or tenant of the land at issue at such scheduled meeting. At such meeting, the local conservation district may, upon receiving permission from the owner of the land at issue, view the land, either as a group or by individual board members and with or without the presence of either the complaining party, the owner, or the tenant of the land at issue. Such local conservation district may also continue the matter to a different date or take such other reasonable steps as in the discretion of such local conservation district which allows such conservation district to make a recommendation to the board of county commissioners regarding such complaint.

(3) The local conservation district shall act only in an advisory capacity and shall have authority only to make a written recommendation to the board of county commissioners regarding the complaint referred to such local conservation district. Included in such recommendation shall be a determination by the local conservation district as to whether the land at issue is in compliance with a conservation plan promulgated by the owner or tenant under 7 C.F.R. § 12.5 (2011). If the land at issue is determined to be in compliance with a conservation plan promulgated by the owner or tenant under 7 C.F.R. § 12.5 (2011), the conservation district shall recommend no corrective action be taken by the board of county commissioners. If the land at issue is determined to not be in compliance with a conservation plan promulgated by the owner or tenant under 7 C.F.R. § 12.5 (2011), the local conservation district shall recommend specific corrective action to the board of county commissioners.

(c) For the purpose of making a recommendation, the local conservation district:

(1) May request technical assistance from the Natural Resources Conservation Service of the United States Department of Agriculture. It shall be within the sole discretion of the Natural Resources Conservation Service whether or not to provide such technical assistance; and

(2) Shall consider the applicable field office technical guide of the Natural Resources Conservation Service. Any corrective action recommended by the local conservation district shall be based upon one or more terms of the field office technical guide and the local conservation district's written recommendation shall identify the specific term or terms of the field office technical guide upon which the recommendation is based.

(d) In formulating a recommendation, the local conservation district shall rely entirely upon the voluntary cooperation of the complaining party and the owner or tenant of the land at issue. If the complaining party, owner or tenant of the land at issue did not cooperate with the local conservation district regarding such complaint, the local conservation district shall advise the board of county commissioners of this fact in such recommendation. If the local conservation district recommends no corrective action, such local conservation district shall explain why no corrective action was recommended.

(e) Upon receipt of the written recommendation of the local conservation district, the board of county commissioners shall schedule such recommendation for review by the board of county commissioners at a regularly scheduled meeting. The complaining party, owner of the land at issue, and any tenant shall be notified in writing of such meeting no less than 10 calendar days prior to such meeting. At such meeting, the board of county commissioners shall accept or reject the recommendations of the local conservation district. In such case where the board of county commissioners reject the local conservation board's recommendations, the board of county commissioners may, if it is determined corrective action is needed other than the corrective action recommended by the local conservation district, request the local conservation district develop an alternative recommendation. A request for an alternative recommendation from the local conservation district by the board of county commissioners shall set forth reasons why the board of county commissioners believes an alternative recommendation is necessary. Upon receiving an alternative recommendation from the local conservation district, the board of county commissioners shall accept or reject the alternative recommendation. The board of county commissioners at all times shall retain the authority to order any corrective action allowed by this section.

(f) If a complaint has been referred to a local conservation district, but the board of county commissioners later determines immediate corrective action is appropriate under subsection (a), such board of county commissioners shall have the authority to order such immediate corrective action before the local conservation district has issued a recommendation.

( g) In all cases where the board of county commissioners orders corrective action, where it can be done reasonably, the board of county commissioners shall confer with the owner of the land before determining or ordering work to be done thereon, and advise the owner of their conclusions and give the owner an opportunity to do the work they conclude should be done, but if the owner cannot be consulted without unreasonable delay, or cannot or will not do the work in the manner and within the time it should be done, the board of county commissioners may do the work, or employ someone to do it, and issue its warrants to pay the actual cost thereof, and pay such warrants from the fund hereinafter provided, without regard to any other statute pertaining to the issuing or paying of county warrants.

Sec. 2. K.S.A. 2-2004, 2-2005, and 2-2006 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.