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To: Senate Committee on Natural Resources
Senator Larry Powell, Chairman

From: Mike Beam, Sr. Vice President

Re: Testimony in **opposition of SB 425**, a bill amending the conservation easement law

Date: February 18, 2016

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 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.

The Kansas Livestock Association opposes SB 425 because it authorizes local units of government to interfere with voluntary agreements between private landowners and private conservation organizations or government agencies who are currently authorized by law to accept and administer conservation easements.

How does SB 323 change current law?

The “uniform conservation easement law”, provided for in K.S.A. 58-3810 to K.S.A. 58-3817 was enacted by the Kansas Legislature in 1992. This act is similar to conservation easement law in most states. Existing law sets forth a definition for a conservation easement and who the “holder” of these instruments may be. In addition, the state law provides (a) for how a conservation easement may be created; (b) the duration of a conservation easement; (c) who may bring action affecting a conservation easement; (d) the validity of a conservation easement; and (e) when a conservation easement may be trumped by eminent domain.

SB 323 adds a new layer of bureaucracy (New Section 1) by giving boards of county commissioners’ authority to regulate the granting of conservation easements. Furthermore, “regulate” is referred to as adopting standards or policies regarding the duration, type, process, procedure or category of property eligible for a conservation easement.

What is a conservation easement?

A conservation easement is a legally recorded agreement or contract, between the landowner and a nonprofit land trust organization or government agency.

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The conservation easement limits a property's uses to protect its conservation values, which are usually stated in the conservation easement. A landowner who donates or sells a conservation easement retains ownership of the property and continues to determine who may have access and how and when the property can be sold or transferred. The provisions limiting use of the land encumbered by a conservation easements vary, depending on the purpose of the conservation easement. Conservation easement transactions designed for federal tax benefits and USDA payments must meet certain requirements, such as perpetuity. A conservation easement agreement with RTK expressly authorizes a continuation of farming and ranching activities.

Why do landowners enter into conservation easements?

KLA and the Ranchland Trust of Kansas encourage landowners considering a conservation easement to seek legal counsel. A conservation easement is not a good fit for many farm and ranch owners. There are some situations, however, that granting a conservation easement works well for landowners wanting to leverage the development value of their property and/or generate funds needed to grow their farm or ranch operation. In some instances, we've found that conservation easement grantors are inspired to preserve the agricultural legacy of the family by conserving the land and its use for the future. It may have taken a couple of generations to build the family's farm or ranch by making sacrifices and paying for the land with sweat equity and by being good stewards of the landscape. In these instances, conservation easement grantors seek the assistance of grantees like the Ranchland Trust of Kansas. KLA does not want a board of county commissioners to be able to get in the way of this decision and transaction.

Closing a conservation easement is cumbersome and expensive.

RTK staff have found it to be increasingly expensive to complete a conservation easement transaction. Like any real estate transaction, title searches are necessary. These title searches almost always find outdated encumbrances that need to be cleaned up before closing. An expensive survey, often costing over \$5,000, is necessary when a conservation easement grantor wishes to participate in a USDA/Natural Resources Conservation Service funding program. The grantor and grantee usually incur substantial legal fees to settle on an acceptable conservation easement document. It's not unusual for RTK to expend a year or more before completing a conservation easement transaction. Giving county commissioners the authority to demand their own set of guidelines will only create regulatory overkill.

In closing, I would ask... why would the Kansas Legislature give serious consideration to a bill that invites local officials to meddle in the decisions made by private landowners, especially when the granting of a conservation easement is designed to conserve the property's current use? KLA urges this committee to not move SB 425 forward as it will provide opportunities for inhibiting, hindering or blocking conservation efforts and intruding on private property rights of Kansas landowners.