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To: House Committee on Local Government
Rep. Kent Thompson, Chair

From: Aaron M. Popelka, V.P. of Legal & Governmental Affairs, Kansas Livestock Association

Re: **HB 2238 AN ACT concerning counties; relating to the abatement of nuisances.**

Date: February 20, 2019

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,600 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Thompson and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appears to today as an opponent of HB 2238. Our members have a long history of supporting individual freedom and private property rights. This legislation poses a threat to agricultural producers, especially those in Sedgwick County where urban sprawl encroaches on rural norms.

Rather than defer to an individual's freedom to decide how to use his or her property, HB 2238 would substitute for landowner decisions, the subjective opinion of the board of county commissioners. The government, rather than the individual would make decisions about how private property should look and for what purposes the property could be used. Although this legislation is more restrained than past iterations by requiring an abatement proceeding be premised on a county code violation, there is no parameters on the type of code violations that could be a nuisance.

Expansion of county nuisance abatement authority is especially concerning to the agriculture industry. The very nature of agriculture can involve noisy, dirty, and odiferous activities. These activities may not always be pleasant to urban or suburban residents, but they are necessary to grow the food we all need to survive. In addition, agriculture thrives on the freedom of individual producers to operate. This allows new crops and innovative production practices to be used to advance the industry. Why would we, as a state, want to allow a county commission to dictate how Kansas farmers and ranchers manage their operations? In recognition of the importance of agriculture to Kansas, the legislature enacted right to farm laws, K.S.A §§ 2-3201 – 2-3205, and placed restraints on city and county zoning authority, K.S.A. §§ 12-758, 19-2908, and 19-2921, to protect the largest segment of the state's economy. Unless similar limits are placed in HB 2238, KLA is concerned this legislation could be an attempt to circumvent the aforementioned agricultural protections.

As a result, KLA recommends the following amendment:

Sec. 6. Nothing in the Sedgwick county urban area nuisance act shall apply to land, structures, machinery and equipment, or motor vehicles used for agricultural purposes.

This amendment would make clear that the nuisance abatement proceedings apply to only areas of urban sprawl and do not seek to interfere with agricultural production activities.

In addition to the above concerns, HB 2238 may violate the 5th Amendment of the U.S. Constitution by authorizing an uncompensated taking of private property. Specifically, the bill makes reference to the ability of the county to drain any existing pond. Such action would represent a physical invasion and seizure of private property by government, for which the county may have to pay just compensation under the Constitution. Unfortunately, not only does this bill fail to account for the 5th Amendment, but it attempts to push the cost of the county's destruction of private property onto the landowner. This would force a landowner to defend his constitutional rights in court, accruing additional expense.

To cure the above shortcoming of HB 2238, KLA would suggest the following amendments:

- On page 1, line 18, strike paragraph (1), and on page 2, line 21 strike “*drain any pond or ponds of water,*”. This would remove the ability of the county to drain ponds.
- Add a new subsection (f) to section 2 of the bill as follows: “*(f) In assessing the cost of removal and abatement of a nuisance, the county shall subtract from the total cost of the abatement or removal incurred by the county the value of the property removed or abated. If the value of the property removed or abated is greater than the cost of the abatement or removal incurred by the county, the county shall pay the owner the difference. If the value of the property is contested, the property owner may request a hearing before the governing body or its designated representative prior to the 30 days following receipt of notice of costs due and payable under subsection (d).*”

The two above amendments should alleviate any takings concerns associated with this bill.

Thank you for the opportunity to submit testimony. While KLA disagrees with the general direction of HB 2238 and opposes the bill in its current form, KLA's objections could be removed by adopting its suggested amendments.