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To: The House Agriculture and Natural Resources Committee  
Representative Larry Powell, Chair

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

Re: **Testimony in support of Senate Bill No. 357.**

Date: March 6, 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 supports SB 357 as passed by the Senate. This legislation represents a compromise reached by KLA, the Kansas Farm Bureau, the Kansas Association of Counties, and Riley County. The bill was also vetted with the Kansas Association of Conservation Districts, the Kansas Department of Agriculture, and the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS).

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In addition to being out of date, the authorities referenced in the Article 20 grant nearly limitless authority to county commissions in developing corrective action.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

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was rural-based and knowledgeable about agriculture, 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 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.

SB 357, as passed by the Senate, accomplishes the goals of limiting government intervention upon private property and makes certain that if any intrusion occurs, it is based on necessity and sound science. The legislation changes existing law to prohibit unilateral action by a county commission. A commission can only act upon receiving a complaint. Next, SB 357 eliminates reference to antiquated dust prevention methods like discing or chiseling. In some instances, such as where land is under a no-till conservation system, the practices listed in current statute could actually damage soil structure and exacerbate the erosion problem. SB 357 eliminates reference to the antiquated dust prevention practices currently listed in statute and replaces them with conservation practices developed by the NRCS for the applicable region.

SB 357 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. Following review, the local conservation district, acting only in an advisory capacity, submits recommendations to the county commission for either approval or rejection. The local conservation district's 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 to accomplish the task.

KLA believes SB 357 improves existing law by limiting government intervention upon private property rights and requiring the use of best available science in making any decisions. KLA supports passage of SB 357 by the Committee.