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To: Senate Select Committee on Education Finance
Sen. Jim Denning, Chair

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

Re: **SB 251, AN ACT creating the Kansas school equity and enhancement act.**

Date: May 19, 2017

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,200 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 Denning and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA opposes certain portions of SB 251 that relate to the funding mechanism for schools, which inequitably target agriculture. Specifically, KLA opposes removal of the public vote requirement for Local Option Budget (LOB) authority over 30 percent of state aid and the utility and irrigation fees proposed by the bill. If the LOB vote was restored and the utility and irrigation fees removed, KLA would not oppose the remainder of the legislation.

The above mentioned provisions of SB 251 intersect with various KLA policies adopted by our 5,200 members at our annual convention. KLA Policy Resolution #1 states, in part: *"The Kansas Livestock Association opposes the full funding of schools through property taxes and supports increased reliance on income tax and other non-property tax sources for support of local school districts."* KLA Policy Resolution #1, also states: *"The Kansas Livestock Association supports continued sales tax exemptions for inputs and livestock."*

Property Tax Concerns

As mentioned above, KLA members oppose increased reliance on property tax to fund schools because an increase would disproportionately impact agriculture whose largest asset is land. Unlike an income tax that taxes net income, a property tax must be paid at the same rate regardless of profitability. Due to declining prices, the agricultural sector is expected to experience negative net farm income for 2017. Increasing property taxes would simply increase net losses. To date, both the House and Senate versions of the school finance plan have avoided an increase to the current 20 state-wide mills assessed to fund education. We commend the committees for doing so, and encourage all members of the legislature to avoid such ideas.

KLA is opposed, however, to the provision in SB 251 that removes the current requirement that any increases to the LOB above 30 percent of state aid be subject to a vote of the citizens in the school district. The vote provision was included in the school finance formula in the past and has acted as a check on local school boards to keep property taxes as low as possible. The vote requirement reserved additional mill levy increases for only projects of utmost need that are verified to have the actual support of a majority of citizens in the district. We urge the Committee to restore this taxpayer protection.

Utility and Water Fees

KLA believes the utility and water fees are inappropriate to fund education and should be removed from the bill. These fees are not fees, but rather two separate forms of a tax. A fee is an amount charged or paid for a service, license, or industry regulation. In this case, there is no service, license, or regulation rendered specific to a farm or ranch as a result of either fee. Instead, the fee on utilities is a sales tax that is an end-run around the sales tax exemption on inputs consumed in production, and the irrigation fee is a property tax that appears to violate article 11, section 1 of the Kansas Constitution.

Irrigation Fee

Article 11, section 1 of the Kansas Constitution states: “the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation.” A water right is a real property right. *See* K.S.A. 82a-701(g). Therefore, a tax on water rights must be uniform and equal. The \$120 irrigation fee assessed by SB 251 is not related to administration of the Kansas Water Appropriation Act (KWAA). Instead the \$120 fee in SB 251 is “a burden imposed on property to raise money for public purposes.” *Beebe v. Wells*, 37 Kan. 472, 476 (1887) (distinguishing between a tax and a stenographer fee); *see also Atchison, T. & S. F. R. Co. v. Howe*, 32 Kan. 737, 764 (1884) (striking down a fee as a non-uniform property tax and stating, “It is evident that the legislature regarded this tax as a property tax, and not as a license or an inspection tax, because the tax is not assessed upon all the companies, corporations and persons subject to be regulated by the provisions of the statute.”). As a result of the lack of a nexus between the \$120 irrigation fee in SB 251 and the KWAA, plus the irrigation fee’s failure to apply to other water rights for uses like domestic, municipal, industrial, recreational, and water power authorized under K.S.A. 82a-707(b), a court would likely find the \$120 irrigation fee to be an unconstitutional property tax.

Beyond the constitutional question, the policy of only assessing irrigation water rights and not water rights issued for other uses creates inequitable outcomes. It seems a fee on irrigation rights were included to target water users who may not access water through a utility. Such an approach, however, ignores that water right owners of industrial, recreational, domestic, and water power water rights may also lack utility service, and therefore, would avoid the \$10 per month utility fee for water use under SB 251. This results in agriculture contributing more to education finance than other sectors of the business community.

The irrigation fee also inequitably targets agriculture compared to other industries because farms and ranches also pay utility fees. Most farms have electrical service and many utilize rural water districts or have access to municipal water service. Therefore, imposing a utility fee

and an irrigation fee would result in many farms and ranches paying two or more times the amount a typical Kansas business might contribute to finance education.

Also complicating administration of the water fee is that many farms may hold water rights through multiple operating entities, and more commonly, many farm operations lease farmland and the land's connected water rights. Under many lease situations, a farmer will agree to complete the annual water use reports and pay any annual water fees on behalf of the owner. As a result, under SB 251, farmers leasing cropland will likely be subject to multiple \$120 fees, despite what appears to be an attempt in the bill to avoid imposition of multiple fees on one operator.

In addition, stockwater fees are a creation of regulations promulgated by the Kansas Department of Agriculture, Division of Water Resources and do not specifically appear in the KWAA. It is unclear from the text of the bill whether stockwater appropriation rights would be assessed a \$120 fee. If stockwater rights are included, it could again result in compounding fees assessed on farmers and ranchers under this legislation.

Utility Fees

In regard to the utility fee, it appears the fee is, in effect, a sales tax that is an end-run around the consumed in production sales tax exemption. This exemption is used to avoid double taxation on goods during the production process. Like the irrigation fee, the utility fee is a burden imposed on sales to raise money for public purposes, not a fee to benefit or regulate the purchaser or seller of the good.

In addition, based on current language in SB 251, significant confusion will likely result in how the fee is imposed on agricultural operations, leading to double taxation. Agriculture operations may be viewed as either residential in nature, industrial in nature, or both, depending on the billing procedures of the utility provider, the nature of the agricultural operation, and the types of uses run through a single utility meter(s). For instance, in the sales tax statutes, residential and agricultural electric accounts are treated identically. This is because most farms run both their residence, as well as barns, machine sheds, and other electrical outlets to operate farm machinery through one electrical meter. The same dual-use meter scenario applies for rural water customers using one meter to access water for residential consumption and agricultural production. It is unclear from the language of SB 251 whether utility providers would be required to assess a \$2.25 per month fee, a \$10.00 per month fee, or both on a farm. If deemed to be a dual-use by the Department of Revenue, SB 251 would result in unfair, double taxation on agricultural utility users. When coupled with the irrigation fee, the double utility fee would result in an even greater burden an agriculture at a time when it can least afford it.

Thank you for the opportunity to appear before the Committee. KLA asks the Committee to remove the utility and irrigation fees in SB 251 and restore the LOB vote requirement for property tax authority over 30 percent of state aid. Should the Committee appropriately address these issue, KLA would withdraw its opposition to the bill.