



Since 1894

To: House Transportation Committee
Representative Gary Hayzlett, Chair

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

Re: **Testimony in Support of House Bill No. 2735.**

Date: March 5, 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 testify today and present the views of the Kansas Livestock Association (KLA) on H.B. 2735. KLA supports H.B. 2735 and the amendment suggested by the Kansas Farm Bureau. H.B. 2735 is necessary as a result of a recent misguided opinion by the Kansas Court of Tax Appeals that assessed the value of a railbanked right-of-way to the adjoining landowners rather than the trail management entity. This legislation would clarify that unless a railroad is formally abandoned and the land ceded to the adjoining landowners, property taxes should be assessed and levied on the entity in control of the right-of-way.

The National Trails System Act (Trails Act) was enacted in 1983 by Congress to preserve established railroad corridors for interim trail use and future railroad use after a railroad has discontinued use of the right-of-way for operation of a railroad. 16 U.S.C. § 1247(d). Under the Trails Act, when a railroad gives notice that it wishes to abandon a right-of-way for active use as a railroad, a qualified interim trail manager may apply to the Surface Transportation Board (STB) to operate the railroad right-of-way as a trail. See 49 C.F.R. § 1152.29, 1152.20. If the trail manager is approved by the STB, the trail manager assumes financial and management responsibility of the right-of-way. The transfer of the railway right-of-way is typically done through a voluntary railbanking agreement that could be in the form of a donation, sale, or lease. The trail manager takes possession of the right-of-way subject to the right of a railroad to resume operation of a railroad in the future.

If a trail manager assumes responsibility of the railway right-of-way, the land cannot be utilized by the adjoining landowners. Depending on how the land was granted to the railroad,

the maximum property right an adjoining landowner has in the right-of-way is a future reversionary interest if the trail manager and railroad abandon the railway right-of-way permanently. This would take approval by the STB. *See* 49 C.F.R. § 1152.29, 1152.20. Furthermore, the Trails Act provides that railbanked right-of-ways “shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such right-of-ways for railroad purposes.” 16 U.S.C. § 1247(d).

Kansas law also provides that utility property, including railroad property, is to be assessed by the Director of Property Valuation as an integrated unit. *See* K.S.A. § 79-5a01 *et seq.* When the Trails Act is read in conjunction with how railroad property is assessed in Kansas, railbanked property should be considered railroad property, assessed as a unit, and the tax levied on the trail manager, the entity in control of the railroad property.

H.B. 2735 clarifies the proper procedure to assess property taxes on railbanked right-of-ways in Kansas and prevents future improper decisions by the Kansas Court of Tax Appeals. Adjoining land owners have no ability to use or control railbanked right-of-ways, and until the right-of-way is formerly abandoned by order of the STB, it should not be assessed as part of the adjoining land. In addition, in the case of agricultural land, such land is subject to use-value appraisal. As a result of the adjoining landowner’s inability to control the right-of-way, the landowner cannot use the right-of-way for pasture, crop production, or agricultural waste land. This results in the railbanked property having no use-value to the adjoining landowner.

For the foregoing reasons KLA supports H.B. 2735 and the suggested amendment by the Kansas Farm Bureau, and asks that the Committee approve the legislation favorably as soon as possible.