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**House Transportation Committee**

**March 5, 2012**

**RE: HB 2735 - Taxing Railbanked Rights-of-Way**

Chairman Hayzlett and members of the House Committee on Transportation, thank you for the opportunity to appear today and present our qualified support for HB 2735. I am Leslie Kaufman, President/CEO of the Kansas Cooperative Council and I appear here today on behalf of our members and the members of the Kansas Grain & Feed and Kansas Agribusiness Retailers Associations.

Our members are the grain handlers and ag product retailers that serve farmers and ranchers across our state. Many of our members have their business operations located along railroads to facilitate shipping and receiving of grain and ag in-puts. So, the practice of railbanking corridors has been a concern for our members for many years.

Several years ago, the Kansas legislature passed legislation outlining responsibilities for trail operators to maintain corridors. I was part of the effort to draft that legislation, although at that time I worked for another organization. Back then, we did not include provisions regarding taxation in the Kansas law as federal railbanking agreements included payment of taxes as a condition for a trail group to be granted interim trail use.

Recently, the Kansas Court of Tax Appeals (COTA) has rendered a decision assessing taxes on railbanked rights-of-way to the underlying fee holder. Should that decision stand, it poses some troubling possibilities for our members. Under the COTA line of thinking, landowners or business owners could be obligated to pay taxes on land they have no control over. Often, with other types of easement rights, those rights have essentially been "purchased" or "lease" in exchange for a fee. That fee is likely negotiate with the knowledge that the underlying estate will continue to bear the tax burden. That is not the case when there is a railbanking.

We could write pages on the problems and issues of railbanking from the perspective of those with their business operations along rail corridors. Railbanking for interim trail use essentially crates the potential for a hiking, biking, or equine trail to run right through our business operations — our equivalent of a manufacturing plant. To add the possibility of having to pay taxes on such a trail just adds insult to injury.

We do agree that the question of whom to assess the taxes on railbanked corridor needs to be resolved and taxes should be assessed to the interim trail user. We do have some question as to whether section 2 of the bill is appropriately worded. As such, we are appearing today as a qualified proponent. We understand an amendment is contemplated. We have seen a draft and it appears to strike most of section 2, which we believe will solve the wording issues we were concerned about with this section.

Thank you for the opportunity to share our comments on HB 2735. I would stand for questions at the appropriate time.