KANSAS LIVESTOCK ASSOCIATION

Since 1894

To: Senate Committee on Assessment and Taxation
Sen. Les Donovan, Chair

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

Re: **SB 202 AN ACT adding certain agricultural production NAICS subsectors to the definition of "qualified firm" for purposes of the high performance incentive program.**

Date: February 27, 2013

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,500 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, Chairman Donovan and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appears to today as a proponent of SB 202. KLA believes this bill will correct a legislative oversight that occurred in 2011 and help to grow the animal agriculture sector consistent with Governor Sam Brownback's agricultural growth agenda.

The need for SB 202 was discovered last spring when a few KLA members attempted to access the sales tax exemption for business construction and expansion provided under the Kansas Enterprise Zone (KEZ) Act for the last twenty years. During the application process, they were informed that the legislature had repealed the KEZ sales tax incentive, but had continued the incentives in the High Performance Incentive Program (HPIP). When our members attempted to apply for the HPIP sales tax exemption, they found that animal agriculture's NAICS code had been left out of the list for qualified firms. For the first time in twenty years, animal agriculture was cut off from an important economic growth incentive.

Upon further investigation, KLA staff determined that nearly every other manufacturing and production industry in Kansas has the ability to access the sales tax exemption for new and expanding business through HPIP. It also appears that the repeal of the sales tax exemption was an oversight. In 2011, SB 196 was passed to create an expensing deduction, but it also repealed the KEZ and streamlined the sales tax exemptions for construction or expansion of a business into HPIP. In the process, however, no one noticed that the change would repeal animal agriculture's longstanding sales tax exemption for expansion or new construction of facilities because HPIP lacked the animal agriculture NAICS code.

SB 202 corrects the oversight made in 2011. It allows the animal agriculture sector to once again access an important incentive for rural economic growth of current businesses and a tool for recruiting new animal production businesses. Agriculture is the backbone of this state and is the second largest industry in Kansas as a percentage of GDP. Agriculture deserves to be treated like other manufacturing and production industries in the state, but the sales tax exemption is also crucial to allow the state to compete in a very competitive and mobile industry.

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Reinstating this tool is crucial for the Kansas cattle industry at a time when the cattle herd is the lowest in over half a century. If we do not encourage investment in the best animal production facilities in the region and invite new growth to the state, we risk closure of an existing packing plant. As cattle numbers have shrunk, the packing industry, has suffered from over capacity. Just last month, a Cargill packing plant in Plainview, Texas was closed because it lacked the cattle numbers to operate the plant. We do not want this to happen in Kansas. Such a closure would cause unemployment and a diminished tax base. The animal feeding and packing industries are very competitive in the high plains region. Plants exist in Nebraska, Oklahoma, Texas, and Colorado. With such competition, Kansas should not risk creating an environment that pushes development of animal feeding operations to other states. This could result in Kansas packing plants instituting furloughs or closures, rather than plants in neighboring states.

SB 202 can also help grow the state's dairy industry. Milk production has increased in Kansas significantly over the last ten years. This increase was due to construction of new, modern dairies in western Kansas. These dairies migrated to Kansas, with the help of the now expired KEZ sales tax exemption, from states like New Mexico and California. Kansas dairies produce annual milk sales of nearly $500 million. Growth in milk production capacity enhances the state's chances of attracting new milk or cheese processing plants. This growth can add many jobs, as well as provide new markets for Kansas grain and hay producers.

SB 202 also addresses the issue of fairness among existing competitors. This would allow Kansas animal agriculture operations, which decided to expand without the sales tax exemption in 2012, to access the exemption post-construction to prevent adverse competition in the industry due to a legislative oversight. It would be inequitable for a neighbor to be prohibited from accessing the exemption simply because he took additional risk and expanded in 2012 instead of 2011 or 2013.

KLA understands there may be an issue with whether the Secretary of Commerce can allow a post-construction HPIP application. If this needs clarification, we would urge the committee to adopt an amendment that would allow a post-construction application for the HPIP sales tax exemption, limited to the year 2012 and the portion of 2013 that predates the effective date of the bill.

KLA discovered the oversight in regard to the sales tax exemption late in the 2012 session. At that time KLA requested an amendment to last year's tax bill, but were encouraged to delay our efforts until 2013 to allow a hearing by the tax committees. KLA members were willing to work within the process with the understanding that expansions in 2012 would be later granted the exemption to prevent adverse competition.

Thank you for the opportunity to submit testimony on SB 202. KLA believes SB 202 will correct an unfortunate oversight and will restore an important economic development tool for rural Kansas. KLA urges the committee to pass SB 202 favorably.