



Since 1894

To: Senate Committee on Natural Resources
Sen. Larry Powell, Chair

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

Re: **Substitute for HB 2207 AN ACT concerning public health; relating to confined feeding facilities; permits; notice of intent to construct; separation distances.**

Date: March 13, 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 Powell 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 Substitute for HB 2207. KLA members support the bill, and urge the Committee to pass it favorably without amendment. The bill is assembled by the Kansas Department of Health and Environment (KDHE) and KLA staff. It passed the House by a vote of 119 - 0.

Before explaining the Substitute for HB 2207, I want to explain why this change in statute became necessary. Many KLA members are engaged in the business of feeding animals for meat or milk production. Often this takes place in a beef cattle feedyard, a swine production unit, or a dairy barn or dry lot. The statute refers to these operations as confined feeding facilities. If the confined feeding facility is large enough, it must register with KDHE, and depending on whether there is water pollution potential, apply for a pollution control permit subsequent to the initial registration of the facility.

In addition, KDHE must determine if the confined feeding facility is in compliance with the separation distances set forth in statute. Separation distances are the minimum distances between a confined feeding facility and a habitable structure. These distances vary depending on the size of the operation and the type of livestock occupying the facility.

Under current law, measurement and determination of separation distance cannot occur until a complete water pollution control permit application is submitted, rather than at the initial registration date. Completion of a permit application typically entails on-site surveys and other visual activities that give the public notice of a potential confined feeding facility. Often, before the owner can complete the permit application, a neighboring landowner will move a recreational vehicle or a mobile home into the separation distance area. The neighbor will then

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claim these structures are habitable structures to halt development of the confined feeding facility. The neighbor, however, will have no intention of inhabiting the structure. This sort of activity frustrates the spirit of the law, impedes economic growth, and can cost an agricultural producer a substantial investment in planning and design expenditures made during the application period.

To prevent such abuse, Substitute for HB 2207 allows KDHE to measure separation distance from the date it receives a registration, rather than when it receives a completed permit application. The proposed language would require the landowner to describe the land where the confined feeding facility would be located in the registration form. Once an operation is registered, KDHE would determine if there is a separation distance violation and whether the confined feeding facility poses a water pollution potential. If the registered facility has no separation distance violation and no water pollution potential, KDHE would certify compliance with the separation distance law.

If the facility poses a water pollution potential, the facility would have eighteen months to complete a permit application. If the owner of the proposed facility does not have the permit application complete in the initial eighteen months, KDHE could grant an eighteen month extension to the original permit application period. If the owner does not submit a completed application within the original eighteen months, or the within the extension period if granted, the registered separation distance would expire and would be re-determined upon a subsequent registration. If the permit application is completed within the deadline, KDHE would then certify compliance with the separation distance law as determined on the date of registration.

This legislation will allow Kansas to grow animal agriculture adding both jobs and economic development to rural communities across the state. We believe this approach is both fair to the landowner and fair to the landowner's neighbors. It requires a landowner to follow existing separation distances, but prevents unreasonable neighbors from gaming the system. In addition, Substitute for HB 2207 prevents a landowner from continuously registering a separation distance without building the facility. This allows neighbors to build a house knowing that a local agricultural producer cannot continually keep separation distances registered without building the facility.

Finally, it is important to understand that locating a confined feeding facility is a very difficult proposition. An owner must find a location that has adequate water, feed, labor, transportation infrastructure, pollution control capabilities, and the ability to comply with separation distances. Finding a location that accomplishes all these factors can be difficult and separation distance can be especially challenging.

Substitute for HB 2207 only modifies the appropriate time to measure separation distance. It does not change the length of the statutory separation distances. KLA would oppose any attempt to modify the current separation distances. Such proposals, especially a proposal to lengthen separation distances, would be counter to the overall goal of the bill, which is to promote and grow animal agriculture and the Kansas economy.

Thank you for the opportunity to submit testimony. KLA urges the committee to pass Substitute for HB 2207 favorably without amendment.