



House Committee on Commerce, Labor and Economic Development

March 9, 2015

Testimony on:

HB 2391

Written Testimony By:

Phyllis Gilmore

Secretary

Kansas Department for Children and Families

Testimony of:

Phyllis Gilmore, Secretary
Kansas Department for Children and Families
Topeka, Kansas

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Chairman Hutton, Vice Chairman Mason, Ranking Member Frownfelter, and Members of the Committee:

The Kansas Department for Children and Families (DCF) stands in strong support of HB 2391.

DCF has 2,257 employees as of Feb. 14, 2015. Of that total, only 281 employees are unclassified (12.4 percent of the DCF workforce). Numerous statutes, including K.S.A. 75-5309 and K.S.A. 75-5310, have specifically required DCF to hire employees in the classified service. HB 2391 allows DCF to convert vacant positions in the classified service to the unclassified service, notwithstanding the language of those statutes.

The ability to hire unclassified employees would bring DCF into alignment with modern personnel practices. The agency is currently obligated to adhere to a civil service system that has remained virtually unchanged for the past 37 years. When competing with other employers to hire and retain quality staff, using the current system puts the agency at a great disadvantage.

The current civil service system requires every vacant position be posted for a minimum of a week, longer if it is a position covered by the KOSE union Memorandum of Agreement. Should an outstanding candidate application come to our attention on the first day the position is announced, we can take no steps to move forward to hire that individual. We are required to wait the allotted time and go through the formalized process. By the time the required process is completed, the candidate may have already accepted employment from an employer with more flexible hiring practices. For unclassified positions, the amount of time it takes to hire is greatly shortened because there is no minimum period of time required for posting.

Hiring unclassified employees also allows DCF to be more competitive in salary with other comparable employers. Classified employees must be paid on the pay range assigned and can start no higher than step four, absent some demonstrated written showing of exceptional circumstance. Our experience has been that this level of pay is not competitive for some positions. DCF is unable to attract high-quality candidates for vacant positions under the current personnel laws. Unclassified positions provide greater flexibility to offer competitive salaries as well as rewarding candidates with outstanding qualifications or credentials when the agency is not bound by civil service pay grade limitations.

This legislation benefits all Kansans by having a higher caliber State workforce providing services to its citizens. Having the flexibility to pay staff based upon their

performance and experience will create a work environment of highly-engaged and motivated employees resulting in better quality services to our clients—the taxpayers of Kansas. Currently, employees in the same classifications in the classified service are paid the same whether they process only 50 cases with a 25 percent error rate or 150 cases with no errors. There is no incentive to produce a higher volume or quality of work—those two workers must be paid the same.

This legislation would also have a positive effect on the retention of State employees. Getting good employees in the front door is only part of the equation. We must find ways to keep those good employees motivated and engaged in their work. With this legislation, good performers could be more readily rewarded with increases in pay currently not available to classified staff. The agency has been required under current law to hire classified employees. However, after they are hired, DCF is not able to reward good employees with raises. Classified employees within DCF have received no annual cost of living or raises adjustment since June 15, 2008, and no step increases since Sept. 10, 2006. This has led to fairly high turnover in DCF in many crucial positions where a great deal of State resources have been expended in training new employees. DCF has a turnover rate of 19.7 percent for FY2014. DCF utilizes an exit interview program for all employees leaving the agency to discern the reasons they are leaving. The lack of opportunity for salary increases is continually reported as the primary reason employees are choosing to leave DCF employment. Many employees have said during their exit interviews that staying at the same level of pay since they started at DCF has caused a hardship in being able to keep up with the economy and if they had known there would be no pay increases, they would not have taken the position.

This legislation would foster more flexible options for promotions to reward good workers. Currently, under the classified service system, every applicant must meet minimum requirements that sometimes are quite arbitrary or they cannot be considered for the position. For example, to be a Human Services Consultant, a Range 24 position, requires five years of experience doing work relevant to the agency's programs. A stand-out employee with four years, nine months of experience could not be considered for this position if it came open as a classified position. However, if it is an unclassified position, there is no rigid requirement of adherence to all technical class specifications and the employee who has less than three months of experience could be considered for the promotion.

Some DCF positions are subject to federal laws or federal regulations regarding a requirement to maintain personnel standards on a merit basis. In researching this requirement, it has been determined by DCF Office of General Counsel that this does not mean that all such positions must be in the classified service. Federal merit system requirements set forth in 42 U.S.C.A Section 4701 are as follows:

- Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- Providing equitable and adequate compensation;

- Training employees, as needed, to assure high-quality performance;
- Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- Assuring fair treatment of applicants and employees in all aspects of personnel administration with regard to political affiliation, race, color, national origin, sex or religious creed and with proper regard for their privacy and constitutional rights as citizens; and
- Ensuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

These six merit principles can be readily followed in the unclassified service for positions tied to these federal requirements. Other states have already made such changes.

This legislation would also allow DCF to better address situations where the removal of staff is required. A total of sixteen classified permanent DCF staff were dismissed in FY 2014. Under current law for classified employees, there is a bifurcated system to dismiss an underperforming employee. The process currently takes on the average of at least a week to dismiss the employee from the time the decision is made to dismiss. Current laws require that the employee receive a proposed letter, as well as a face-to-face meeting with their appointing authority to discuss the proposed action. Typically, staff who are being dismissed are placed on administrative leave with pay at the time they are given the proposed letter. This common practice is to avoid workplace disruption and done in the interests of clients and staff. These staff will remain on paid leave until the effective date of their dismissal. This is tantamount to rewarding poor employees with paid vacation before they can be let go. From FY 2011 through FY 2013, DCF paid \$71,721.47 in administrative leave to employees prior to dismissal, and a total of 14 DCF employees were placed on administrative leave during FY 14 for a total of \$37,572.97 in pay.

This is not a responsible use of taxpayer funds. Classified civil service positions can then appeal their termination to the Kansas Civil Service Board and have a full hearing on the merits of the action. These hearings typically last a day or two but can last longer in complicated cases. The case can then be appealed to district court and beyond. Even when there is overwhelming evidence supporting an employee's termination, the effort required to defend the action is an extensive use of State resources, including staff time, travel costs to Topeka for the hearings, costs of transcripts, depositions, etc. to prepare for hearings. Civil service procedures, including hearings over terminations, are not available for unclassified employees who serve at the pleasure of their appointing authority. It is a simple process to remove unclassified employees who are not performing adequately and whose performance will clearly not improve.

Another aspect of this legislation includes longevity bonuses only being paid to staff when they are fully funded by the legislature. This would relieve the burden from individual agencies from identifying funds in their budget that are already earmarked for other purposes to cover these costs. Currently, it is tantamount to an unfunded mandate and there simply are not extra agency funds lying around to cover these costs of up to \$1,000 per employee. DCF paid longevity bonuses from agency funds that were not specifically appropriated by the legislature in FY2014 at a cost of \$939,320.

The definition of “qualifying events” to use shared leave is also addressed in this legislation. The current language is overly broad and offers shared leave widely when there is “severe illness.” This can have a substantial price tag when any employee or their family member has a severe illness and qualifies to have their leave covered with paid shared leave if they run out of leave time. This broad definition does not encourage employees to save their sick leave or use it judiciously because there will still be paid leave time available to them. This legislation would more appropriately define shared leave for those instances when there is a “life-threatening medical condition.” This should limit the amounts of shared leave currently being used by State employees by applying a more reasonable, well-defined standard. Since staff are being paid while they are on shared leave, agencies cannot hire others to do the work of those employees due to the expense. Having too many employees on shared leave hampers the level of services being provided and adds a higher work level to co-workers.

One of the most challenging aspects of running one of the State’s largest agencies is managing the many personnel issues that arise due to the current civil service system. These issues range from the inability to hire or retain quality staff to the frustrations of the elaborate process involved in terminating a poorly-performing employee. Too many management hours are spent trying to navigate the cumbersome personnel processes the current laws and regulations require. This bill makes great strides in making this aspect of the job much easier and more efficient. Less time will be spent on these personnel functions, which will allow more time to address substantive issues that fulfill the agency’s mission. The net result from the changes proposed will help make DCF more effective for our clients and the taxpayers of Kansas.

In summary, this important reform legislation gives DCF and other State agencies the additional flexibility needed to hire and retain quality staff and to ensure that the most qualified workforce is employed. DCF recognizes that all DCF employees, including myself, hold taxpayer-funded positions. Kansas taxpayers deserve to have a higher level of accountability from those staff than what is currently built in to the existing civil service laws. This legislation provides higher accountability so that staff who do not meet performance expectations do not remain in the State workforce. DCF fully supports passage of HB 2391.