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Testimony IN OPPOSITION to HB 2391
Before the House Committee on Commerce, Labor, and Economic Development
Submitted By: Rebecca Proctor
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March 19, 2015

Chairman Hutton and Members of the Committee:

Thank you for allowing me to address you today. My name is Rebecca Proctor. I am a life-long Kansan, a labor and employee benefits attorney by trade, and currently serve as Executive Director for the Kansas Organization of State Employees (KOSE). KOSE is a public employee union representing over 8,000 executive branch employees in over 300 workplaces spread across all counties of our State. On behalf of those employees, I urge you to oppose HB 2391.

This bill was proposed to effectuate Human Resource "Modernizations" proposed by the Department of Administration. The proposed "modernizations" substantially alter the Kansas Civil Service Act by making it possible to fill nearly every position in the state service as an "unclassified" position. Doing so would be a very serious mistake.

Before making changes to the Kansas Civil Service Act, it is important to understand the reasons why Kansas has a Civil Service Act. In the late 1800's, politics (and political service) were rife with patronage and corruption. The federal government took steps to reduce corruption by passing it's own civil service program, which provided a merit system of personnel management for federal employees. To provide the incentive to do the same, many intergovermental grant programs (which channel monies to the states from the federal government) were conditioned on the individuals who administer those programs also being covered by a merit system of personnel management. Merit systems were seen as important to insuring the uninterrupted function of government, as without a merit system, the entire workforce could turn over every time a new governor was elected. The idea was to provide protections to insulate rank and file workers from partisan politics.

The voters of Kansas passed a Constitutional Amendment allowing the legislature to create a merit system of personnel management; that provision is in Article 15, Section 2. From that Constitutional Amendment came the Kansas Civil Service Act. The purpose of the Kansas Civil Service Act reads as follows:

> ***Purpose of act.*** *The general purpose of this act is to establish a system of personnel administration that meets the social, economic and program needs of the people of the state of Kansas as these needs now or in the future may be established. This system shall provide means to recruit, select, develop and maintain an effective and responsible work force and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe benefits, discipline, discharge and other related activities. All personnel administration actions regarding employees in the state classified service shall be made without regard to race, national origin or ancestry, religion, political affiliation, or other nonmerit factors. Personnel administration actions shall be based on merit principles and fitness to perform the work required and shall provide fair and equal opportunity for public service.*

If you look at the Civil Service Act, it divides employees into two categories: classified and unclassified. The positions considered "unclassified" as specifically detailed in the Act. Unclassified positions are generally not rank and file positions. By contrast, the classified service "comprises all positions now existing or hereafter created which are not included in the unclassified service. Apointments in the classified service shall be made according to merit and fitness." So, the various provisions of the Civil Service Act, some of which are included in the text of the bill, some of which are not, establish a system where the Department of Administration establishes classifications, salary ranges, and job descriptions for all individuals in the classified service. The result is consistency across the agencies for similar positions (for wages, duties, qualifications, etc). The same rules apply to all classified employees, regardless of agency, manager, etc.

Consistency in personnel management is important. It helps insure the State does not, inadvertently or otherwise, engage in illegal employment practices, such as hiring a woman and a man into the same job classifciation at drastically different salaries or have different terms of employment for individuals of different races or nationalities. It also helps insure the state can continue to conduct business when the person in the governor's office changes. Although those in leadership may change, the people doing the daily work of the state do not. Without the requirements of civil service, the entire state workforce could turn over with every gubernatorial election.

Without consistency in salaries, revenue-generating agencies with more money could offer substantially higher salaries for positions than other agencies, leading to some agencies experiencing a talent drain.

The Civil Service Act does not just provide consistency for managing employees. It also qualifies as a "merit system of personnel management" which enables our state to qualify for particular intergovernmental grants. As of the writing of this testimony, no fiscal note has been released for 2391. However, here is a partial list of grants (and their associated dollar amounts for Kansas) that could be lost without a merit system of personnel management.

- Kansas received approximately $400 million in Supplemental Nutrition Assistance Program (SNAP) money in FY2015, which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.

- See 7 CFR Section 272.4 http://www.ecfr.gov/cgi-bin/text-idx?SID=8d9d6abd6bef3c83960e6d5008387bd3&node=se7.4.272_14&rgn=div8

- Kansas received over $1.5 billion in Medicaid funding which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.
  - See 5 CFR Section 900.605 http://www.gpo.gov/fdsys/pkg/CFR-2012-title5-vol2/xml/CFR-2012-title5-vol2-part900-subpartF.xml

- Kansas received over $66 million in Children's Health Insurance money which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.

- The state could also place into jeopardy funds received for unemployment Insurance and employment services if the state does not have a merit personnel administration system in accordance with Federal law.
  - See 5 CFR Section 900.605 http://www.gpo.gov/fdsys/pkg/CFR-2012-title5-vol2/xml/CFR-2012-title5-vol2-part900-subpartF.xml

Our state is already facing significant budget problems. It is absolutely not prudent to put these funds at risk by removing the state's merit system of personnel management.

Some may claim this bill addresses that problem on page 4, in section 5. However, this section in no way, shape or form replaces or creates a merit system of personnel management. Instead, it only indicates an agency MAY adopt an agency policy statement. Regardless of what a policy statement may say, an unclassified employee is an at-will employee without any due process protections. Additionally, in past years when this issue has been raised, there has been no indication that agency heads even know the specific employees that must be covered by a merit system of personnel management to keep grant money. In fact, a few years ago the Secretary of Labor proposed that the entire department should serve "at the pleasure of the secretary" (which would have put in jeopardy all funds for unemployment insurance and employment services).

Dismantling a system designed to limit corruption and to insure the flow of intergovernmental grant funds is not something that should be done without substantial study and consideration. Both appear to be missing in this case.

In addition to allowing mass unclassification of employees, this bill also makes two other significant changes. It limits shared leave to "life threatening conditions" and it allows for longevity payments only when the legislature makes a specific appropriation for longevity.

The change to shared leave is completely unnecessary. Currently, employees apply for shared leave by submitting materials to the shared leave committee. Shared leave is available for extreme, serious, of life-threatening conditions. If the committee denies shared leave, the employee may appeal to his/her appointing authority who has the final say and can either uphold or overturn the shared leave committee's decision. In 2014, the shared leave committee granted 88 requests for shared leave and denied 93 requests for shared leave. There are not a large number of employees using this program. Shared leave is already difficult to get. At least three breast cancer patients have contacted KOSE because their shared leave requests were denied. Shared leave is only available to employees who have already exhausted all of their paid leave, remain unable to work, and are in danger of losing employment. Limiting this program further does nothing but demonstrate a complete and total lack of compassion.

Finally, this bill eliminates the payment of longevity bonuses without a specific legislative appropriation. This is a slap in the face for long-term employees. Longevity bonuses are only available for employees hired before 2008. Since the state has not chosen to fund any particular pay program, and employees have been without across the board raises since 2009, longevity bonuses are the only incentive long-term employees have to stay employed with the state. Longevity bonuses are a promise made to employees. In an era with no pay raises and increasing benefit costs, making the longevity bonus conditional is just another slash to employee pay.

These HR "modernizations" are not really modernizations at all. They put federal funds at risk worsen the working conditions of state employees. On behalf of KOSE and the members it represents, I urge you to vote against HB 2391. I am happy to answer any questions you may have.