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OPPOSITION--Testimony Regarding Proposed Personnel Regulation Changes
Before the Joint Committee on Administrative Rules & Regulations
Submitted by: Rebecca Proctor
Executive Director, Kansas Organization of State Employees
September 6, 2016

Chairperson Schmidt and Members of the Committee:

Thank you for allowing me to address you today. My name is Rebecca Proctor, and I am the Executive Director of the Kansas Organization of State Employees (KOSE). KOSE is a public sector labor union, representing over 8,000 Executive Branch State employees. We cover employees in every legislative district and every county of our State.

As most of you know, state employee working conditions are poor. State employees have not seen an across-the-board pay increase since 2009. In the seven years that have passed since that last across-the-board increase, employee costs for both KPERS and health benefits have increased substantially, creating a de facto pay cut. Additionally, in 2015 the legislature passed HB 2391, which allowed agency heads the discretion to fill new or vacant jobs as unclassified. This action removed most new/vacant jobs from the due process protections provided by the Kansas Civil Service Act.

Low wages, high benefit costs, decreased workplace protections. That is the world state employees face today. These proposed changes, if adopted, will make things even worse, as they will remove some of the few protections that still exist. Taken together, the proposed changes penalize long-term employees, replace objective measures with subjective judgment, and make it easier to politicize the state workforce.

There is no need to adopt these changes. None of the proposed changes are mandated by federal law, and none of them are anticipated to have an economic impact for the State. The only impact is to employees...and it is a negative impact.

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Attachment 3

Before I address each individual regulation, I want to note that the actual language for proposed changes was not provided in the Department of Administration's posted notice. All of that was provided was a description of the change. Since the actual language was not provided, these comments are based on the description provided in the notice. The impacts could actually be more far-reaching based on the express language.

K.A.R. 1-2-74

The first proposed change is to K.A.R. 1-2-74, and would remove the prohibition on using administrative leave as a reward. The announcement materials do not provide any examples of how an award system would be used, so it is unclear how the administration sees this proposal working.

My own experience with the need to award administrative leave relates to the state hospitals. During 2015, staffing shortages prevented many employees from utilizing their vacation days. Employees can only carry over so much vacation time, and some employees stood to lose over 100 hours as of June 2016. Special arrangements had to be made in order to prevent these employees from losing accrued time. This change would allow the award/substitution of administrative leave to prevent time loss.

That said, it does not address the underlying problem: staffing shortages so severe employees are prevented from taking any meaningful time off. The administration predicts "a positive impact on employee morale." Leave time only boosts morale if employees are able to use it. Having significant time off available but being completely unable to use that time damages morale. There are no guidelines provided about how awarded administrative leave can be used. So, it technically could be even harder to get a day off under awarded administrative leave than it is with vacation time.

Fundamentally, there is no need to change this regulation. There is simply a need to staff at levels sufficient to allow employees time off.

K.A.R. 1-6-23

This regulation, as it currently exists, provides laid off state employees an opportunity to be placed into a reemployment pool for three years following layoff. Employees in the reemployment pool who were laid off, had satisfactory performance reviews prior to layoff, and had no formal discipline for twelve months preceding layoff receive an employee preference. Under this preference system, a person from the reemployment pool who applies for an open position and can successfully perform the duties and responsibilities of that open position is entitled to receive the position. In other words, if you have multiple qualified applicants, and one of them is a laid off state employee with a reemployment preference, the laid off employee would receive the job.

The regulation does not require the State to place a laid off employee in a position for which he/she is not qualified. The regulation, as currently written, reads, "Following the interview, the appointing authority shall offer the position to the individual, unless the

director determines the individual cannot successfully perform the duties and responsibilities of the position."

Again, without the express language, it is hard to know exactly what the administration plans to change. The Economic Impact Statement says simply the proposed change will "allow agencies to obtain an exception to the employee preference policy." There is no description of the process necessary to obtain an exception or of the criteria that will be used to evaluate whether an exception is necessary. Despite implications in the Department's written materials, there has also been no data or other indicator showing the reemployment preference has burdened the state's hiring process or resulted in unqualified individuals holding a position. Essentially, there is no real justification for this change. The only impact would be on laid off employees who would no longer have a meaningful preference system to allow them to return to State service.

K.A.R. 1-7-11

This regulation relates to the appeal of performance appraisal ratings. Currently, employees can appeal any rating lower than the highest possible rating (Exceptional). The change would remove that right and only allow appeal of the two lowest ratings, Needs Improvement and Unsatisfactory.

This is problematic for a couple of reasons. First, the Alvarez and Marsal efficiency study recommended implementation of performance-based bonuses to incentivize high performers and encourage retention. For performance-based bonuses to truly be an incentive, employees must be correctly evaluated and earn that bonus.

Unfortunately, high-performing state employees regularly have to fight for their "Exceptional" and "Exceeds Expectation" ratings. We have heard from a variety of employees, ranging from Facilities Maintenance to Social Workers, that they have not received the "Exceptional" rating required by their objective performance measures. All have had to file appeals to receive the "Exceptional" rating that was earned and deserved. We have additionally received reports from managers that their agency heads at the various central offices have decreed no one should receive an exceptional rating. Employees are entitled to receive the rating corresponding with their performance. If they don't receive that rating, they should be able to appeal.

Second, in the event of a layoff, an employee's layoff score is calculated by combining length of service and performance rating. If an employee receives a lower performance rating, the employee has a lower layoff score. The difference between an "Exceptional" rating and a "Meets Expectations" rating could be the difference between getting laid off and retaining your job. Again, employees deserve the rating corresponding with their performance. If the administration unfairly lowballs the rating, the employee should be able to appeal.

As with the previous change, there is no documentation showing that this is a large problem. In fact, the economic impact statement even acknowledges, "these ratings are

not appealed very often." There is no savings or efficiency here for the State... there is just a way for supervisors to give an artificial low rating to employees with absolutely no check or repercussion.

Finally, this change would impact employee morale and discourage exceptional performance. If an employee has absolutely no control over the rating he/she will receive, and if agencies issue directives that no one will receive a rating over "Meets Expectations" there is zero incentive to be a high performer. This is in direct opposition to the recommendations in the A&M study, which indicated the State should try to incentivize high performers.

K.A.R. 1-9-23

This regulation deals with the State's shared leave program. Shared leave is available to employees if and only if:

- The employee or a family member is experiencing a serious, extreme, or life-threatening illness, injury, impairment or physical or mental condition; AND
- The illness, injury, or impairment has caused or is likely to cause the employee to take leave without pay or terminate employment; AND
- The illness, injury, or impairment keeps the employee from performing regular job duties; AND
- The employee has exhausted all paid leave; AND
- The employee has been employed for at least six continuous months of service.

If these conditions are met, the employee can apply for shared leave. Shared leave is not granted automatically. It must be awarded by the Shared Leave Committee or by an agency head. Shared leave has become very hard to get. Over the past three years, shared leave has been denied to one heart attack patient and three cancer patients, all because the committee did not deem their conditions as serious or extreme enough.

This proposed change reduces the amount of leave that can be donated at retirement. Again, no specific language has been provided. However, the Notice of Public Hearing states employees will be limited to donating 80 hours of time to the shared leave program. As with the other proposed changes, the State has not provided any evidence that shared leave donation has become a problem or that the program is being abused. The shared leave program exists to help employees keep their job through a serious health crisis. Undermining this program or reducing the leave that can be donated reflects a serious lack of care and compassion.

K.A.R. 1-14-8

This regulation deals with the calculation of a layoff score. In the event of layoff, each employee is given a layoff score. The layoff score then determines the order of layoff. This is a particularly difficult section to comment on without actually seeing the proposed language, as multiple changes are identified.

Under the current regulation, the layoff score is calculated by multiplying the average performance review rating by the employee's length of service (stated in months). The proposed change would modify the calculation by stating the employee's length of service in years, rather than in months. It would also increase the values assigned to "Exceptional" and "Exceeds Expectations" ratings, while decreasing the value assigned to a "Needs Improvement" rating.

These changes deemphasize the value of service. For example, a five-year employee would go from having a 60 for service (counted in months) to having a 5 for service (counted in years). Keep in mind, this change is proposed alongside a change that would remove the employees' right to appeal a rating of "Meets Expectations" or above. So, while the value of the performance score is increased, the employees' ability to have control over that score is decreased.

Fundamentally, these changes provide a broader opportunity for managers to directly impact the layoff process by providing an unfairly low ranking.

K.A.R. 1-14-10

This regulation deals with employee bumping rights. Under the regulation, an employee who receives a lay off notice has the ability, in lieu of layoff, to displace/bump an employee in a lower classification in their job classification series. For example, an Equipment Operator III could bump into an Equipment Operator II position. There are two qualifiers: the employee being bumped must have a lower layoff score than the person bumping into the job and the employee being bumped must have the lowest layoff score in the job classification. The important word to note here is "classification." These rules apply to employees in the classified service and only extend to the unclassified service if so negotiated in a union contract or an individual employment contract.

Again, there is no specific language presented for the proposed change. Both the Notice and Statement of Economic Impact say the "primary amendment to this regulation allows agencies to prevent an employee from being laid off regardless of the employee's layoff score if the loss of the employee's particular knowledge, skills, abilities, certification, licensure, or combination thereof would substantially impair the agency's ability to perform its essential functions." The Department of Administration notes that "recently hired employees are still vulnerable to layoff."

The problem with this proposed change is that it does not contemplate the impacts of HB 2391, passed during the 2015 legislative session. Under that bill, agency heads have the ability to fill new or vacant positions as unclassified jobs without civil service protections. Employees in unclassified jobs who are not covered by a union contract or an individual employment contract are strictly at-will employees and are not covered by the layoff regulations. The trend at most agencies is to bring in new hires as unclassified employees. Additionally, the high-demand employees who the Economic Impact Statement notes "may have been the result of months of recruitment and

possess the most up-to-date and/or critical qualifications" are usually brought in as unclassified employees to whom the layoff regulations do not apply.

If an employee is such a crucial employee, and is being brought into a new or vacant position, the agency head already has the ability to hire that person as unclassified. That solves the stated problem without changing the regulation. This proposed change is openly targeted at older, longer-serving employees. There is no identified savings to the State, nor any evidence that mission-critical employees would be at risk should a layoff occur. There is no need to adopt the proposed change.

CONCLUSION

There is no documented reason or justification for any of the proposed changes. They don't result in savings or efficiency to the State, and they unfairly penalize long-serving employees. The changes directly contradict recommendations made under the efficiency study, as they do not help recruit and retain State employees. The proposed changes should be rejected. Instead of targeted State employees, the administration should work on addressing the recruitment and retention problems that result in severe staffing shortages.