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Testimony IN OPPOSITION to SB 179
Before the Senate Committee on Commerce
Submitted By: Rebecca Proctor
Executive Director, KOSE
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Chairperson Lynn 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 SB 179.

The bill before you today modifies that Kansas Public Employer-Employee Relations Act (otherwise known as the Kansas PEERA). Actually, "modify" is too soft a term. The bill before you today effectively guts the Kansas PEERA. Before you take that action, it is important to understand what the PEERA, in its current form, actually does.

The Kansas PEERA became effective March 1, 1972. There were quickly questions about how PEERA balanced the rights of public employers and public employees. Specfically, there were questions about what kind of bargaining statute the PEERA was. For reference, there are two different types of bargaining laws: traditional collective bargaining statutes and meet and confer statutes. In 1975 and 1976, the legislature appointed a special interim committee to study PEERA and recommend improvements. The committee recommended changes to make clear the PEERA was a meet and confer act. Those changes failed to pass the legislature as a whole.

In 1980, Professor Raymond Goetz published an aricle analyzing the PEERA. In that article, he argued that PEERA is not either a traditional collective bargaining statute or a meet and confer statute. Rather, it is a hybrid. PEERA does not provide employees all of the rights of a traditional collective bargaining statute. However, it also does not grant the employer all of the rights of a meet and confer statute, primarily because PEERA requires employers and employee representatives to "endeavor to reach agreement" on conditions of employment. Professor Goetz's analysis and reasong was accepted by the Kansas Supreme Court in the Pittsburg State case, 233 Kan 801,1983.

So, what does all of that mean? It means our public employee bargaining law is a pragmatic middle ground, a balanced approach between a collective bargaining statute and a meet and confer statute.

The statute's purpose reads, in part, as follows: "…it is the purpose of this act to obligate public agencies, public employees, and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the ramework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and to be represented by such organizations in their employment relations and dealings with public agencies."

Accordingly, PEERA's provisions work to achieve this purpose. While the State and its agencies are automatically covered by PEERA, all other public entities (counties, municipalities, etc) must opt in to coverage by vote of the governing body. The only subjects that must be bargained are "conditions of employment" defined as "salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, prepaid legal service benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty, and grievance procedure."

These thirteen items are the only items required to be discussed at the table. All other items are discussed only at the agreement of both parties. For state employees, the list is even narrower, due to all employees being covered by the state health insurance plan and KPERS. And, a caveat: because we are dealing with public entities, the governing body (city commission, county commission, etc) must ratify the resulting agreement. For state employees, most bargained matters regarding pay are merely recommendations provided to the legislature (which cannot and do not take effect until passed by the legislature).

If the employer and the employee representative cannot reach agreement on a mandatory subject, they have reached impasse. PEERA provides a procedure for resolving the impasse, consisting of mediation and fact-finding. This bill completely eliminates that procedure. PEERA sets out a series of prohibtited actions, both for employers and for employee organizations. This bill eliminates the board responsible for hearing complaints regarding those prohibited actions, instead placing that authority in the Secretary of Labor. There is a conflict of interest in that award of authority, as employees at the Department of Labor are covered by the PEERA, and the Secretary (or his/her designee) could be a party in intererst in the case.

The whole idea of having a public employee relations board is to have a neutral, a body that is not part of either the public employer or the public employee organization. This bill completely eliminates that neutral.

The bill also conflicts with the Kansas Civil Service Act. It adds provisions making it exclusively a management right to determine the criteria, procedures and methods by which candidates for hire, promotion, demotion, transfer, assignment, furlough, lay-off or termination are identified and to determine which personnel shall be hired, promoted, demoted, transferred, assigned, retained, furloughed, laid-off or terminated. Making these

things a management right means they are decided strictly at management's discretion. This is in direct and total conflict with the provisions of the Kansas Civil Service Act, which provide set procedures for handling these types of personnel actions.

Finally, and most vitally, the bill eliminates the ability for public employees to have any meaningful say in their working conditions. Under this bill, the only negotiable item is the minimum salary for each covered position. This does public employees a huge disservice. While we would all like to think every manager is fair and equitable, that is not the reality. Just within the past few months, KOSE has represented state employees who have been required to work through lunch and breaks without pay, state employees who are disciplined for valid uses of accrued leave time, state employees who have met all of the metrics to be rated "exceptional" on a performance appraisal but did not achieve exceptional ratings. Without a contract, without a grievance procedure, these employees would have had no remedy or recourse.

Our state employees have very valid concerns that need to be heard by their management. Most people don't realize public employees in Kansas are not covered by OSHA. The only safety statute in place for our employees is one that says safety complaints may be submitted to the Secretary of Labor, who then has the discretion to determine whether to even investigate those complaints. State employees face dangerous working conditions every day. Taking away the employees' voice, and their right have and use a grievance procedure, makes their work environment even more unsafe.

Public employees are citizens, taxpayers, and voters. They deserve a voice in their workplace, and a neutral body to review issues that arise in that workplace. We are talking about rights and freedoms. And, as Senator Wage recently said, if you must err, "err on the side of freedom." Thank you and I am happy to answer any questions you may have.