

MINUTES OF THE HOUSE KANSAS 2000 SELECT COMMITTEE.

The meeting was called to order by Chairperson Kenny Wilk at 1:30 p.m. on February 23, 1999 in Room 526-S of the Capitol.

All members were present except: Representative Larry Campbell - excused

Committee staff present: Alan Conroy, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Janet Mosser, Committee Secretary

Conferees appearing before the committee: Darrell Plummer, Kansas Department of Health and Environment  
Patricia Howell, Manager of Training and Development, Division of Human Resources, Kansas State University  
Don Rezac, State Employees Association of Kansas (SEAK)

Others attending: See attached list

Chairperson Wilk opened the hearing on **HB 2522 on performance-based compensation plan for state agencies.**

Darrell Plummer, Kansas Department of Health and Environment, opponent, was recognized by Chairperson Wilk and expressed his concern that, if enacted in its present version, the bill had the potential to demoralize state employees and destroy the loyalty and atmosphere of teamwork all have worked so hard to achieve over the last two decades (**Attachment 1**).

Chairperson Wilk recognized Patricia Howell, Manager of Training and Development, Division of Human Resources, Kansas State University, neutral, who shared with the Committee both her positive and negative impressions of the bill (**Attachment 2**).

Don Rezac, State Employees Association of Kansas (SEAK), opponent, was recognized by Chairperson Wilk and expressed SEAK's concern that this legislation would both punish state employees unfairly and would be counterproductive to Governor Graves' message of encouraging employees "to serve Kansans even better" (**Attachment 3**).

Chairperson Wilk recessed the hearing on **HB 2522**.

Chairperson Wilk then directed the Committee's attention to **HB 2185 enacting the Kansas Y2K protection act.**

Representative Carmody moved to amend and pass favorably HB 2185. The motion was seconded by Representative Gregory. The motion failed. (Attachment 4)

Chairperson Wilk adjourned the meeting at 3:20 p.m.

The next meeting is scheduled for March 3, 1999.

## KANSAS 2000 SELECT COMMITTEE GUEST LIST

DATE: 2-23-99

NAME	TITLE	REPRESENTING
ERIC Sexton		WSU
Algebra Pridoux		FHSU
Patricia Fenshall		OJA
Marsha Schenpp		BOHA
Erin East		Sharon City Leadership
Koralee W. Johnson		Junction City Leadership
David Plummer		self
Don Roper	Lobbyist	S. E. A. <del>A</del>
Barbara Walden-Hicks		Board of EMS
Wendy Reynolds	Visitor,	BSN Student, KSU
Judy Pickens		DOE
Carol Reed		SPS
Debra Duncan		Animal Health
GEORGE TEAGARDEN	Commissioner	Ks Animal Health Dept.
A. Ruff	camp class	DPS
Jon Josseland		KU
Craig Peterson	HR Manager	KDHE
J. Keith Meyers	Assistant to the Secretary	Dept of Admin
Karen Watney		Dept of Admin
B. Manani	Asst Dir DPS	Dept of Adm.
Moorthy A. Hare	Tax Examiner I	Dept of Rev.
Charles M. Muller	RETIRED	VISITOR
Kathy McTeague	HR Mgrs	Revenue
Anne Pruitt		KSOT



# Testimony on House Bill 2522

An Act concerning state officers and employees; relating to a state compensation system with performance-based compensation provisions and related personnel policies.

Presented by Darrel R. Plummer  
Before The House Kansas 2000 Select Committee  
February 23, 1999  
1:30-3:30 p.m. Room 526-S

Mr. Chairman, ladies and gentlemen of the committee, my name is Darrel Plummer and I am a state employee with the Department of Health and Environment. I appreciate this opportunity to appear before you this afternoon in opposition to House Bill 2522.

I began my career with KDHE almost nineteen years ago in 1980. Currently I supervise six other state employees in my position as Unit Chief for the Compliance and Data Management Unit, Public Water Supply Section, Bureau of Water. This afternoon I am on vacation leave. The views and opinions I am expressing are my own.

Over the term of my employment with the state I have been witness to several changes to the state employee pay plan and compensation package. Some of the changes have been good and improved employee moral, loyalty and created a team environment that helped provide the citizens of the state with friendly, helpful service. Some of the changes demoralized the state work force and had the opposite affect.

When I joined the state work force I entered a work force that was demoralized by a pay plan that was seldom if ever fully funded. Many good, hard working employees witnessed a favored few receive increases in salary. Employees with seniority and experience saw little increase in pay while witnessing younger, inexperienced individuals hired into the same class of position receive six month and annual salary increases.

Ladies and gentlemen, unfortunately, I believe this bill will have the latter affect on the state work force. If enacted in its present version this bill has the potential to demoralize state employees and destroy the loyalty and atmosphere of teamwork all of us, legislature and governor included, in state government have worked so hard to achieve over the last two decades. My reasons for believing this are due to several actions that will occur once this bill becomes law and is fully implemented.

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Attachment 1

This bill will:

**1) Eliminate a fairer, equitable and funded performance/ longevity based pay system**

The current compensation plan provides employees with a dependable increase in salary and a longevity bonus each year that are based on satisfactory performance. Will the average employee, who is dependable, loyal and productive but is not considered outstanding or have a skill or knowledge that is competitively sought after in the job market, be able to count on at least a base amount of increase in their compensation each year under the new plan?

**2) Establish a compensation system that will be erratic from year to year**

There doesn't appear to be a clear formula identified to help agencies budget and provide a constant and consistent level of funding for the plan. Final funding levels for the compensation plan will be totally dependent on the legislature and the agency's final appropriation which can change drastically from year to year due to changes in various program priorities.

**3) Dismantle the state civil service act job by job and return the state to a work force that is unstable and exposed to political favoritism.**

Employees that are currently in classified position will be able to keep their classified status if their current position is unclassified until they change positions. If an employee wishes to move up in their career they will eventually be unclassified. What happens to the employee who has reached the maximum pay deemed appropriate for such a position? The choice won't be whether or not to take on more responsibilities, as mentioned in the bill, but whether to move to an unclassified position and obtain an increase in compensation or remain in the classified position at the same level of compensation for the rest of their career.

**4) Base compensation on market factors including wages**

Compensation will be based on market factors that are related to affected state officers and employees, including wages for substantially the same work performed for private or nonstate public employers in a geographic area.

Government compensation plans cannot be directly compared to private sector compensation without considering the total compensation package in dollars. Many companies in the private sector include profit sharing and stock options and other incentives that government cannot offer employees therefore, government must compensate employees in other ways, such as providing increased vacation, sick leave or salary.

Government is unique. Other than utility companies, what other business gets more than 20% employee wages back? State employees pay state and federal taxes; income taxes, state and local sales tax, property taxes, fuel taxes, excise taxes and fees most all which come back to the state in some form. A state employee with good purchasing power is also good for the state economy. By purchasing goods and services they not only help keep businesses healthy but produce even more tax revenue for the state.

**5) Will be costly to implement(if full funding is maintained)**

What is the projected cost of implementing and maintaining this plan at full funding? At least initially, the bill allows for an oversight committee that is compensated and provides for professional services as requested by the committee.

The bill allows for and depends on tax increases to implement and maintain. Under Section 14, *each state agency..is authorized to fix, charge and collect a performance-based compensation surcharge for each fee that is authorized by law to be charged and collected by the state agency and that finances in whole or in part the operating expenses of one or more of the state officers or employees of the state agency who are under the performance-based compensation system prescribed by this act..... "used in this section `fee" includes any tax, assessment or other charge that is authorized by statute and that is fixed as to rate or amount by the state agency charging or collecting such tax, assessment or other charge."*

**6) Broadens the existing cafeteria benefit plan**

Allows for a set dollar amount of compensation that employees can use for vacation leave, sick leave, health insurance and dependant care. This one is really scary. Since full funding is not guaranteed, in the future it is possible an employee may have to decide between health insurance or an increase in salary to keep up with the cost-of-living. With this provision not only can an employee's purchasing power erode over the years but their whole compensation package is vulnerable to erosion.

In its present form, this bill will scrap everything that is positive in the current plan and replace it with a compensation plan that will be very subjective and has the potential to be extremely inequitable across agencies,.... even within the same agency. The likelihood funding for the plan will decrease over time will make it extremely costly for the state to catch up and provide a fair and competitive compensation package when and if it ever needs to.

**Recommendations:**

- a) Make improvements in the current compensation plan that will strengthen some of the weaknesses and address competing in the job market, rewarding outstanding employee performance and make performance evaluations a positive management tool without totally dismantling the plan. Please don't trade the compensation packages of many state employee for compensation packages for a few employees, (the outstanding and the sought after).
  
- b) If the legislature chooses to adopt this compensation plan, at least define a fair base annual percentage increase for the average employee's compensation package comparable to the current rate. By establishing such a base rate of increase employees will be assured they will not experience an overall decrease in their salary and benefits over time.

Eliminate any further dismantling of the Civil Service Act. Ensure the citizens of the state are served by a knowledgeable, dependable and stable work force.

**This bill starts out by stating that the state of Kansas values its employees as individuals and as the resource to provide efficient, effective and creative public services to the people of Kansas. It also states the compensation, benefits and performance standards of the state compensation system shall assist employees to achieve personal job satisfaction and earn a livelihood and shall encourage employment loyalty and high quality service to Kansas. If these statements are true, this bill is sure the wrong way to prove to state employees they are a respected and valuable resource.**

To successfully implement such a drastic overhaul of the total employee compensation package and achieve all the lofty goals stated employee 'buy in' is needed. Unless I totally misjudge my fellow state employees, I don't think employee 'buy in' is going to be there for these changes.

Thank you again for allowing me the opportunity this afternoon to express a few of my thoughts concerning this matter.



**Testimony  
before  
The Kansas 2000 Select Committee**

February 23, 1999

My name is Patricia Howell. For the past five years, I have served as the manager of Training and Development in the Division of Human Resources at Kansas State University. In that role, I facilitate Basic Supervisory Training for newly appointed supervisors, provide a variety of topical training events to the university community, conduct Performance Review training for groups and individuals, coordinate the Employee Assistance Program, and chair the Threat Management Team.

I appear before you on my own time (thanks to annual leave) to share a few personal thoughts about HB 2522. I saw the bill for the first time yesterday afternoon, so my knowledge of its contents and reflection upon its potential impact are naturally limited.

My first impression after reading the entire bill is a positive one: this is a "broad brush" approach to revamping the state compensation system, rather than a piece-meal effort. It appears to be grounded in a central philosophy with a healthy dose of common sense. A great deal of thought and care must have been invested in its preparation.

Ideas whose time has come include the following:

- ◆ Creating a Director of Training within the Department of Administration (page 8), which will increase the visibility of training and provide

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additional leadership to those of us who work, sometimes in professional isolation, within state agencies.

- ◆ Ending longevity bonus pay (page 3) in future but, if I interpreted it correctly, rolling the previous bonus payment into the individual employee's pay. Let's face it: longevity pay is an outmoded concept that rewards endurance rather than productivity. However, providing for my peers who may have become dependent upon it by adding it to the base salary will assuage many concerns. This solution seems to me to be a fair and equitable compromise.
- ◆ Providing counseling and assistance for those at the maximum pay rate (page 4).
- ◆ Broad-banding classifications and pay ranges to provide greater flexibility in recruiting and retaining valuable employees.
- ◆ Freezing classified positions to be reallocated to unclassified until that position is vacant. (Will this also apply to those positions reallocated to unclassified Board of Regents?)
- ◆ Repealing the Retirement Reduction Act, which has accomplished its intended goal.
- ◆ Introducing "cafeteria style" benefit options.

As you might expect, I also encountered aspects of the proposed legislation that may have unintended consequences. Indeed, Chairman Wilk,

you cautioned my colleagues and I during a recent visit that there would be portions of the legislation that we would like and other portions that we would not like. Thank you for your candor. It was refreshing.

I hope that we are not changing the entire state compensation system because "pay for performance" sounds so appealing. Who, after all, could object to such a seemingly fair concept and not seem a little unreasonable?

Too, the fact that the current system has not changed much since 1941 does not speak to its undesirability; rather, it speaks to its *success* in serving generations of Kansans. That one brief fling with merit pay left us longing for the comfort and security of the system we may once again abandon.

Any change, no matter how desired or well intended, brings its own set of problems. Choices should be made after weighing the disadvantages inherent in each solution. I hope you will not think me presumptuous if I point out several of the concerns that HB 2522 raises. They are as follows:

- ◆ How will we measure the success of this legislation once implemented?  
What are the specific problems that we are trying to resolve? High turnover? Recruitment problems? Low productivity? Poor morale? Have baselines been determined?
- ◆ Providing counseling, assistance and training to employees at maximum pay may prove to be a time-consuming and costly endeavor.

- ◆ The current Performance Review System will not provide equity unless those who are responsible for evaluating classified employees feel a commitment to the process. My particular concern is for classified employees at Regents institutions. After a recent training session on classified performance reviews, an amiable faculty member confided, "You know, this just isn't important to me." Approximately one-half of our employees at K-State are unclassified Board of Regents and many supervise classified employees. We are all paid by the taxpayers of Kansas, but we exist in two separate worlds: for example, classified supervisors are required to attend supervisory training; Board of Regents employees are not. The sad result is that the classified employee must sometimes rely upon a supervisor unfamiliar or uninvolved with civil service or performance management. If this legislation passes, that employee will also be dependent upon them for fair compensation. Is that the desired result?
- ◆ I also have concerns about peer evaluation (page 9) as created by this bill. It will place individuals who are competing for pay increases in the position of evaluating each other. Will this contribute to a sense of equity or merely increase competition and resentment?
- ◆ I would suggest that the wording on page 9, line 43, and on page 10, line 4 be changed to read "under *either*" rather than "under both."

- ◆ A final concern is that agencies are expected to fund the plan through additional fees. In the case of Regent institutions, is tuition to be raised to cover these expenses? If not, how will be provide for classified employees?

Thank you for your attention. Are there any questions?

# **S** *tate Employees Association of Kansas*

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On January 12, 1998, Governor Graves in his message to the Legislature, provided the following assessment of the job state employees were doing, "We are asking our employees to do more, and therefore—because they are our greatest asset—we must support their effort. I am proud of our State employees and particularly proud of the leadership my Cabinet has shown. I recommend the equivalent of a 4 percent increase for all State employees. They are doing more with less and have earned this recommendation."

Earlier, the Governor reported on a meeting he had had with a group of state employees. The Governor stated, "My message was of appreciation for their willingness to do more and an encouragement to serve Kansans even better. Personally delivering this message to them was important because during our past three years, we have reduced the size of government by more than 3,000 employees."

SEAK and its members have reviewed the contents of HB 2522 and the accompanying information distributed by the Kansas Legislative Research Department. While we have many questions regarding the basic tenets of the bill, SEAK's overriding concern is that this legislation, if enacted, will both punish state employees unfairly and will be counterproductive in encouraging state employees "to serve Kansans even better." In view of the Governor's assessment of the job state employees are doing for the State of Kansas and the sacrifices they have made, the question must be asked why this bill would seek to deprive state employees of benefits and limit their ability to provide for their families.

Imagine for a minute that you as a legislative committee were discussing this proposed pay plan with an individual state employee named "Joe." Based upon the current provisions of

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the bill, the conversation might go something like this:

Committee: Joe, we've had a good year. Tax revenues are up. You've done a good job and we want to change your pay plan.

Joe: Great. I've tried to be more efficient with our reduction in staff and I could use some extra money. Going to give me a cost of living adjustment.?

Committee: Uh, not exactly. You see what we want to do is take away your longevity check and do away with the pay matrix. We're going to put your longevity money in a pool, and we might give it to you or Fred or Sue or Heather or maybe Jim over there who doesn't get longevity.

Joe: Let me get this straight. Longevity is out. The 2.5 percent increase I've been getting is out, and you're going to put the money in a pool and maybe give it to me or to someone else.

Committee: You got it.

Joe: May I ask why? I thought you said I did a good job.

Committee: Well, the current pay system is kind of old and it doesn't reward you for outstanding service.

Joe: But, I was getting along pretty well under the old system.

This conversation could go on a lot longer, but we'll cut it off here. SEAK has talked to its members and personnel directors who were around the last time a "merit" based pay system was implemented in 1980. There were complaints from all quarters. Supervisors complained that agency heads would only allow a certain number of "outstanding" and "above average" evaluations, thereby requiring them to pick and choose among employees

(3)

they believed were performing at an equally high level. Employees complained that they were not evaluated in a fair manner. Some believed that the supervisors used the “performance based evaluation system” was used to reward favorite employees. Agency heads complained that they didn’t have appropriate funding to support the evaluations. An employee could jump one, two or three steps depending on his rating, and if outstanding evaluations exceeded a certain number, sufficient funding was not available.

Agency heads imposed different standards. Some approved large number of “outstanding and above standard” ratings and others would try to administer it more judicially. After listening to all of the complaints, the Legislature chose not to fund the merit based portion of the pay plan after the first year.

Going back to our conversation with Joe for a minute, if you could project him as an engineer or a computer programmer, he undoubtedly would be looking for another job as soon as the talk was over. While the bill contains language about adjusting Joe’s salary to market levels, current law requires “consideration to pertinent rates in other public and private labor markets, and for this purpose the director shall have made periodic wage and salary surveys with one survey to be conducted each year.” The Department of Administration has more than ample authority to make any necessary adjustments and is indeed required to do so.

The bottom line is that Joe and other state employees would be getting nothing for giving up much in the way of benefits under this piece of legislation. Implementation of this legislation will cripple the morale of state employees and lead far more problems than it



(4)

could possibly solve. We would strongly urge that this committee reevaluate the kind of changes that are needed in the pay plan. Rather than taking actions that would discourage employees from remaining in or undertaking state employment as a career, SEAK respectfully suggests that the Legislature and the people of Kansas would be better served by either making no changes in the pay plan or proceeding with the type of changes that make state employees feel as though they are appreciated for their service.

AN ACT enacting the Kansas Y2K protection act.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. This act shall be known and may be cited as the Kansas Y2K protection act.

Sec. 2. As used in this act:

(a) "Action" means any action to recover damages resulting directly or indirectly from a computer date failure, including but not limited to an action based on a breach of contract for a computer date failure, a shareholder or derivative action based on a computer date failure, or an action based on an alleged failure to properly detect, disclose, prevent, report on, or remediate a computer date failure.

(b) "Computer date failure" means either of the following:

(1) the present or future inability of the computer system or computer program or software to accurately store, process, provide or receive data from, into and between the years 1999 and 2000 and beyond, including leap year calculations, if all other technology used in combination with such system, program or software properly exchanges data therewith; or

(2) The possibility of the existence of any such inability or incompatibility.

(c) "Computer program or software" means a set of statements or instructions to be used directly or indirectly in a computer system in order to bring about a certain result.

(d) "Computer system" means any electronic device or collection of devices, including support devices, networks and imbedded chips, and excluding calculators that are not programmable, that contain computer programs or electronic instructions and that perform functions including logic, arithmetic, data processing, data storage and retrieval, communication or control.

Sec. 3. (a) In an action described in subsection (a) of section 2, the defendant shall have an affirmative defense to such action, if the defendant has complied with the requirements set out in subsection (b) of this section.

(b) The requirements referred to in subsection (a) are as follows:

(1) the defendant, not later than September 1, 1999, has successfully tested its computer systems, programs or software, which it uses to provide services to its customers and clients, by actually simulating the transition from December 31, 1999, to January 1, 2000. The term "successfully test" means test results which avoid a computer date failure. The defendant is not required to test the computer system, program or software of any individual client or customer;

or

(2) the defendant, not later than October 1, 1999, has implemented a contingency plan as a result of testing its computer systems, programs or software, that will provide for alternative methods of carrying out the services which it provides to its clients and customers. Such contingency plan must be able to be implemented within 60 days after receiving written notice from a customer or a client of an actual problem regarding the defendant's services that has been caused by a computer date failure; and

(3) the defendant, not later than October 1, 1999, has provided notice by mail to its current, known customers or clients of its efforts to avoid a computer date failure, or has posted such notice prominently in its place of business for public review. The notice required herein shall include a summary of the following: (A) A general description of the defendant's year 2000 compliance efforts; (B) an explanation to the defendant's customers or clients that all problems discovered in the defendant's services which are possibly caused by a computer date failure should be reported to the defendant in writing; (C) an explanation to the defendant's customers

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or clients that it should expect any problem with the defendant's services that is caused by a computer date failure to be remedied within 60 days after the client or customer has notified the defendant in writing of a problem with the defendant's services that may be caused by a computer date failure; and

(4) the defendant has or will implement the applicable portions of the contingency plan, or otherwise remedy the problem created by the computer date failure, within 60 days after receiving written notice, from a client or customer, of a problem with its services that may be caused by a computer date failure; or

(5) the defendant has satisfied all the mandatory requirements of the state and federal agencies and authorities which regulate the defendant in the time limits set by the agency or authority.

Sec. 4. (a) The notice required under subsection (b)(3) of section 3, and amendments thereto, in whole or in part, shall not be admissible against the defendant in any action to prove the accuracy or truth of any information set forth in the notice, except that:

(1) The court in any covered action shall have discretion to limit application of this section in any case in which the court determines that the defendant's use of the disclosures in the notice amounted to bad faith or fraud.

Sec. 5. Nothing in this act shall be construed to limit the ability of contracting parties to enter into agreements as they deem appropriate on the issue of liability and damages resulting from computer date failure;

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.