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SB 179 – Testimony in Support of and Neutral to Proposed Amendments to Select Portions of the Public Employer-Employee Relations Act (PEERA)

Testimony from the Kansas Department of Labor (KDOL)
Bradley R. Burke – Deputy Secretary and Chief Attorney
Before the Senate Commerce Committee
March 11, 2015

Background on PEERA and PERB:

The Public Employer-Employee Relations Act, K.S.A. 75-4321 *et seq.* (also known as PEERA) is the statutory framework governing public employee labor relations in Kansas for all state employees (except for supervisory or confidential employees) and for public employees of any political subdivision that votes to be covered under PEERA.

Based on information received by KDOL, the following Kansas political subdivisions are covered under PEERA in addition to State of Kansas employees:

Cities	**Counties**
Burlington	Ellis
Chanute	Leavenworth
Coffeyville	Norton
Derby	Phillips*
Dodge City	Russell*
Ellis*	Sedgwick County Fire District #1
Hays	Shawnee
Hutchinson	Unified Government of Wyandotte County/Kansas City, KS
Junction City	
Manhattan	**School Districts**
Russell*	USD 259 (Wichita, KS)
Topeka	USD 489 (Hays, KS) - Service and Maintenance
Wichita	USD 500 (Kansas City, KS) - Clerical; Paraprofessional; Shop & Maintenance*; Security Officers; Bus Drivers*

*Unit bargaining representative decertified or withdrew representation.

PEERA is currently administered by the Public Employee Relations Board (PERB), which consists of five members who are appointed by the Governor, subject to confirmation by the Senate. One member shall be representative of public employers, one member shall be representative of public employees, and three members shall be representatives of the public at large and hold no other public office or public employment. Not more than three members of the PERB may be of the same political party. Members of the PERB serve four year terms and are paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223. Additionally, under current law, the Secretary of Labor provides office space and such clerical and other staff assistance as necessary to assist the PERB in carrying out its duties.

The current duties of the Public Employee Relations Board (PERB) include: (1) Determination of whether a proposed bargaining unit is appropriate; (2) Clarification or Amendment of bargaining unit membership; (3) Certification of a recognized union, including the conduct of elections; and (4) Adjudication of prohibited practice claims.

Proposed Amendments:

New Section 1 and New Section 2

KDOL is **neutral** on New Section 1 and New Section 2.

New Section 1 and New Section 2 are provisions that abolish the existing Public Employee Relations Board (PERB), and transfers those existing duties of the PERB to the Secretary of Labor. The abolition of the PERB and transfer of the duties of the PERB to the Secretary of Labor would not be a difficult transition since the Secretary of Labor already provides office space, clerical and legal support for the PERB. In fact, a slight savings in time and resources may actually occur with such a transfer of duties.

Section 3

KDOL is **neutral** on the amendments in Section 3.

The amendments in Section 3 include changes to the manner in which political subdivisions elect to bring a public employer under the PEERA, and how such governing bodies can rescind coverage under PEERA. Under current law, PEERA coverage only requires a majority vote by the governing body of a political subdivision. Additionally, once a public employer is covered under PEERA, coverage continues unless rescinded by a majority vote of all of the members of the governing body and such rescission cannot take effect until the end of the next complete budget year following the vote to rescind coverage. The amendment in Section 3 changes the opt-in provisions of PEERA by requiring a governing body to first pass a resolution electing to bring the public employer under the provisions of PEERA, and then such resolution must be submitted to the voters for approval on the date of the primary election immediately following adoption of the resolution. The public employer will only be covered by PEERA if a majority of qualified electors who vote on the matter pass the resolution. The amendments in Section 3 also change the manner in which a public employer opts-out of PEERA, by removing the requirement that that vote to rescind may not take effect until the end of the next complete budget year following the vote to rescind coverage. In effect, the amendment in Section 3 will remove a public employer from coverage under PEERA immediately following a vote to rescind. The amendments in Section 3 will not affect the Department of Labor, but will likely benefit public employers who wish to opt out of PEERA.

Section 4

KDOL is a **proponent** of the amendments in Section 4 relating to making the definition of "Conditions of employment" an exclusive list.

KDOL is **neutral** regarding the amendments in Section 4 that strike terms from the definition of "Conditions of employment."

KDOL is **neutral** regarding the amendments in Section 4 that strike terms "Board," "Mediation," "Fact-Finding," "Arbitration," and "Grievance."

The amendment to the definition of "Conditions of employment," in Section 4 is also part of an effort throughout the bill to close the loophole in current law in which courts have concluded that the existing statutory definition of "conditions of employment," is a nonexclusive definition and when read in conjunction with other provisions of the PEERA, results in public employers being required to negotiate a wide variety of terms that clearly fall outside of the statutory definition of "conditions of employment" under the PEERA. For many years, the Public Employee Relations Board (PERB) has been using a balancing test that the PERB created to determine what "Conditions of employment" are required to be negotiated between a public employer and a recognized employee union, even though the phrase "conditions of employment" is defined in PEERA at K.S.A. 75-4322. The PERB and the Courts have ruled that the statutory definition of "conditions of employment" is: "A nonexclusive list of 'conditions of employment—' the matters about which there must be negotiation—is contained in K.S.A. 75–4322(t): The list includes "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 procedures." Pittsburg State Univ./Kansas Nat. Educ. Ass'n v. Kansas Bd. of Regents/Pittsburg State Univ., 280 Kan. 408, 411, 122 P.3d 336, 339 (2005). The result of the PERB and Court decisions has been a wide variety of lengthy labor disputes and litigation over matters the legislature never intended to be negotiated. The proposed amendment in Section 4, and other sections throughout the bill, will make it clear that only the specific and articulated "conditions of employment" listed in K.S.A. 75-4322, may be included in a negotiated Memorandum of Agreement between a public employer and a public labor union. This change will allow the legislature to establish clear and specific public policy defining "conditions of employment," which will bring an end to many unintended lengthy labor disputes and costly litigation.

Section 5

KDOL is **neutral** on the amendments in Section 5.

The amendments in Section 5 eliminate grievances from the list of matters that may be included in negotiations between a public union and a public employer.

Section 6

KDOL is a **proponent** of the amendments in Section 6.

The amendments Section 6 are additions to what is included as rights of the public employer. Current litigation includes findings that public unions have a right to negotiate policies and procedures relating to promotions, lay-offs, demotions and terminations. The amendments in Section 6 make it clear that all matters relating to hiring, promotion, demotion and termination are management rights.

Section 7

KDOL is **neutral** on the amendments in Section 7.

The amendments in Section 7 are technical amendments to achieve the results of transferring duties from the PERB to the Secretary of Labor.

Section 8

KDOL is **neutral** on the amendments in Section 8.

The amendments in Section 8 are technical amendments and include removal of the term "grievance" as a matter that a public union has a right to negotiate in a Memorandum of Agreement.

Section 9

KDOL is **neutral** on the amendments in Section 9.

The amendments in Section 9 are technical amendments resulting from the elimination of the PERB.

Section 10

KDOL is a **proponent** of the amendments in Section 10 that make the definition of "Conditions of employment" an exclusive list.

KDOL is **neutral** regarding the amendments in Section 10 that eliminate grievance and arbitration procedures.

The amendments in Section 10 are to clarify that the definition of "Conditions of employment" in K.S.A. 75-4322 (Section 4 of the bill), is an exclusive list of conditions, and they remove grievance procedures and arbitration from terms that may be included in the Memorandum of Agreement between public employers and public unions. These changes will simplify and streamline negotiations between public employers and public unions and will simplify and streamline any legal disputes over the Memorandum of Agreement between public employers and public unions.

Section 11

KDOL is a **proponent** of the amendments in Section 11.

The amendments in Section 11 of the bill eliminate the additional steps of mediation and fact finding boards from the impasse process, which will reduce the time negotiations between public employers and public unions may linger during impasse by over 47 days. The changes will also permit state agencies to impose a contract after impasse if they deem it is in the best interest of the public. Political subdivisions under PEERA may already take such action, but currently, state agencies may not.

Section 12

KDOL is **neutral** on the amendments in Section 12.

The amendments in Section 12 are technical amendments resulting from the elimination of mediation, fact-finding and arbitration from the Memorandum of Agreement negotiation process.

Sections 13, 14, and 15

KDOL is **neutral** on the amendments in Sections 13, 14, and 15.

The amendments in Sections 13, 14, and 15 technical amendments resulting from the elimination of the PERB and they transfer such responsibilities to the Secretary of Labor.

Sections 16 and 17

KDOL is a **proponent** of the amendments in Sections 16 and 17.

The amendments in Sections 16 and 17 are technical amendments.