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NEUTRAL -Testimony Regarding SB 501
Before the Senate Commerce Committee
Submitted by: Rebecca Proctor
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Chairperson Lynn and Members of the Committee:

My name is Rebecca Proctor, and I am a labor and employee benefits attorney by trade and Executive Director of the Kansas Organization of State Employees (KOSE). KOSE represents over 8,000 Executive Branch employees. We cover employees at over 300 worksites across the State.

In general, KOSE and the employees it represents support the idea of a non-discretionary bonus program. For such a program to function correctly, it must be accompanied by regular and fair performance evaluations. Civil service rules require that classified employees receive regular performance evaluations. Those same rules provide mechanisms to appeal any evaluation that is unfair or incorrect. However, since the passage of HB 2391 last session, more and more positions are being moved to unclassified status, and unless there is a union contract in place, there are absolutely no performance evaluation requirements for unclassified employees. If an unclassified employee does receive a performance evaluation, there are also no mechanisms for appealing that evaluation.

Why is this important? The whole purpose of a non-discretionary performance based bonus is to incentivize and reward performance. To do so, there must be a clear, unbiased picture of what employees are high performers. This cannot be done without regular performance evaluations. Additionally, for employees who do receive performance evaluations, there is an established culture at many state agencies of refusing to give any employee the highest possible rating. Many employees are simply told “no one gets an exceptional.”

This happens even when there are clear metrics in place. As an example, in 2015 KOSE assisted with a performance appraisal appeal at DCF. The metrics for

determining performance level were based on case handling and case closure. There was nothing subjective about them, and every employee's rating should have been very clear-cut based on those metrics. This employee's case handling and case closure rate was at the high end of the "Exceptional" scale...she was an extremely high performing employee. Despite her documented metrics, she was given an "Exceeds Expectations" rating. Still a high rating to be sure, but not the rating to which she was entitled. She had to utilize both the performance appraisal appeal process and the grievance process under the KOSE contract to get her performance appraisal rating adjusted to "Exceptional."

Because she was still rated over a "Meets Expectations" some people did not understand why she appealed. To those people she explained that layoff scores are based in part on performance evaluations, and that in the event performance based pay was implemented, it would rely on evaluations as well. As an exceptional performer, she deserved that exceptional rating. The same would be true with a performance-based bonus system. Rewarding employees would depend on having an accurate picture of employee performance. This cannot occur unless employees are regularly evaluated and given the opportunity to appeal any incorrect evaluations.

Unfortunately, the State is trying to move to a system where appeals like the one we just discussed would not be allowed. The State is currently proposing employees only be able to appeal any rating below "Meets Expectations." Such a change would negate any incentive provided by a bonus program, as employees could not be sure their performance would be properly recognized and rewarded.

Accordingly, we would suggest the legislative body include clear guidelines regarding performance evaluation and appeal along with any non-discretionary performance-based bonus. This would help insure the integrity of the program and allow it to function as intended.