

TESTIMONY BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS

Regarding HB 2384

Submitted by: Rebecca Proctor, Attorney

On behalf of the American Federation of Teachers, Kansas (AFT Kansas)

Mr. Chairman and Members of the Committee:

My name is Rebecca Proctor. I am a labor and employee benefits attorney and lifelong Kansas resident. I appear before you today on behalf of my client, the American Federation of Teachers, Kansas to address proposed changes to the classified/unclassified system as it currently exists in the Kansas Civil Service Act.

WHY KANSAS HAS A CLASSIFIED SYSTEM

The current classified system is what is generally referred to as a “merit system.” By definition, a merit system is a manner of hiring and promoting government employees that emphasizes their ability, education, experience and job performance rather than their connections or political affiliation.

The Kansas civil service system was made possible by a state constitutional amendment in 1940 that gave the legislature the power to create a merit system. The Kansas Civil Service Act was subsequently passed in 1941.

So why are merit systems important? Because they are required to receive certain federal funds or to participate in intergovernmental programs. Under various federal laws, including the Intergovernmental Personnel Act of 1970 (as amended), 42 USC 4728, 4763, certain Federal grant programs require, as a condition of eligibility, that State and local agencies receiving grants establish merit personnel systems for personnel who administer the grant-aided programs. The merit systems are sometimes required by specific federal grant statutes and sometimes by regulations of the grantor agencies. The accompanying regulations set forth definitions and requirements for merit systems. Merit systems have six components:

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
2. Providing equitable and adequate compensation.
3. Training employees, as needed, to assure high quality principles.
4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
5. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national

origin, sex, religious creed, age, or disability and with proper regard for their privacy and constitutional rights as citizens. This “fair treatment” principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

6. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for purposes of interfering with or affecting the result of an election or a nomination for office.

The State is required to maintain a certification by the governor that the State has a system of personnel administration that complies with these standards and satisfies Federal merit personnel requirements.

INTERGOVERNMENTAL PROGRAMS REQUIRING MERIT SYSTEMS

A partial list of programs with statutory requirements for merit systems includes:

- Food Stamps
- Employment Security (unemployment insurance and employment services)
- Grants to states for old-age assistance
- Aid to families with dependent children
- Grants to states for aid to the blind
- Grants to states for aid to the permanently and totally disabled
- Medicaid
- State and community programs on aging
- Federal payments for foster care and adoption

A partial list of programs with a regulatory requirement for merit systems includes:

- Occupational safety and health standards
- Disaster assistance and emergency relief

These programs are examples, the ones that result from basic research on intergovernmental programs with merit system requirements. I make no representation that this is a complete or exhaustive list of programs that would be impacted.

You would expect to find a breakdown of the programs that would be impacted by elimination of the merit system, and a dollar amount of the impact, in the bill’s fiscal note. However, the fiscal note provides no breakdown or analysis of the amount of federal monies that would be lost. The only portion of the fiscal note that even references this issue is the first full paragraph on page two, which notes, “this bill exempts specific employees in the Department of Labor’s unemployment benefits division from this conversion when that conversion would violate federal law.” Neither the fiscal note nor the bill references any of the other

THE CLASSIFIED SYSTEM HELPS THE STATE COMPETE

This bill states, in New Section 1, that the purpose of the bill is to attract, retain, and develop highly competent employees. Attracting and retaining employees requires employee satisfaction. The Society for Human Resource Management looked at twenty-four factors that relate to employee job satisfaction. Employees and human resource managers both overwhelmingly ranked job security as the most important factor in creating employee satisfaction. Numerous studies have established a link between employee satisfaction and job performance.

The classified system as it exists today provides a level of job security unavailable to unclassified employees. Employees know they cannot be terminated arbitrarily, and understand that should suspension, demotion, or dismissal occur, there is a vehicle for appeal. Job security is completely eliminated if employees are unclassified.

The importance of job security cannot be overstated, because Kansas as a state certainly cannot compete with other employers, public or private, when it comes to pay and benefits. A 2008 study (published by chambers of commerce in other states to boost the attractiveness of their own states) ranked Kansas 37th of the states in total pay and benefits; a 2011 study ranked Kansas 39th. As of 2011, Kansas was one of only nine states where public workers earn less than their private sector counterparts. A market pay plan, passed in 2008 to help bring Kansas workers up to market pay levels, has never been fully funded by the legislature. It should be noted that when the market pay plan was signed, some state employees were earning 45% less than those in similar jobs in the private sector.

I have lived in Kansas all of my life. State jobs here have never had a reputation for being high-paying, but they have had the reputation of being good, stable jobs. I know a lot of very talented people who chose state service precisely for that reason. Why, when stability has been the hallmark of state service, would the state want to eliminate the one thing that positioned state jobs above the private sector?

CONCLUSION

Because the impacts of this bill have not been thoroughly researched and documented, because there is no indication of the bill's actual fiscal impact, and because there are no compelling reasons to change the current classified system, I urge you oppose this bill. Thank you for your time and attention.

Rebecca Proctor
Wickham & Wood, LLC
rebecca@wickham-wood.com
(913) 687-6014
Attorney for AFT Kansas

intergovernmental programs that require a merit system of personnel management as a condition for receiving funds.

This omission is a clear and open indicator that this bill's impacts have not been thoroughly researched and its costs not thoroughly analyzed. As drafted, this bill if passed would take effect upon publication. If that occurs, federal money for all of the programs above, as well as any other intergovernmental program requiring a merit system of personnel administration, is in immediate jeopardy. Such passage would also immediately invalidate the certifications our state has provided to the Office of Personnel Management regarding the state's compliance with laws/regulations requiring a merit system.

It would be irresponsible, and very poor public policy, to vote for or recommend a bill for passage without knowing or understanding how the bill impacts state programs and state finances. Given our state's financial condition, the last thing any legislator should want to do is act to strip more money out of the budget. For this reason alone, you should reject this bill.

THE CLASSIFIED SYSTEM--SUSPENSION, DEMOTION & DISMISSAL

The classified system as it exists today, in addition to meeting requirements for federal funding of intergovernmental programs, protects employees from being terminated for arbitrary or political reasons. Unclassified employees have no such protection. A classified employee who is suspended, demoted, or dismissed can appeal the suspension, demotion, or dismissal to the Kansas Civil Service Board.

Contrary to what opponents of the system might have you believe, it is not easy for an employee to prevail before the Civil Service Board. In appeal hearings, the burden is *on the employee* to establish that the appointing authority's action was not reasonable. Think about that for a minute: the employer/agency does not have to establish its decision was reasonable...the employee, through evidence and testimony, has to establish that it was not. Unless an employer/agency action was completely arbitrary or illegal, employees usually find meeting this standard difficult.

It is not overly restrictive, on any employer, to require that employer to act reasonably in matters of employee suspension, demotion, or dismissal. The legislature eliminating this check can only be taken as an indication that the legislature wishes to give state agencies the ability to act unreasonably, or to suspend, demote, or discharge for arbitrary or political reasons. Making most employees unclassified opens the possibility of return to the spoils system, and cronyism, where individuals may be hired or fired based on their political affiliations and beliefs. In a system where all employees are unclassified, there could be complete turnover in agency staff every time there is an administration change. Federal law requires merit systems for intergovernmental programs precisely for this reason.