



Testimony

Unified Government Public Relations
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HB 2426 KPERS Computing Final Salary

Delivered May 11, 2015
House Commerce, Labor and Economic Development Committee

The Unified Government of Wyandotte County/Kansas opposes House Bill 2426.

This bill punishes thousands of people who have dedicated their lives to public service. This measure steals earned benefits from the people who police our streets, save your house when it catches fire, save your life when you have a heart attack, pave and patch the streets you drive on, ensure the water pipes and sewer pipes work, provide recreation programs for your kids and so much more. These are the people who work everyday to make your community a good place to live.

HB 2426 changes the terms of employment for thousands of local government employees by capping the number of vacation hours and sick leave that can be accrued. When I joined the Unified Government in 2003, my and employer and I agreed on the terms of my employment and the benefits and policies under which I would work. Now, 12 years later, a third party group enters the picture and unilaterally is trying to change the terms of the contract. I'm not convinced it's legal. And if it is, it shouldn't be.

This bill is coming late in the session with little time for properly vetting it or determining its real impact. Even KPERS staff is uncertain of all the impacts, saying in the Fiscal Note, "HB 2426 appears to limit the use of add-ons for purposes of calculating final average salary to only those that were earned within the last four years of retirement. The intent of this language is not clear, but it can be read as applying to all forms of add-on pay."

Let me give you an example of how HB 2426 would affect three hypothetical Unified Government employees. Three employees, all with 20 year careers earn 200 vacation hours a year. The maximum they are allowed to bank is 400 hours.

- Employee A is female who wants to raise a family. She banks her vacation time so she use it to get paid when off on maternity leave. The Family and Leave Act allows 12 weeks or 480 hours. That's 80 more hours than this bill would allow her to bank.
- Employee B has a history of cancer which required depleting sick leave. He likewise banks his vacation so that he gets paid for continuous or intermittent FMLA.
- Employee C uses all of his vacation every year and does not bank any.

Under HB 2426, Employee A and Employee B would be prohibited from earning any vacation until they each used 160 hours to bring them down to 240 hours. Employee C would still be able to earn his full 200 hours of vacation. This allows different treatment of similar employees which we believe creates a violation of the Equal Protection laws.

If this measure becomes law, it will create a rush of retirees. Hundreds of Unified Government employees will file for their retirement before the July 1 implementation date. We will see decades of experience and expertise walk out the door all at once, with no way to replace them in time. It will hinder running the city and providing services. And with the diminished benefits, it will make it harder for us to hire qualified replacements.

This bill is said to be about stopping longtime employees from "spiking" their final salary and thus collecting larger benefits. Those benefits were all earned and are owed. As far as spiking the system, please remember the Kansas Legislature is in session for 90 days a year, but legislator salaries are annualized as if the session last 52 weeks a year. The end result is legislators collect bigger KPERS benefits than are actually earned. If this bill advances, that practice should be changed.

To: Honorable Mark Hutton (Chairman) and Members of the Commerce Committee

House Bill # 2426 affects the method that KPER's is calculated for members employed by an eligible employer, prior to July 1st 1993. That employee is allowed two methods for determining the Final Average Salary (FAS)

- The three highest years of salary (or)
- The four highest years of salary with added compensation (i.e. sick, vacation leave)

The member is limited to a 15% cap on the added compensation method. The bill as written appears to have major issues at the method(s) used to limit compensation and looks unduly onerous. If the attempt is to limit the use of compensation this bill may only complicate the situation.

Specifically, I have addressed the following changes:

- *Page 1/Line 14 – On July 1st 2015 any employee with more than 240 hours of vacation leave accumulated shall be able to use such accumulated vacation leave in the amount above 240 hours as of July 1st 2015, as a portion of compensation as defined in KSA 74-4902*
 - The Compensation clock (Vacation) stops on July 1st 2015.
 - If an employee is under 240 hours they can accumulate up to 240 and no more
 - If an employee in over 240 on July 1st 2015 they can use that amount for compensation but no more is added.
- *Page 1/Line 25- Any employee may accumulate sick leave over the amount as of July 1st, 2015, but such additional amount of sick leave shall not be included in the calculation of such employee's compensation for retirement.*
 - The Compensation clock (Sick) stops on July 1st 2015
 - Whatever the number of sick days the employee has on July 1st 2015 they cannot accumulate any more for compensation.
- *Page 3 /Line 33- No employee shall increase the amount of compensation during the four-year period immediately prior to the retirement of such employee by adding any portion of compensation that was earned by such employee but not paid to such employee during the period of employment prior to the four years before the retirement..... Compensation shall include any payment for accumulated sick leave, vacation or annual leave paid to the member at the salary pay rates of such member as of July 1, 2015*
 - The second Compensation clock starts?
 - The employee can use sick and vacation as compensation but is limited to what was accrued in the last four years of their employment. Any amount of compensation may be paid to the employee by the employer but the compensation for KPERs is limited the last four years.
 - Possible issue may be when is leave credited to employee
 - During the last four years is sick leave credit as a "first in last out" or a "last in first out" scenario.

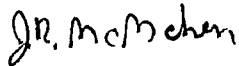
- During the last four years is vacation leave credit as a "first in last out" or a "last in first out" scenario.

This language in first two sections contradicts the language in the last section. The bill as written cannot be fairly implemented. There is also the issue of a possible court challenge to this change in contractual benefits by the State to members. This was addressed when KPERS reform was passed in 2013 and was decided to leave untouched. The reasoning was that this was a fast dwindling membership section due to retirements.

I would respectfully ask the Committee to not pass this bill out for floor vote due to the ambiguity of the language in the text and the possible court challenge.

In addition KPERS staff believes that the bill cannot be implemented as written.

If you have any questions please contact me.



J.R. McMahon, CPM
2 Crestview Dr.
Paola, Kansas 66071



BOARD OF COMMISSIONERS

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May 11, 2015

The Honorable Mark Hutton, Chairman
House Committee on Commerce, Labor & Economic Development
Capitol Building, Room 582-N
Topeka, KS 66612

Re: H.B. 2426 - Testimony in Opposition

Dear Chairman Hutton and Members of the Committee:

The Board of Riley County Commissioners unanimously opposes H.B. 2426.

On page 1, at "new section 1,(a)," lines 8-12 prohibit local governments from allowing their employees to "accumulate vacation leave in an amount of more than 240 hours." Certainly the state may, prospectively, determine how KPERS **uses** a local government employee's accumulated "vacation leave" in the retirement system's calculation of a retiree's benefit amount. But the identified language reaches much farther. It tells Riley County, and all Kansas counties, how much "vacation leave" *their employees* may accumulate *for any purpose*, even if that accumulation is unrelated to their KPERS benefit calculations.

For example, by current Riley County personnel policy, our non-elected employees may accumulate a maximum of 768 hours of unused leave. But the county will only "pay out" to that employee separating from service a fraction of the accumulated amount. In this example, by written personnel policy, no more than 376 hours would be paid by Riley County. This entirely local "accumulation" of a county employee's leave has no fiscal impact upon KPERS, unless it is used as part of the KPERS benefit calculation. Legislative changes to that benefit calculation should logically focus upon KPERS, not upon counties. So my client believes that the state has no legitimate basis for regulating the local accumulation of "vacation leave." That is a matter best left to local control. The very broad text above must be altered so that it does not place a new state regulatory requirement on county personnel matters.

Troubling new language appears on page 3, at "Sec. 2.(9)," lines 33-41. This new text prohibits local government employees from having their "Final Average Salary" increased by vacation or sick leave earned but unpaid "prior to the four years before . . . retirement." The problem this presents is the retiring employee described may not have access to that earned but unpaid leave before retirement. For example, in Riley County part of every non-elected employee's earned leave each pay period goes into an "Extended Sick Leave" account which the employee has no access to unless they are away from work due to illness for 3 consecutive work days. The employee cannot access it

voluntarily, but it has clearly been earned. So it strikes our County Commission as unfair to categorize those hours as anything other than compensation. As true "compensation," that earned leave ought to be taken into account as part of the retiree's benefit calculation. This new text should be deleted.

A third defect in H.B. 2426 is that it's not based upon necessary data. Its May 6, 2015 fiscal note points out that KPERS does not know how much vacation and sick leave has been earned by its members, nor when that leave was earned. "As a result, KPERS indicates that it is not possible to project the actuarial impact of HB 2426." That same fiscal note refers to a prior KPERS "actuarial cost study." But the note concludes, "However, HB 2426 would not be expected to result in savings of the amount projected by the cost study."

Without data estimating what level of savings will result from its passage, given its intrusion to local personnel policies, and with its unfair restriction on employee access to earned but unpaid leave, H.B. 2426 does not deserve your support.

Thank you for allowing me the opportunity to express our County Commission's opposition to H.B. 2426.

Sincerely,

BOARD OF COMMISSIONERS OF
RILEY COUNTY, KANSAS

Robert L. Boyd, Jr., Member

cc: Ronald E. Wells, Chairman
Ben Wilson, Member

HOUSE BILL No. 2426

By Committee on Appropriations

5-1

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system and systems thereunder; calculation of
3 members' benefits; limiting accumulation of vacation leave for certain
4 employees; amending K.S.A. 75-5517 and K.S.A. 2014 Supp. 74-4902
5 and repealing the existing sections.
6

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

8 New Section 1. (a) On and after July 1, 2015, no employee who is
9 employed by any participating employer defined in K.S.A. 74-4902 and
10 74-4931, and amendments thereto, including, but not limited to, the state
11 of Kansas, cities, counties and school districts, shall accumulate vacation
12 leave in an amount of more than 240 hours. Any employee with less than
13 240 hours of vacation leave shall be able to accumulate up to 240 hours.
14 On July 1, 2015, any employee with more than 240 hours of vacation leave
15 accumulated shall be able to use such accumulated vacation leave in the
16 amount above 240 hours as of July 1, 2015, as a portion of compensation
17 as defined in K.S.A. 74-4902, and amendments thereto, upon such
18 employee's retirement.

19 (b) On and after July 1, 2015, any employee who is employed by any
20 participating employer as defined in K.S.A. 74-4902 and 74-4931, and
21 amendments thereto, shall be able to use accumulated sick leave no more
22 than the amount accumulated as of July 1, 2015, for proportionate pay out
23 in accordance with the applicable statute, rules and regulations or policies,
24 as a portion of compensation as defined in K.S.A. 74-4902, and
25 amendments thereto, upon such employee's retirement. Any employee may
26 accumulate sick leave over the amount as of July 1, 2015, but such
27 additional amount of sick leave shall not be included in the calculation of
28 such employee's compensation for retirement.

29 Sec. 2. K.S.A. 2014 Supp. 74-4902 is hereby amended to read as
30 follows: 74-4902. As used in articles 49 and 49a of chapter 74 of the
31 Kansas Statutes Annotated, and amendments thereto, unless otherwise
32 provided or the context otherwise requires:

33 (1) "Accumulated contributions" means the sum of all contributions
34 by a member to the system which are credited to the member's account,
35 with interest allowed thereon;

36 (2) "acts" means the provisions of articles 49 and 49a of the Kansas

1 by an amount which exceeds 15%, then the amount of such increase which
2 exceeds 15% shall not be included in compensation, except that: (A) Any
3 amount of compensation for accumulated sick leave or vacation or annual
4 leave paid to the member; (B) any increase in compensation for any
5 member due to a reclassification or reallocation of such member's position
6 or a reassignment of such member's job classification to a higher range or
7 level; and (C) any increase in compensation as provided in any contract
8 entered into prior to January 1, 1991, and still in force on the effective date
9 of this act, pursuant to an early retirement incentive program as provided
10 in K.S.A. 72-5395 et seq., and amendments thereto, shall be included in
11 the amount of compensation of such member used in determining such
12 member's final average salary and shall not be subject to the 15%
13 limitation provided in this subsection. Any contributions by such member
14 on the amount of such increase which exceeds 15% which is not included
15 in compensation shall be returned to the member. Unless otherwise
16 provided by law, beginning with the employer's fiscal year coinciding with
17 or following July 1, 1985, compensation shall include any amounts for tax
18 sheltered annuities or deferred compensation plans. Beginning with the
19 employer's fiscal year which begins in calendar year 1991, compensation
20 shall include amounts under sections 403b, 457 and 125 of the federal
21 internal revenue code of 1986 and, as the board deems appropriate, any
22 other section of the federal internal revenue code of 1986 which defers or
23 excludes amounts from inclusion in income. For purposes of applying
24 limits under the federal internal revenue code "compensation" shall have
25 the meaning as provided in K.S.A. 74-49,123, and amendments thereto.
26 For purposes of this subsection and application to the provisions of
27 ~~subsection (4) of K.S.A. 74-4927(4)~~, and amendments thereto,
28 "compensation" shall not include any payments made by the state board of
29 regents pursuant to the provisions of ~~subsection (5) of K.S.A. 74-4927a(5)~~,
30 and amendments thereto, to a member of the faculty or other person
31 defined in ~~subsection (1)(a) of K.S.A. 74-4925(1)(a)~~, and amendments
32 thereto;

33 *No employee shall increase the amount of compensation during the*
34 *four-year period immediately prior to the retirement of such employee by*
35 *adding any portion of compensation that was earned by such employee but*
36 *not paid to such employee during the period of employment prior to the*
37 *four years before the retirement.*

38 *For purposes of this subsection and application to the provisions of*
39 *subsection (17), "compensation" shall include any payment for*
40 *accumulated sick leave, vacation or annual leave paid to the member at*
41 *the salary pay rates of such member as of July 1, 2015;*

42 (10) "credited service" means the sum of participating service and
43 prior service and in no event shall credited service include any service



KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

May 11, 2015

House Judiciary Committee
Attention: Mark Hutton, Chairman
State Capitol, Room 521-E
Topeka, Kansas 66612-1504

Re: HB 2426

Hon. Chairman Hutton,

Thank you for the opportunity to provide our written response in opposition to HB 2426.

The Kansas Association of Court Services Officers (KACSO) is opposed to the passage of HB 2426. Kansas Court Services Officers (CSO) are the Kansans charged with providing probation supervision to criminal offenders.

As the legislature is keenly aware, more and more criminal offenders are being placed on probation rather than going to prison. As the State of Kansas has adopted policies over the past couple of years that divert many offenders from prison in an effort to reduce the financial burden from prison beds, Kansas CSO's have had to pick up the slack supervising these offenders in Kansas communities. The State experiences cost savings in the form of reduced prison beds, while CSOs experience greater caseloads, fewer resources, and more dangerous clientele. HB 2426 sends the wrong message to CSOs, these dedicated public safety officers, at a time when the State is relying on and benefiting the most from CSOs supervising the State's criminal offenders.

KACSO is concerned with HB 2426 for a couple of reasons. First, as you all are aware, KPERS legislation can be complex, and time is needed to fully comprehend the positive and negative effects legislation would have. KACSO feels that this legislation has not received enough time between introduction and hearing to properly vet its application with KACSO members. KACSO would ask that the committee allow for more time and involvement with possible stakeholders.

Second, as written, HB 2426 would be a significant reduction in expected benefits for some seasoned and experienced CSO's. A possible effect of HB 2426 would be to encourage many experienced CSOs to file for retirement immediately to avoid the effects of the legislation. This will result in an immediate and unexpected loss of experienced staff for Court Services offices, at a time when caseloads and vacancies are already high. This abrupt loss of experienced CSO's could affect the public safety in the communities across Kansas where CSO's supervise offenders. Furthermore, HB 2426 changes the benefits at a late stage in many CSOs' careers. CSO's are dedicated public servants who deserve to have a reliable and predictable benefits package from the State. Passage of HB 2426 would abruptly change the rules of the game, resulting in the detrimental reliance and financial harm to our most experienced and valued CSO's.

Lastly, CSO's are already subject to policies on accrued leave. They have relied on these policies in making career and retirement decisions. If the committee chooses to advance HB 2426 at this point, KACSO would ask for its members to be excluded.

The mission of the Kansas Association of Court Services Officers is to challenge, educate, support and advocate for the membership by promoting fellowship and professionalism, providing relevant training opportunities and maintaining communication with all members. The organization will further this mission by encouraging collaboration with our Court Services Officers and professional organizations and by recognizing member excellence.

An American Probation and Parole Association Affiliate

KACSO thanks the committee for letting us provide written testimony on HB 2426 and respectfully requests that the committee not advance HB 2426.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Esquibel". The signature is stylized and written in a cursive-like font.

Chris Esquibel, President
Kansas Association of Court Services Officers



**State Employees Association
Of Kansas
P. O. Box 4091
Topeka, KS 66604
(785) 267-1515**

**Testimony before the House Committee on
Commerce, Labor & Economic Development
in Opposition to HB 2426**

Mr. Chair and members of the committee, my name is Gary Adkins and I am Executive Director of the State Employees Association of Kansas. Thank you for the opportunity to present testimony.

Today I speak in opposition to HB 2426. Case law, including at least three Kansas Supreme Court cases, provides that a contract exists between the state and KPERS members. This contract is protected under Article 1, Section 10 of the United States Constitution. Specifically, the courts held that when employees entered KPERS, they attained contractual rights which may not be eliminated or substantially changed by unilateral action. Any changes to the system must not disadvantage, or be detrimental to members.

Also, it should be noted that employees who may use accumulated sick and vacation leave in the calculation of final average salaries is dwindling. In 1993, the legislature removed the benefit for all new employees. Our research has shown that, as of 2013, about 25,000 members were eligible for this benefit and that number decreases by 3,000 to 4,000 every year. Furthermore, only about 20% of eligible employees use the benefit. As such, we estimate that the issue will become moot within the next six to eight years.

In summary, it is our opinion that this bill, as proposed, is in violation of the contract clause of the United States Constitution and the bill is unnecessary in that it seeks to address an issue that will soon go away.

Thank you for the opportunity to testify before you today.

Case Citations:

Shapiro v KPERS 216 Kan 353
Singer v. City of Topeka, 227 Kan 256
Brazelton v. KPERS, 227 Kan 443

THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS

Testimony in Opposition to House Bill 2426 – KPERS; definition of compensation for purposes of computing final average salary

To: Honorable Chairman Representative Mark Hutton
Members of the House Committee on Commerce, Labor, and Economic Development

From: Nolan Sunderman, Assistant to the City Administrator

Date: May 8, 2015

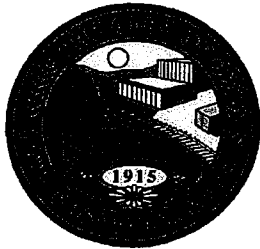
Thank you for the opportunity to provide comments in opposition regarding the proposed changes to KPERS.

The City of Prairie Village has several concerns regarding House Bill 2426. The proposed legislation would impact employees with the City of Prairie Village who have worked over 20 years with the organization. They have planned for their retirement based on the current formula calculation. The City could see a number of key staff members retire immediately as a result of this change. The untimely retirements will greatly impact our organization.

The proposed legislation also requires a vacation leave policy not to exceed a maximum accrual of 240 hours for KPERS employees. This will require a change in personnel policies and will substantially impact current and future employees. The City of Prairie Village examines the total compensation package including salary, benefits, and leave policies. One added benefit of longevity in the City of Prairie Village is the opportunity to accrue additional vacation time the longer an employee serves. The proposed change will eliminate a benefit for employees directly impacting compensation policies at the local level.

The City of Prairie Village supports local control. The proposed legislation is a directive for all local KPERS-member organizations requiring changes to their individual personnel and leave policies. For these reasons, the City of Prairie Village is opposed to HB 2426.

CITY OF EDWARDSVILLE



"All-American City – 1992"

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Edwardsville, KS 66113
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Fax (913) 441-3805

May 8, 2015

The Honorable Mark Hutton and Members of the House
Standing Committee on Commerce, Labor and Economic Development

Re: HB 2426 KPERS; definition of compensation for purposes of computing final average salary

Dear Mr. Hutton:

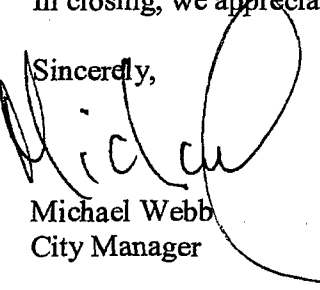
The City of Edwardsville has reviewed HB 2426 KPERS; definition of compensation for purposes of computing final average salary and is concerned with language in the bill. Specifically, we are concerned with language in new Section 1 that dictates to cities vacation benefits offered to its employees. Determination of benefits (vacation, sick leave, paid-time, etc.) is a local decision and should not be mandated by the State government.

However, we do understand that KPERS benefits are subject to legislative review, but would request the language in Section 1 be deleted or modified if it is the intent of the language to limit the use of accrued vacation time in the calculation of final average salary.

We are also concerned how this legislation may impact long term employees who are nearing retirement and fear it could lead to an exodus of well qualified employees from the municipal work force.

In closing, we appreciate consideration of our comments by the Committee.

Sincerely,


Michael Webb
City Manager

cc: Mayor & City Council

CITY OF SHAWNEE

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HOUSE COMMERCE, LABOR AND ECONOMIC DEVELOPMENT COMMITTEE HEARING ON HB 2426

Written Testimony in Opposition to HB 2426 on behalf of the City of Shawnee

By Katie Killen, Assistant City Manager

May 11, 2015

Honorable Chair and members of the House Commerce, Labor and Economic Development Committee:

As part of the 2015 Legislative Program, the Shawnee Governing Body adopted a KPERS statement that includes support of a system that helps attract and retain quality employees. In addition, the Shawnee Governing Body supports local control. The City believes this bill goes against both of these statements and would greatly affect the City of Shawnee due to the following stipulations contained in the bill.

1. This legislation changes the way final compensation is calculated because it does not allow all sick and vacation leave for employees hired before 1993 to count towards that final average compensation. This seems to be explained on page 3 lines 33-41.

First, this would dramatically affect key members of our staff who have worked 20+ years and planned for retirement based on benefits under the current calculation. Additionally, the City questions the legality of such a change as the legislature would be changing a vested right.

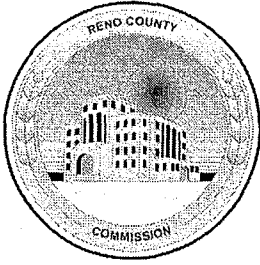
The City is becoming increasingly concerned, because of this legislation, at the number of unexpected retirements that could result and the immediate costs associated. Not only that, but these retirements seriously impact our organization, succession planning and level of service for our community.

2. The bill additionally dictates a vacation leave policy to cities participating in KPERS in setting a maximum accrual of 240 hours for KPERS employees.

The City of Shawnee looks at total compensation (salary + benefits, including leave time policies) when setting our compensation policies in trying to recruit and retain employees. This section of the bill overreaches into cities compensation practices. It should be left to individual cities to determine, through their governmental structures, how they want to handle their leave time practices.

For these reasons, the City of Shawnee is opposed to HB 2426. Thank you for your time and consideration.





COUNTY ADMINISTRATOR
GARY MEAGHER

RENO COUNTY
206 West First Ave.
Hutchinson, Kansas 67501-5245
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Fax: 620-694-2928

Testimony on HB 2426
House Committee on Commerce, Labor and Economic Development
By Gary Meagher, County Administrator
May 11, 2015

Chairman Hutton and members of the committee, thank you for the opportunity to submit written testimony as I strongly urge you to not support HB 2426. This is the KPERS legislation that changes the computation of final average salaries for members that joined before July 1, 1993. I am not able to attend the hearing today, but I wish to express my concerns on behalf of the KPERS members employed by Reno County that will be affected if this legislation become law.

Reno County has 389 employees when fully staffed, of which 40 are members of KPERS that joined before 1993. We consistently have eight to sixteen positions open at any given time. Many of the positions are vacant for many weeks because we struggle to fill positions. We have had one department director position open for over two years because there are so few people in this region with the required skills and we are not able to compete with the private sector salaries for a person that has the experience that is needed.

When I began my career in local government I soon realized that I could earn more money in the private sector, but the public sector offered good retirement benefits. Over the last several years that has changed. The changes in KPERS benefits over the last few years have made it very challenging to attract and retain qualified and experienced employees. The latest legislative proposals have spurred a record number of employees to contact our Human Resources Department to inquire about their retirement benefits. This includes many highly skilled employees and senior managers.

As an administrator, I am very concerned that if HB 2426 becomes law, many of our senior employees will exercise their retirement option, soon after. Many of these people hold high ranking, or highly skilled positions within our organization, and they have a wealth of institutional knowledge.

From a management perspective, it is much better to experience a slow, steady turnover of employees than to see some of the organizations most seasoned staff leave the workforce within a short period. After talking to several people, I strongly believe that HB 2426 has the potential to make this happen, if passed.

I think that it is important to point out that those who joined KPERS before 1993 are an ever shrinking group that have been promised, and have planned on, the benefit that will be taken away if HB2426 passes. I urge you not to change this benefit for these employees that have dedicated many years of their careers to public service in Kansas.

Thank you for your time and consideration.

Gary Meagher
County Administrator



KANSAS STATE COUNCIL OF FIRE FIGHTERS



Affiliated With

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS • KANSAS AFL-CIO • CENTRAL LABOR BODIES

Testimony of Jerry Marlatt

Re: House Bill 2426

My name is Jerry Marlatt. I am a retired Topeka Fire Captain. I worked for the Topeka Fire Department for 30 years. I am the immediate past president of the Kansas State Council of Fire Fighters and currently serve the organization and appear today representing the same. My appearance before the committee today is to speak in opposition of HB 2426.

WE believed the intent of the bill was not to include the Kansas Police and Fire Pension system (KP&F). New Section 1 does not refer to the KP&F pension system but under K.S.A. 74-402 refer to in the bill would indirectly affect KP&F members.

Therefore we would ask you to oppose HB 2426. Again I thank the committee for allowing me to appear before you today and will be happy stand for questions that the committee may have.

Respectfully

A handwritten signature in cursive script that reads "Jerry Marlatt".

Jerry Marlatt

Lobbyist KSCFF

House Committee on Commerce, Labor, and Economic Development

Testimony in Opposition to HB 2426

Kevin Florey: President; KS State Firefighters Assn (KSFFA)

May 11th, 2015

Good afternoon Chairman Hutton and fellow committee members. My name is Kevin Flory, and I am the President of the Kansas State Firefighters Association (KSFFA). Our association represents the approximately 16,000 members of the Kansas Fire Service both paid and volunteer firefighter and chief officer. I am writing today to ask you to oppose HB 2426.

Many of you might be asking why is the fire service would be opposed to this bill when the bill exempts KPF? Well, first of all, we have yet to get a clear direction that KPF members ARE NOT impacted by this bill by reference of some if its language. KPERS staff and legislators cannot agree on who exactly is included and who is not. That is the first issue we would respectfully ask be clarified for our membership.

Our next reason for opposition is that not only does this affect our full-time fire service members in the state, but a large percentage of our states' volunteer firefighters come from some type of public service background. Whether it be school teacher, KDOT employee, County worker, law enforcement, County ambulance service worker, etc,. As such, many of our 16,000 firefighters of this state have a stake in the KPERS system in one form or another. It is our position that this bill compromises their retirement benefits. It is the State going back on its word from 1993 when original language was passed that grandfathered in KPERS employees prior to that date who could get their leave accruals counted towards their final average salary. Employees after that date are entering the system fully aware that that benefit is not available to them. It is poor practice at best to wait until the eleventh hour of a person's career to change what they have believed their retirement benefits would be. In many cases they have not enough working time left to try and recover that lost dollar amount they were "promised" by the state in 1993 they would have available.

The Kansas State Firefighters Association would respectfully ask that HB 2426 not be approved by this committee. Thank you.

Kevin L. Flory

President, KSFFA



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

May 11, 2015

Neutral Testimony on HB 2426 House Commerce, Labor and Economic Development Committee

Stephanie Bunten
Office of Judicial Administration

Thank you for the opportunity to testify on HB 2426. Our office has received many calls from employees about the application of the various provisions of HB 2426 and its effect on retirement payments. In attempting to answer these questions, we have come across what appears to be technical inconsistencies in the bill. We recognize that the statutes contained in this bill are extremely complex and affect many different payments, including vacation leave, sick leave, and KPERS payments. We ask that particular attention be paid to two particular items in the bill: (1) new language relating to the four years before retirement in Section 2 on page 3 of the bill; and (2) Section 3 of the bill relating to sick leave payouts.

Sick Leave Accrual for Final Average Salary Calculation

Section 1 of HB 2426 caps the accrual of sick time for purposes of final average salary calculations at the amount accrued as of July 1, 2015. Thus, an employee who has accrued 100 days of sick leave as of July 1, 2015, would be eligible for a proportionate pay out upon retirement as set out in K.S.A. 75-5517. Moreover, if the employee was hired before July 1, 1993, the employee would be eligible to have the sick leave payout included in a four-year final average salary calculation for KPERS.

Section 2 of the bill, however, presents some technical concerns. The language contained on page 3, lines 33-41 of HB 2426 would appear to limit the use of sick, vacation, and annual leave for use in the final average salary calculation to only those that were earned within the last four years before retirement. This is because the language modifies the defined term "compensation" to include payment for accumulated sick, vacation, and annual leave, while simultaneously prohibiting the inclusion of "compensation" earned but not paid to the employee during the period four years prior to retirement in the final average salary. If read literally, an eligible employee could only use the leave time accrued as of July 1, 2015, in calculating the employee's final average salary if that leave time was earned within the four years immediately preceding retirement. In many cases, this would prevent the inclusion of leave accrued as of July 1, 2015, in the four-year final average salary calculation. Further, an employee could not possibly earn 100 days of sick leave in the four-year period, and 100 days is required for any payout under K.S.A. 75-5517, so the bill establishes a practical impossibility. Our understanding is that this is not the intended result of HB 2426.

If the intent of HB 2426 is, in fact, to limit the use of sick, vacation, and annual leave for final average salary calculations to only those hours that were earned within the last four years before retirement, then there is a concern that many experienced employees will look at retiring before July 1, 2015, the date that the provisions of this bill would go into effect. The loss of many experienced employees during this short timeframe would result in additional costs in finding and recruiting qualified employees, training a large number of new employees, and possibly paying for temporary help during the transition.

Sick Leave Payout

It also appears that Section 3 of HB 2426 would curtail the practice of compensating state employees for accumulated sick leave when they retire from the classified or unclassified service. Currently, each employee who retires with 100 days or more of accumulated sick leave is entitled to compensation for some portion of that accrued sick leave if the employee meets certain length of service requirements, as established in K.S.A. 75-5517(a). This entitlement exists regardless of whether the employee is eligible to have the compensation included in the calculation of final average salary for retirement benefit purposes. HB 2426 would alter subsection (a) in that statute to allow for such compensation only if an employee has accumulated 100 days or more of sick leave as of July 1, 2015.

It is our understanding that the modifications in this section were intended to affect the sick leave payout for purposes of final average salary calculations only. However, if read literally, our concern is that this provision would limit the actual sick leave payouts to only those employees who had accumulated 100 days or more of sick leave as of July 1, 2015. If this were to occur, many employees may choose to use their sick leave more frequently, resulting in additional employer costs in loss of employee productivity.

Thank you for your consideration of this testimony, and I will be happy to answer any questions you may have.



TESTIMONY OF THE KANSAS ASSOCIATION OF COUNTIES
TO THE HOUSE COMMERCE COMMITTEE
ON HB 2426
MAY 11, 2015

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to offer neutral testimony on HB 2426. The Kansas Association of Counties is a neutral conferee on this bill because we do not have a policy position on KPERS. However, we have questions and concerns to raise about the bill.

County officials have voiced the following concerns about HB 2426:

- New Section 1 creates a state-dictated policy on vacation leave for local government. Counties have their own personnel policies relating to accumulated leave and we would prefer local control on that aspect.
- New Section 2 appears to alter the KPERS final average salary calculation with relation to accumulated vacation and sick leave. This benefit only exists for a very small class of people: those who were employed in public service before 1993. The county human resource directors and the county counselors who have reviewed this section with me have all arrived at the conclusion that this section is confusing and we do not know how to implement it.
- County human resource departments are concerned about this bill's effects on their workforce. Due to low salaries, it is hard to recruit public employees, and HB 2426 will result in mass retirements of our most seasoned employees. A sudden upswing this year in retirements that require payouts by local government will result in unexpected costs that have not been budgeted.
- Our review of the bill indicates that the wording in Section 2 affects both KPERS employees and KP&F employees. We understand that may not have been the intended result but nevertheless, as worded, we think that may be the result.

This legislation has the potential to result in legal action against the state and to strain the public workforce; we do not believe it should be given serious consideration this late in the session. We request that the committee hold the bill for further study or instead seek an interim study on the issues presented in the bill. Thank you for your consideration.

Melissa Wangemann, General Counsel
wangemann@kansascounties.org
785-272-2585, ext. 307



To: House Committee on Commerce, Labor and Economic Development

From: Nicole Proulx Aiken, Legal Counsel

Date: May 11, 2015

Re: HB 2426

Thank you for allowing me to testify today on behalf of the League of Kansas Municipalities and its member cities. This bill would limit the amount of vacation time KPERS employees can accrue and change the KPERS and KP&F final average salary calculation for pre-1993 employees. The League opposes this bill for several reasons.

First, section 1 of the bill, which does not allow KPERS employees to accrue more than 240 hours of vacation time, preempts local control and is an unnecessary mandate on cities. The amount of vacation time earned, how much can be accrued, when it can be used, and how it is paid out upon an employee's termination or retirement has always been decided by an individual employer's personnel policy. The amount of vacation provided to employees varies from city to city. Some cities choose to cap vacation time at 240 hours or below. Other cities have found that a cap higher than 240 hours is needed to hire and retain the most qualified employees. Just like there is no state or federal law requiring employers to provide vacation time, there should not be a state mandate requiring employers to limit the amount of vacation time an employee can accrue. This decision should remain with the individual employer.

Second, changing the KPERS and KP&F final average salary calculation for pre-1993 employees places many vital city services at risk. The League has heard from many cities that are concerned about this legislation. The largest worry is that cities will experience a mass exodus of seasoned pre-1993 employees they rely upon to provide essential services. Many of these employees, especially in rural areas, cannot easily be replaced. Citizens will likely see a disruption in services as qualified, competent employees quickly retire to avoid the effects of this bill.

For these reasons, the League asks this Committee not to report HB 2426 favorable for passage. Thank you again for allowing me to testify today.



Rich Vargo
County Clerk
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May 11, 2015

The Honorable Mark Hutton, Chairman
House Committee on Commerce, Labor & Economic Development
Capitol Building, Room 582-N
Topeka, KS 66612

Re: H.B. 2426 - Testimony in Opposition

Dear Chairman Hutton and Members of the Committee:

As the Human Resource Manager and KPERS Designated Agent for Riley County, I must oppose H.B. 2426. Riley County's employment data demonstrates why passage of H.B. 2426 is a very bad idea. It directly harms Riley County employees. It also directly harms our organization in its role as an employer.

As of May, 2015, Riley County's KPERS membership and retirement eligibility breaks down as follows:

- 204 employees are in a KPERS eligible position
- 145 employees are members of KPERS 1 (72%) – These employees were members on or prior to July 1, 1993
- 21 KPERS1 employees are eligible to retire TODAY (14% of KPERS1)
- 7 KPERS1 employees are eligible to retire within one year (5% of KPERS1)
- Of the 28 employees eligible to retire now and within one year, 14 are in upper or department head level management positions (50% of 28 employees)

These numbers reflect what valuable resource long-term employees are to Riley County. Riley County has maintained a stable workforce for years, in part, because the KPERS retirement system has rightly encouraged members to commit to a long career in public service. Despite the fact long-term employees have had to make mandatory payroll contributions to KPERS for decades in return for their promised retirement benefits, employees have maintained a sense of security with their retirement. KPERS' fair level of benefits and its rational benefit calculation method has provided Riley County a strong recruitment tool. This has enabled us to attract and retain employees for the long term.


But if H.B. 2426 becomes law, I anticipate that four of our department heads, and six upper management employees will consider retiring prior to July 1, 2015. Their abrupt departure will disrupt succession preparations, because a significant amount of experience and institutional knowledge will go out the door with them. Riley County will also need to alter its personnel policies to account for H.B. 2426's broad 240 hour "cap" on all accumulated leave. I believe we will not be able to attract the long-term talent we want in our staff without the current Riley County personnel

policy on accumulated leave. Current Riley County policy allows long-term employees to accumulate leave payable up to a maximum of 376 hours. That is a local benefit that is important to current and prospective employees. It improves the pool of applicants from which we can choose.

Significantly changing the KPERS retirement benefit calculations now will force our retirement-eligible employees to make a HUGE career/life decision. It is likely some will choose to retire as soon as possible after July 1, 2015 in order to minimize the amount of their leave earned after that date which will be uncompensated by KPERS. Without H.B. 2426's change to the compensation rules, Riley County might otherwise have had the benefit of several more years of their on-the-job experience.

I respectfully request that you not approve H.B. 2426, because of the harm it will cause Riley County employees. A significant number of our employees (72%) have made mandatory contributions to KPERS for years. Please do not deprive them of the benefit of the retirement planning they have already done through their financial support of KPERS.

Sincerely,

A handwritten signature in black ink that reads "Cindy Volanti". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Cindy Volanti, Human Resource Manager
KPERS Designated Agent for Riley County

May 8, 2015

The Honorable Mark Hutton, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse Room 521-E
Topeka, Kansas 66612

RE: HB 2426; Testimony of Peter J. Fogarty, President FOP State Lodge

Dear Chairperson Hutton and Members of the Committee:

Thank you in advance for your consideration of my written testimony in opposition to House Bill 2426. My name is Peter Fogarty, and I am the President of the Kansas State Lodge of the Fraternal Order of Police. I have worked as a police officer for over 30 years in Kansas City, Kansas. On behalf of all the Lodges throughout the State of Kansas and its some 3,200 members, I am writing to express our strong opposition to this bill.

HB 2426 seeks to change the definition of compensation that has been in place for more than 20 years, and seeks to establish limits on the accumulation of sick and vacation leave. My members have devoted their entire adult lives to the service of their community. They have earned these benefits through personal and professional sacrifices. The State of Kansas and the communities they served have provided these benefits as part of their overall compensation for devoted police work. They believed that at the time of their retirement they would receive the retirement that they have earned and that was promised to them. They have relied on these benefits to allow them to retire with dignity and some level of financial stability.

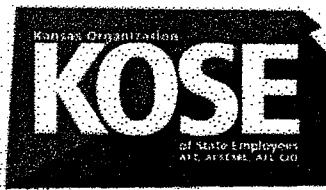
These changes would only effect law enforcement officers hired on or before 1993 and as such, this bill seems to single out the most tenured officers and pull the proverbial rug out from under them at the final hours of their careers. As the fiscal note provided to the Committee indicates, the alleged savings to the retirement system is speculative at best. In reality there is likely no real financial gain if these changes are made. Furthermore, there will be added costs to implement these changes, as KPERS current systems would have to be modified to account for changes in the final average salary calculations. Additionally, this legislation, if passed, will undoubtedly prompt

litigation that would not be necessary but for these changes. All of this suggests that this bill is a misguided approach and is an affront to long-tenured, devoted and loyal men and women of law enforcement, who have given a great deal to the citizens of Kansas. We ask you to vote against the passage of this bill.

Thank you for your time in reviewing my testimony. I urge you to vote against the passage of HB 2426.

Sincerely,

Peter J. Fogarty
President, FOP State Lodge



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Testimony IN OPPOSITION to HB 2426

Before the House Committee on Commerce, Labor, and Economic Development

Submitted By: Rebecca Proctor

Executive Director, KOSE

May 11, 2015

Chairman Hutton 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 HB 2426.

This bill was proposed to eliminate so-called "pension spikes," Representative Lunn's term for the ability to increase a monthly pension benefit by including pay for longevity, holiday pay, compensatory time, and pay outs for sick and vacation leave. This bill, as drafted, impacts only those who became participants in KPERS before July 1, 1993 or were in a waiting period as of July 1, 1993. In other words, this bill targets those employees with twenty-two or more years of service, a group already shrinking in size.

Very honestly, this is a slap in the face to long-serving state employees. If there was a "problem" here, it was corrected back in 1993. What this bill does is go to those long-serving employees still with the state and take away yet another benefit. Keep in mind state employees last had an across-the-board pay increase in 2009. From 2009 to the present, employee contributions for both retirement benefits and health benefits have increased. The result is a de facto pay cut in net pay.

In March, this committee heard testimony on HB 2391, the HR Modernizations bill. This committee chose to amend out the changes to longevity payments contained in that bill, so as not to penalized long-term employees. HB 2426 imposes an even worse penalty on long-term employees than HB 2391 did.

In many State agencies, employees are receiving written counseling documents for not banking enough sick leave. Several agencies, especially those with 24-7 operations, are requiring employees to bank 60-70% of the potential sick leave that could be accrued

(based on years of service). The reason? The agencies want to insure employees have enough time to cover catastrophic health events. As an example, one employee with three weeks of sick leave was told the agency would consider those three weeks a “near zero” balance because it was a small portion of the total an employee with twenty-five years of service could have accrued.

So, you have employees who are being encouraged by their agencies to bank large amounts of sick leave. Most long-term employees do not have a problem with banking that time because they know they can include that banked time in their final average salary calculation. If you eliminate the ability to bank sick leave for KPERs purposes, there is less incentive for these employees to keep that time banked and more incentive to use the time.

Employees using large banks of sick leave can create tremendous problems for the employer. While the employee is on sick leave, the employee’s position is not open or empty. It is filled by, and must be held open for, that employee. Accordingly, there can be many, many weeks where an employee is off of work using their banked sick time and shifts must be covered by other employees, resulting in significant unbudgeted overtime.

Additionally, earlier in the session the pension committees considered a deferred retirement option for public safety positions. The deferred retirement option was a way to incentivize retirement-eligible individuals for staying on the job. The reason? Positions are becoming harder and harder to fill, so it is important to keep employees on the job longer.

This bill does nothing to incentivize employees to stay on the job. Instead, it incentivizes those with large vacation or sick accruals to retire within the next four years (because it requires any vacation or sick used towards final average salary to be accrued in the four years prior to retirement) or to use all of their sick time prior to retirement.

With the current state of public employee pay and benefits in Kansas, the last thing a good policy maker should do is encourage even more people to leave state service.

Finally, there is an issue of fundamental fairness. This bill takes away the right of long-term state employees with twenty-two or more years of service to use their rightfully earned and accrued vacation and sick time towards their retirement benefit. However, Kansas legislators have their KPERs benefits calculated based on a final average salary that annualizes session pay. Instead of receiving benefits based on actual yearly pay, legislators are credited with an average state salary of over \$80,000.00 per year. I fail to understand how counting earned vacation and sick time is considered a “spike” but turning a ninety-day salary into a 365-day salary is not.

Budgets should not be balanced on the backs of state employees. We are talking about the people who maintain our highways, man our correctional facilities and state hospitals, clean this beautiful statehouse, and keep the daily business of our state running. They don’t deserve yet another attack on the few benefits they have left. Please vote against HB 2426.

Thank you for your time and I am happy to answer any questions you may have.