

TESTIMONY OF

Molly Herrington, Chief People Officer, Human Resource Management Services

Good morning, Chairman Wobbema and committee members. My name is Molly Herrington, Chief People Officer and Director of Human Resource Management Services (HRMS) Division of the Office of Management and Budget (OMB). OMB opposes SB 2350.

SB 2350, which exempts performance and disciplinary records for three years or until termination and prolongs internal investigation lengths to 180 days, poses several risks to state agencies.

State agencies rely on these records for informed hiring decisions. Without access, agencies could unknowingly hire individuals with a history of poor performance or misconduct. While law enforcement agencies retain access, other critical agencies, such as Corrections and Rehabilitation, Health and Human services, and Transportation, also need this information to protect the public.

By making these records exempt, which is discretionary to the entity, discretionary disclosure could also lead to unnecessary and increased litigation, as selective record disclosure may result in claims of retaliation, discrimination, interference with contracts or employment, or unfair treatment. Administratively, this bill complicates HR processes, requiring agencies to track records based on employment status and effective dates, creating inefficiencies and compliance challenges.

Functionally, this bill is difficult to apply and will be applied differently across the public entities creating inequities and confusion. There is no definition for "performance and discipline records." Are these just records related to performance or discipline which are included in the personnel file? Does this include emails, notes, or other communications that discuss an employee's performance or possible discipline? This could be differently interpreted across the entities creating an expectation of receipt of certain records by public members. It is unclear whether the internal investigation records are intended to be included in the definition of discipline or performance records.

Open records are a long-standing principle. While encouraging candid performance feedback is important, a three-year restriction is excessive. A more balanced approach would ensure agencies can continue sharing records for hiring and reference checks while preserving transparency. For that reason, I urge the committee to consider amendments that maintain access for state agencies to make informed, responsible hiring decisions. Without amendments, I recommend a do not pass to the bill in its current form.

Thank you for your consideration. Chairman Wobbema and committee members, this concludes my testimony. I would stand for any questions.