

2025 SENATE WORKFORCE DEVELOPMENT

SB 2350

2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2350
2/13/2025

A BILL for an Act to amend and reenact section 44-04-18.1 of the North Dakota Century Code, relating to an exemption from open records for employee performance and discipline records contained in personnel records.

10:20 a.m. Chairman Wobbema opened the hearing.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers

Discussion Topics:

- Role of Upward Mobility
- Merit Based Pay Rewards

10:20 a.m. Senator Paulson, District 3, Introduced SB 2350, testified in favor and submitted testimony #37609.

10:23 a.m. Mike Blessum testified in favor and submitted testimony #37209.

10:28 a.m. Herold Stewart, City Manager, City of Minot, testified in favor and submitted testimony #37244.

10:35 a.m. Stephanie Engebretson, Deputy Director, ND League of Cities, testified in favor.

10:38 a.m. Cecile Wehrman, Executive Director, ND Newspaper Association, testified in opposition and submitted testimony #37578.

10:48 a.m. Jack McDonald, Lobbyist, Newspaper Association, testified in opposition.

10:52 a.m. Molly Herrington, Chief People Officer, Office of Management and Budget, testified in opposition and submitted testimony #37454.

10:58 a.m. Travis Engelhardt, Chief Human Resources Officer, ND Department of Corrections and Rehabilitation, testified in opposition and submitted testimony #37487.

11:02 a.m. Annique Lockard, Assistant Attorney General, Office of the Attorney General, testified neutral.

Additional written testimony:

Shawn Wenko, City Administrator, City of Williston, submitted written testimony in favor #37085.

Kristi Burgess submitted written testimony in opposition #37558.

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11:07 a.m. Chairman Wobbema closed the hearing.

Andrew Ficek, Committee Clerk



City Administrator
City of Williston
22 East Broadway
Shawnw@ci.williston.nd.us
701.570.5013

February 11, 2025

Senator Mike Wobbema
Chairman, Senate Workforce Development Committee
North Dakota State Senate
11829 31st Street SE
Valley City ND 58072

Subject: Support for Senate Bill 2350 – Exemption of Employee Performance and Discipline Records from Open Records

Dear Senator Wobbema,

I am writing to express my strong support for Senate Bill 2350, which seeks to exempt employee performance and discipline records contained in personnel files from open records requests. As the City Administrator for the City of Williston, I have witnessed a rising trend in the misuse of the Freedom of Information Act (FOIA) as a tool for retaliation, public shaming, and the overall fostering of discord within our community—particularly through social media journalism.

Of particular concern is that many of the FOIA requests targeting employee discipline records do not serve the public interest in any meaningful way. Instead, they have been weaponized to expose minor infractions of citywide policies that hold no legitimate benefit for public disclosure. The overwhelming majority of disciplinary actions processed by my HR department involve minor policy infractions—issues that should remain internal to protect employee privacy and to maintain a functional and fair working environment. Publicly releasing these records, particularly in today's social media landscape, has resulted in unnecessary reputational damage to city employees, creating a culture of fear and discouraging internal accountability.

Additionally, I urge you to support an extension of the timeframe in which records related to an ongoing investigation remain exempt from public disclosure. The current 75-day exemption period is insufficient given the complexity and increasing demands of thorough investigations. Heavy workloads, coupled with more in-depth

procedural requirements, often extend the timeline necessary to ensure a fair and complete review. Increasing this exemption period to no more than 180 days would provide agencies the necessary time to conduct comprehensive and unbiased investigations without external pressures influencing the process.

A recent example within the Williston Police Department illustrates the risks of premature disclosure. A department-wide survey was conducted to gather employee input as part of an internal investigation. Prior to the conclusion of our investigation, social media journalists submitted a FOIA request for this raw data. As required by law, we released it after 75 days. However, the data—containing sensitive and speculative information—was taken out of context and widely circulated, severely jeopardizing the integrity of our investigation. This underscores the urgent need for legislative action to protect sensitive materials during ongoing investigative processes.

I strongly urge your support for SB 2350, as it will provide essential protections for employees, promote fair and thorough investigations, and prevent the exploitation of public records laws for retaliatory and harmful purposes. Thank you for your time and consideration of this critical issue. Please do not hesitate to reach out if I can provide additional insights or examples from our experiences in Williston.

Sincerely,



Shawn Wenko
City Administrator

Chairman Wobbema and members of the Senate Workforce Development committee. My name is Mike Blessum. I am a Minot resident and sitting alderman on the Minot City Council. I'd like to give you my perspectives on SB2350 and ask you for a do pass recommendation. These thoughts are mine and are not the official positions of the City of Minot or other council members.

In Federalist 72 Alexander Hamilton wrote **“the desire of reward is one of the strongest incentives of human conduct...the best security for the fidelity of mankind is to make their interests coincide with their duty.”** In America, we believe that hard work and quality performance should be rewarded. The idea of upward mobility and delivering a better life for our kids is based on this concept. It is woven into the very fabric of our republic.

In my role on the Minot City Council, I am responsible for working with city staff leadership to develop the city budget – including programs and strategies for compensation plans. I believe it is imperative that we move away from the current practice of job grades and time in position as our primary factors in compensation. Moving to a merit based compensation model will allow us to reward our strongest performers while holding marginal performers accountable. This process, used throughout the private sector, is the key to controlling personnel costs at the local level.

In our last budget cycle we were asked to approve what was essentially an across the board pay increase of just over 7%. Through council action we were able to lower that amount to about 5%. That amount applied to all positions equally based on job grade and time in position, including those that may not be performing at satisfactory levels. This process must change to enhance the organizational culture and cost structure.

A major challenge with merit based pay is the open nature of public employee personnel records. City leaders are unlikely to give meaningful feedback to their employees when the performance evaluations and other coaching documentation are available through records requests. Employees can request the evaluations of their coworkers. This undermines the coaching process and makes a merit based pay plan much more difficult.

The North Dakota Supreme Court has ruled in City of Grand Forks v. Grand Forks Herald and then Hovet v. Hebron Public School District that personnel records of government employees are public records subject to records requests. They also made it clear in the decisions that the legislature had the authority to close the records through the law. That is what you are being asked to do with this bill. I would ask you to return a do pass recommendation on SB2350.

Thank you for your consideration. I would stand for any questions.

Mike Blessum

mblessum@min.midco.net

701-818-2000



February 11, 2025

Sixty-ninth Legislative Assembly of North Dakota
Bismarck, ND

RE: City of Minot Support for Senate Bill 2350

Dear Members of the Committee,

The City of Minot would like to express its support for Senate Bill 2350 introduced by Senators Paulson, Burkhard, Castaneda and Representatives Fisher, D. Johnston and Louser.

First and foremost, let the record show the City of Minot understands and is a strong advocate for public transparency. In most circumstances it is imperative the public have access to the records of their local government to ensure the public trust is maintained in the decision-making processes, operation of public services, and use of the taxpayer dollar.

It is the City's position, however, there are a few instances where opening government records results in unintended negative impacts and costs if provided publicly.

Recently the City of Minot has conducted some internal investigations and has experienced reluctance from City staff to participate due to current North Dakota open records laws. It is imperative during an investigation the organization be able to get all pertinent facts and information to properly assess the circumstances. This is prevented when staff do not want to be identified and/or quoted in an open record out of fear of retaliation by supervisors, the employing organization, or the general public. In addition, when an investigation is conducted the report usually includes a synopsis of information provided which may or may not be true or accurate and may at times include details of a personal nature of an employee that may not be relevant to the fulfillment of their work as a public servant.

In addition to the hesitancy of employees to participate, the City experienced significant challenges resulting from the 75 day timeframe allowing records relating to an internal investigation to be exempt from public records requests, as allowed in current State law. The City found itself in the position of not having completed the investigation but with the expiration of the 75 days records were becoming publicly accessible. This resulted the potential release of records that without the complete report could be publicly misinterpreted or construed. In addition, this applied significant pressure to expedite the completion of the report leading to potential errors and inaccuracies which could have been prevented with the time to appropriately review before finalization.

Another significant transition the City would like to make, which is potentially jeopardized by current open records laws, is implementation of merit based/performance based pay raise system for City employees. Any effective performance evaluation must include not only an assessment of the quality of work of an individual employee, but also some constructive feedback and goal setting for further improvement and professional growth. Even the most dedicated and best of employees can be encouraged to learn, develop, and do more. With employee evaluations being open public records supervisors and management are hesitant to implement a merit or performance-based pay system due to the potential of the public misconstruing employees as poor

performers when the system is trying to encourage a good employee to be even better. Exempting performance records from open records significantly diminishes this concern.

With regards to disciplinary records being open, the City has concerns regarding the potential challenges this creates also. It opens opportunities for citizens to potentially harass a city employee or public official. For a hypothetical example, does the public need to know that a heavy equipment operator was disciplined by the City for showing up late for work?

Finally, should the Legislature agree to approve the proposed amendment the local entity always has the ability to consider publicly releasing requested information that is exempt. The Minot City Council has done just this over the last couple of years, including pertaining to issues discussed in an executive session.

Given the above outlined concerns and reasoning, the City of Minot respectfully requests a **Do Pass** vote on SB 2350.

Sincerely,

Harold Stewart, Minot City Manager



Management
and Budget

Testimony in Opposition of
Senate Bill No. 2350

Senate Workforce Development Committee

February 13, 2025

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.

SENATE WORKFORCE DEVELOPMENT COMMITTEE
SENATOR MIKE WOBBERMA, CHAIR
February 13, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY IN OPPOSITION OF SENATE BILL 2350

Chairman Wobbema and members of the Senate Workforce Development Committee, I am Travis Engelhardt, Chief Human Resources Officer of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in opposition of Senate Bill 2350, which among other things proposes to designate public employee performance and discipline records as exempt.

Along with law enforcement and other state agencies, it is critical that the DOCR have access to public employee performance and discipline records when we do our preemployment background checks. We are required by federal Prison Rape Elimination Act (PREA) regulations to ask specific questions about any former jail or prison employee to ensure we are not hiring individuals who could be putting inmates and juveniles in our custody at risk. Further, as the DOCR provides an important public safety function which requires public trust in our ability to keep our communities safe, we must have access to performance and discipline records to ensure we are not hiring someone with a history of inadequate performance or even discipline that could disqualify them from serving in a public safety officer role with the DOCR.

Chairman Wobbema and members of the Senate Workforce Development Committee, we ask that you oppose or amend Senate Bill 2350 to include the DOCR along with law enforcement agencies, so that we also have access to performance and discipline records of public employees for preemployment background check purposes. I will stand for questions.

Chairman Wobbema and Members of the Workforce Development Committee:

I am writing to express my strong opposition to the proposed amendment aimed at closing public access to certain records of public employees. As a resident of North Dakota, I firmly believe that maintaining transparency within our government is essential for fostering public trust and ensuring accountability.

North Dakota's open records laws have long upheld the principle that government records and meetings should be accessible to the public, except where specific laws dictate otherwise. This openness allows citizens to understand how government functions are performed and how public funds are allocated.

The proposed amendment to close employee performance and discipline records is concerning. While I understand the intent to protect employee privacy, such a measure could inadvertently shield misconduct or inefficiency from public scrutiny. Transparency in these records ensures that public employees are held accountable and that any issues are addressed promptly.

Furthermore, exempting these records from public access could erode public trust. Citizens have a right to know how their tax dollars are being utilized and to ensure that public servants are performing their duties effectively. Limiting access to these records may lead to perceptions of secrecy and foster distrust in governmental operations.

In a recent article, it was noted that closing employee records could be helpful if performance-based pay is adopted. However, this perspective overlooks the importance of public oversight in performance evaluations, especially when taxpayer funds are involved.

I urge you to consider the long-standing values of transparency and accountability that our state upholds. Maintaining open access to public employee records is crucial for preserving public trust and ensuring that our government operates with integrity.

Thank you for your attention to this matter. I trust that you will make a decision that reflects the best interests of the citizens of North Dakota.

Sincerely,

Kristi Burgess

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Minot, ND 58703

701-240-7038

kburgess921@gmail.com

**Senate Workforce Development Committee
SB 2350 Testimony**

Chairman Wobbema and Committee members

My name is Cecile Wehrman. I represent the North Dakota Newspaper Association and the state's 73 newspapers.

We oppose SB 2350 because public servants work for the public, they're paid with tax dollars and that entitles the public to timely access to performance and disciplinary records.

We hold public servants to the highest standard, and people who become public servants know this when they accept a position.

While this bill may have been written as a result of a particular set of circumstances in a well meaning attempt to prevent harm in cases of wrongful accusations, it would also provide cover to those employees who abuse the public's trust -- shielding them from scrutiny for three years.

As someone who has reported the news for 40 years I know I cannot even conceive of the potential ways a bill like this might thwart legitimate inquiry. In a 40 year career covering issues involving public servants I can still be surprised by a set of circumstances none of us standing here in this room today can think of.

What this bill appears to have the potential to do, however, is to shield a bad actor from public scrutiny, potentially allowing a dysfunctional situation to be hidden from the public if it never becomes the subject of investigation.

There are any number of cases in which public scrutiny may become the very mechanism that applies the pressure that finally separates a bad actor from public service.

The law already has checks and balances. People are innocent until proven guilty. Wrong accusations will occur but there are already processes in the law to protect against those situations. While well meaning, this attempt to protect the innocent has the potential to give a pass to people who should not be entitled to such protection.

In a few weeks, the nation will celebrate Sunshine Week, an observance celebrating the public's access to open records. It's called sunshine week because sunlight is the great disinfectant. Open records illuminate the truth. Much as we want to protect the innocent, the public is ill served when that protection also has the potential to obscure the record of the guilty. We urge DO NOT PASS.

Good morning Chairman Wobbema and members of the Workforce Development Committee. For the record, my name is Senator Bob Paulson from District 3 in Minot. I'm here to introduce SB 2350.

The primary intent of SB 2350 is to exempt, at least for a time, performance and discipline records from the open records section of code, to enable movement to a merit-based compensation model which allows for rewarding above average performers while holding marginal performers accountable. This process, used throughout the private sector, is beneficial in controlling personnel costs at the local level.

A major challenge with merit-based pay is the open nature of public employee personnel records. I will bless you with a quick Navy story. When I was the Maintenance Officer in a squadron, I had a young man with a lot of potential who was making some less than optimal decisions in his personal behavior. I brought him in with his division chief for written counseling. It was pretty direct, negative counseling, and he hung his head and mentioned that his next eval probably wouldn't look too good. I told him, "I'm going to put this in my desk drawer, and only you, the chief and me are going to know about it. If you square your act away, you won't hear about it again. But if you screw up like this again, you'll see this and one just like it or worse in your personnel record." He took the counsel to heart and went on to do very well.

Mr. Chairman and members of the committee, I can't imagine trying to be a leader of people if I knew that everything I put in writing would be available to be read by the entire unit. That would have severely tied my hands.

Similarly, city leaders are unlikely to give meaningful feedback to their employees when the performance evaluations and other counseling documents are available through open records requests. Employees can request the evaluations of their coworkers. This undermines the personal development process and makes a merit-based pay plan much more difficult to enact. Even in raising kids, I try to follow the model of "praise in public, criticize in private". I think that works well in leadership as well, but with the open records law as currently written, it is impossible.

There are folks who will testify behind me who will explain the specifics better than I can. Mr. Chairman that concludes my testimony and would ask for a Do Pass and I will stand for any questions.

2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2350
2/20/2025

Relating to an exemption from open records for employee performance and discipline records contained in personal records.

10:21 a.m. Chairman Wobbema called the meeting to order.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers.

Discussion Topics:

- Internal Investigation Timelines
- Transparency and Employee Privacy

10:29 a.m. Annique Lockard, Assistant Attorney General at Attorney General's Office, answered committee questions.

10:32 a.m. Senator Larson moved Do Pass.

10:32 a.m. Senator Powers seconded the motion.

Senators	Vote
Senator Mike Wobbema	N
Senator Michelle Axtman	N
Senator Josh Boschee	N
Senator Diane Larson	Y
Senator Michelle Powers	Y

Motion failed 2-3-0.

10:33 a.m. Senator Axtman moved Do Not Pass.

10:33 a.m. Senator Boschee seconded the motion.

Senators	Vote
Senator Mike Wobbema	Y
Senator Michelle Axtman	Y
Senator Josh Boschee	Y
Senator Diane Larson	N
Senator Michelle Powers	N

Motion passed 3-2-0.

Senator Wobbema will carry the bill.

10:34 a.m. Chairman Wobbema closed the hearing.

Senate Workforce Development Committee

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Andrew Ficek, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2350 ([25.1265.03000](#))

Workforce Development Committee (Sen. Wobbema, Chairman) recommends **DO NOT PASS** (3 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2350 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.