

TESTIMONY OF

Lisa Kudelka, Director of Operations, Human Resource Management Services (HRMS)

Chairman Burkhard and members of the Senate Political Subdivisions Committee, I am Lisa Kudelka, Director of Operations, HRMS within the Office of Management and Budget (OMB). I am here to testify in support of Engrossed HB 1349 and offer amendments to section 2 of the bill, which amends and reenacts section 44-04-18.27 of the North Dakota Century Code (NDCC) relating to applications for public employment.

SB 2069 which passed the Senate, also amended NDCC 44-04-18.27. SB 2069 was heard before Senate Government and Veterans Affairs prior to HB 1349 being introduced. After HB 1349 was amended and passed out of the House, it was recognized SB 2069 and section 2 of HB 1349 would have to be reconciled. Amendments to SB 2069 were offered before House Government and Veterans Affairs, but it was determined that the better approach was to amend section 2 of HB 1349. Consequently, House GVA recommended a Do Not Pass on SB 2069 and the bill was defeated on March 17, 2021.

Attached to this testimony are proposed amendments as well as a marked-up version of section 2 amending NDCC 44-04-18.27. The first 4 amendments we are proposing, lines 17 through 21, as well as the last one on line 29 striking the last sentence of NDCC 44-04-18.27, were initiated by the Senate Government and Veterans Affairs Committee in addressing SB 2069. We supported those amendments to SB 2069 and ask that those amendments be incorporated into HB 1349.

The primary substantive difference between SB 2069 and section 2 of HB 1349 is that SB 2069 retained the confidential nature of non-finalist job applications but removed the criminal penalty for disclosure, while HB 1349 would make non-finalist job application materials exempt records. The language we are proposing on line 29 acknowledges the records are exempt under the open records laws but would require a public entity to adopt a policy on how it will handle non-finalist application materials and communicate that policy to prospective job applicants. This will let individuals know how their application materials will be handled and encourage people to apply for public employment.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for Engrossed House Bill 1349 with the suggested amendments. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2069

Page 1, line 17, after “are” overstrike “confidential, except records related to finalists are open to the public after” and immediately thereafter insert “Exempt. Once”

Page 1, Line 18 after designated insert “, the applications and related records of the finalists are open to the public”

Page 1, line 20 overstrike “confidential” and immediately thereafter insert “exempt”

Page 1, line 20 after “applications.” Insert “A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity’s policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised.”

Page 1, Line 23 remove “Section 12.1-13-01 does not apply to confidential records under this section.”

PROPOSED ENGROSSED SENATE BILL NO. 2069 WITH HOUSE AMENDMENTS

SECTION 1. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

~~If a~~Upon the close of an application period, a public entity or any person delegated authority by a public entity to review applications or make hiring decisions ~~receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three~~may designate one or more of the qualified applicants as finalists for further consideration before the public entity or other person ~~may issue~~issues an offer of employment to fill the position. However, if the public entity or other person ~~does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist.~~ The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after~~ exempt. Once the finalists are designated, the applications and related records of the finalists are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential~~ exempt applications. A public entity shall not release exempt records under this section except pursuant to written policies governing the use and dissemination of such records. A public entity shall provide a copy or other notice of the public entity's policies governing use and dissemination of applications to prospective job applicants at the time a position is opened or advertised. ~~If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public~~Section 12.1-13-01 does not apply to confidential records under this section.