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Public Testimony on SB 37 - Problems and Solutions

Chairman and Honorable Members of the Committee,

I am submitting this testimony regarding SB 37, which aims to address performance evaluations and accountability within state agencies. While the bill offers an important framework for transparency and efficiency, several significant issues need to be addressed to ensure its intended success. These issues are operational, legal, financial, and equity-related, and they require careful consideration to avoid unintended consequences. Below are the identified problems along with proposed solutions.

1. Loopholes in Performance Definitions

**Problem:**

The bill lacks precise definitions for key terms such as "performance," "efficiency," "financial health," and "accountability," which could lead to inconsistent application and subjective interpretation across agencies, resulting in legal challenges and confusion in implementation.

**Solution:**

Introduce clear, detailed definitions for each term to ensure uniform application across all state agencies. This will help prevent misinterpretations and ensure consistent, fair implementation.

2. Lack of Clarity in Reporting Criteria

**Problem:**

The reporting criteria for agency performance are too vague, leaving too much room for subjective evaluation. This vagueness could result in uneven implementation and minimal compliance by some agencies, undermining the bill's goals.

**Solution:**

Introduce specific, measurable performance and financial benchmarks that agencies must meet. These should be tailored to the functions of each agency to ensure that performance is evaluated based on appropriate, clear standards.

3. Overburdening of State Agencies

**Problem:**

Excessive reporting and performance evaluation requirements may burden state agencies with additional responsibilities, diverting resources from core missions and critical services.

**Solution:**

Implement a phased approach for the bill's requirements, allowing agencies to gradually adjust. Provide adequate financial and logistical support to help agencies meet the new demands without compromising their core functions.

4. Risk of Administrative Overreach

**Problem:**

The bill could enable excessive executive oversight or interference, undermining the autonomy of state agencies. Overly stringent performance criteria could lead to micromanagement that disrupts the effectiveness of agencies.

**Solution:**

Include provisions for legislative oversight or consultation with relevant stakeholders before executive intervention in agency operations. This will create necessary checks and balances and prevent executive overreach.

**5. Focus on Short-Term Goals Over Long-Term Sustainability**

**Problem:**

The bill may prioritize short-term financial performance over long-term sustainability and the public good. This approach could discourage innovation and long-term planning, particularly in areas like environmental stewardship or workforce development.

**Solution:**

Ensure that performance evaluations balance short-term financial metrics with long-term goals, including environmental sustainability, social equity, and workforce development.

**6. Potential for Bias in Performance Assessments**

**Problem:**

The performance assessment system may rely on biased or flawed metrics, focusing too heavily on financial outcomes at the expense of other important factors like social impact, environmental sustainability, or employee welfare.

**Solution:**

Incorporate multiple forms of evaluation, including qualitative metrics such as community feedback, environmental impacts, and employee satisfaction. This will provide a more holistic and unbiased assessment of agency performance.

**7. Exclusion of Tribal and Local Governments**

**Problem:**

Tribal and local governments may not be adequately involved in the performance evaluation process, despite being directly impacted by state policies. This exclusion could deepen existing disparities and undermine inclusive governance.

**Solution:**

Mandate consultation with tribal and local governments during the creation of performance criteria and evaluations. This will ensure that their voices are heard and considered in the decision-making process.

**8. Lack of Transparency in Funding**

**Problem:**

The bill does not require agencies to disclose detailed information about how funds allocated to them are spent. Without transparency, there is a risk of inefficient spending and mismanagement of state resources.

**Solution:**

Include a requirement for agencies to disclose detailed financial reports, showing how funds are spent in relation to their performance goals. This will increase transparency and hold agencies accountable for their use of public funds.

**9. Inability to Address Systemic Inequities**

**Problem:**

The bill does not sufficiently address systemic inequities within state agencies, such as disparities in resource allocation or services for marginalized communities.

**Solution:**

Ensure that performance evaluations include criteria addressing equity and the fair distribution of resources, particularly for underrepresented or marginalized groups. Agencies should be held accountable for reducing disparities in service delivery.

## **10. Weak Public Engagement**

**Problem:**

The bill's reporting process does not adequately involve the public in evaluating agency performance. Without public participation, the process may seem top-down and unresponsive to community needs.

**Solution:**

Create mechanisms for public participation in the performance evaluation process, such as public hearings, town hall meetings, or online platforms for citizens to provide feedback. This will make the process more transparent and accountable to the public.

## **11. Undefined Permitting Process**

**Problem:**

The bill lacks a clearly defined permitting process for agencies involved in implementing the performance evaluations. This uncertainty could lead to inefficiencies, delays, or conflicts among different entities involved in implementing the bill.

**Solution:**

The bill should establish a clear permitting process, with deadlines, responsibilities, and timelines. This will ensure that the permitting process is transparent, efficient, and non-discriminatory. Agencies must be held accountable for meeting these deadlines to avoid delays in implementing the bill's goals.

## **12. Potential Conflicts with Existing Statutes**

**Problem:**

The bill could overlap with or contradict existing laws governing agency operations, such as those related to transparency, budget allocation, or environmental protections.

**Solution:**

Conduct a thorough review of existing statutes and ensure that the bill is aligned with them. Address any potential conflicts or gaps in the bill's provisions, so it doesn't inadvertently undermine existing legal frameworks.

## **13. Lack of Legal Precedent**

**Problem:**

The bill does not provide sufficient consideration of relevant legal precedents, particularly when it comes to performance evaluation and accountability measures for state agencies.

**Solution:**

Incorporate references to established legal precedents and case law to ensure the bill adheres to legal standards. This will reduce the risk of litigation and legal challenges to the bill's provisions.

#### 14. Risk of Unintended Consequences for Marginalized Communities

**Problem:**

The bill's implementation could disproportionately affect marginalized communities if the performance metrics fail to account for the unique needs and challenges they face.

**Solution:**

Incorporate equity-centered performance criteria that address the specific needs of marginalized communities. This will help ensure that the bill's implementation does not exacerbate existing disparities.

#### 15. Insufficient Stakeholder Consultation

**Problem:**

The bill could be enacted without sufficient consultation with relevant stakeholders, such as advocacy groups, community organizations, and other entities that will be directly impacted.

**Solution:**

Mandate comprehensive stakeholder consultation before finalizing the bill. This will ensure that the perspectives of affected groups are incorporated into the bill's provisions.

#### 16. Limited Focus on Environmental and Social Accountability

**Problem:**

The bill emphasizes financial metrics at the expense of social and environmental outcomes. Agencies could be rewarded for financial success without being held accountable for their environmental or social impact.

**Solution:**

Expand the performance evaluation to include social and environmental benchmarks. Agencies should be evaluated on how they contribute to long-term sustainability and social equity, alongside financial health.

#### 17. Unclear Enforcement Mechanisms

**Problem:**

The bill does not clearly define enforcement mechanisms for non-compliance. Without these mechanisms, agencies might not face significant consequences for failing to meet performance standards.

**Solution:**

Define clear penalties for non-compliance, including financial penalties or reductions in funding. This will ensure that agencies are held accountable for failing to meet established performance benchmarks.

#### 18. Inconsistent Application Across Agencies

**Problem:**

Different agencies may apply the bill's performance criteria inconsistently, leading to disparities in how agencies are evaluated and held accountable.

**Solution:**

Ensure uniformity in the application of the bill's provisions by establishing a centralized oversight body. This body should provide guidance and monitoring to ensure consistent application across all state agencies.

#### 19. Potential Negative Impact on Innovation

**Problem:**

The bill could discourage innovation if agencies feel pressured to prioritize short-term performance metrics over creative problem-solving and long-term planning.

**Solution:**

Encourage innovation by including performance criteria that reward long-term planning and creative solutions. Agencies should be incentivized to think beyond immediate financial metrics and focus on lasting impact.

**20. Overreliance on Quantitative Metrics**

**Problem:**

The bill might place too much emphasis on quantitative performance metrics, such as financial outcomes, without adequately considering qualitative factors like employee morale or public satisfaction.

**Solution:**

Incorporate qualitative assessments into the performance evaluation system. This will ensure that agencies are held accountable for a broad range of factors that contribute to overall effectiveness.

While SB 37 is a commendable attempt to improve accountability and transparency within state agencies, the issues identified in this testimony underscore the need for additional refinement. Addressing these concerns—particularly the permitting process, lack of clear definitions, the exclusion of marginalized communities, and vague performance criteria—will help ensure that SB 37 is effective, equitable, and sustainable. By taking these steps, we can create a system of performance evaluation that is both transparent and truly accountable to the public.

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Thank you for your time and consideration

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