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HOUSE CIVIL JUSTICE COMMITTEE  
H.B. 238 Interested Party Testimony (written only)

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Good afternoon, Chairman Hambley, Vice Chair Patton, Ranking Minority Member Brown, and members of the House Civil Justice Committee. My name is Cheryl Subler, and I am the Managing Director of Policy with CCAO. Thank you for allowing me the opportunity to explain our staff thoughts on House Bill 238, which would make various changes to the Whistleblower statute. We will be working with the bill sponsors, Representatives Cera and Scherer, to see how our staff questions and concerns with provisions in the bill could be addressed, and thus are an interested party at this time. In the future, we may have additional thoughts after that process.

Whistleblower protections are an important provision in law, and protect workers who do the right thing of shining light on wrong doing. Yet, the statutory provisions should be carefully balanced, and the process of evoking these important protections should be clearly defined so that all parties get to the appropriate outcome.

One of the changes proposed by HB 238 would allow verbal reporting as a method to invoke the protections. This creates situations where there will be factual disputes about whether a report was made. We would like to further explore with the bill sponsors how to avoid “he said, she said” scenerios.

Another big change contained in the bill that we would like to further understand is the proposed change of venue for whistleblower complaints from the State Personnel Board of Review (SPBR) to court. This eliminates an administrative remedy that oftentimes is less expensive for all parties and replaces it with a civil action/lawsuit. In addition, the new proposed court provision provides that the court shall award attorney fees and costs.

The bill also adds acts that may constitute a waste of state or federal money as a condition to evoke whistleblower protections. This terminology is very broad and could open employers up to disputes over policy decisions. Some employees may believe some expenditures are a waste even if they are legitimate expenditures. The bill also proposes to add an abuse of authority or gross mismanagement of a



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program – all terms that are undefined. More context or definition around these terms would be helpful.

In addition, there are additional new terms or context added elsewhere in the bill which we would like to have further discussion with the sponsors. The bill also makes an employer responsible for violations of sub-contractors.

Thank you for the opportunity to share some of our CCAO staff questions and concerns. We look forward to continue working with the sponsors of HB 238.