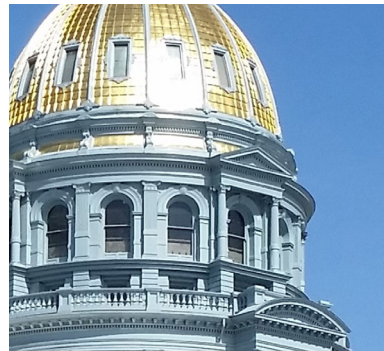


2018

Report to the Executive Committee
of the Legislative Council



Legislative Workplace Interim Study Committee



Prepared by Legislative Council Staff
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Legislative Workplace Interim Study Committee

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This report is also available online at:

<http://leg.colorado.gov/committees/legislative-workplace-interim-study-committee/2018-regular-session>

Committee Charge

Pursuant to Interim Committee Request Letter 2018-15, the Legislative Workplace Interim Study Committee was formed to accomplish the following:

- evaluate the findings and recommendations from the 2018 Legislative Workplace Study authored by Investigations Law Group (ILG);
- study how much taxpayer money has been expended to pay for third-party investigations to investigate workplace harassment complaints; and
- make recommendations to the Executive Committee of the Legislative Council regarding changes to the workplace harassment policy set forth in Joint Rule 38 of the Senate and the House of Representatives, the General Assembly's workplace harassment policies, legislative human resources (HR) staffing and structure, and how to promote cultural change regarding harassment in the legislative workplace.

Committee Activities

The committee held five meetings during the 2018 interim, and studied topics relating to the legislative workplace, including legislative workplaces in other states; HR department structure; informal and formal workplace harassment complaints and the resolution process; the formal investigation process; culture, training, and transparency; and estimated costs.

The committee heard presentations from, and engaged in discussion with, representatives from the following organizations:

- the National Conference of State Legislatures;
- the town of Parker;
- the University of Colorado Office of Institutional Equity and Compliance;
- the Colorado Department of Personnel and Administration;
- the National Women's Law Center;
- the U.S. Equal Employment Opportunity Commission; and
- the law office of Truhlar and Truhlar.

The following sections discuss the committee's activities during the 2018 legislative interim. The report concludes with recommendations from the committee for consideration by the Executive Committee of the Legislative Council, who in turn may adopt any or all of the recommendations or request bill drafts.

Background

At the end of 2017, the Executive Committee of the Legislative Council issued a request for proposals (RFP) to analyze and evaluate the existing legislative culture as it relates to workplace harassment. The RFP also required an analysis of existing workplace rules, policies, and procedures of the General

Assembly. During the 2018 legislative session, the Executive Committee of the Legislative Council contracted with ILG to conduct the analysis and evaluation.

On April 2, 2018, ILG issued a report entitled *General Assembly 2.0 A Transformational Approach to Legislative Workplace Culture: Analysis and Evaluation of the Colorado General Assembly's Culture, Policies, and Procedures as They Relate to Workplace Harassment*. The report includes a summary of findings and recommendations; a description of the legal, social, and historical background of workplace harassment; a summary of the steps in ILG's process used to gather and analyze data; ILG's recommendations for a next-generation plan; a draft of a new policy and set of procedures for addressing workplace harassment in the General Assembly; and reference sections containing details on the data gathered and observations on the data. The report can be found at: http://leg.colorado.gov/sites/default/files/the_report_final_2.pdf.

On April 26, 2018, the Legislative Council authorized the Legislative Workplace Interim Study Committee to convene during the 2018 legislative interim. The interim committee was directed to address the topics outlined in the committee's charge as it relates to the ILG report and make recommendations to the Executive Committee of the Legislative Council.

Current Structure and Process for Changes to Legislative Workplace Laws, Rules, and Policies

The Office of Legislative Legal Services (OLLS) staff provided an overview of legislative workplace laws, rules, and policies. Information was presented regarding federal and state laws, including Title VII of the federal Civil Rights Act of 1964 and Article 34 of Title 24, C.R.S., which address discrimination, harassment, and retaliation in the employment context. The OLLS staff discussed state laws that may need to be changed based on the recommendations included in the ILG report, including adopting laws to create a HR department for the legislative branch and revisions to the Colorado Open Records Act.

The OLLS staff reviewed Joint Rule 38 of the Senate and House of Representatives and the workplace harassment policy of the General Assembly. The committee received information regarding how Joint Rule 38 influences the workplace harassment policy. The OLLS staff outlined the procedures for revising Joint Rule 38 and the workplace harassment policy. The OLLS staff discussed the possible role the legislative culture committees, recommended in the ILG report, could have in reviewing future changes to the workplace harassment policy.

Committee recommendations. As a result of its discussions, the committee recommends revisions to state laws regarding open meetings, the Colorado Open Records Act, and Joint Rule 36 and Joint Rule 38 of the Senate and House of Representatives. The Summary of Recommendations and related exhibits, which begin on page 8 of this report, detail the committee's recommendations regarding changes to legislative workplace laws, rules, and policies.

Legislative Workplaces in Other States

Staff from the National Conference of State Legislatures (NCSL) presented to the committee on sexual harassment policies in other states. Material was also presented on procedures in other states for investigating legislators for sexual harassment.

Sexual harassment policies. According to a NCSL representative, approximately 125 bills have been introduced throughout the country to address legislative sexual harassment in the last year, and most of the bills address internal policies. Additionally, at least 13 states have set up committees to look at legislative workplace harassment policies. Specifically, NCSL staff referenced policy changes in Georgia, Illinois, Maine, and Maryland. The committee received information regarding the workplace harassment hotline set up in Illinois and efforts to address workplace harassment in Indiana, Virginia, and Washington. Efforts in California to address workplace harassment were highlighted, including the final recommendations of the California Legislature's Subcommittee on Sexual Harassment Prevention and Response issued on June 21, 2018, and the establishment of the Legislative Workplace Conduct Unit by the California Legislative Counsel.

The committee received information from NCSL staff about selected differences in 2018 sexual harassment policies and state policies from California, Maryland, New Mexico, and Wyoming. While discussing matters related to confidentiality of investigations, the presenters noted that California's policy allows for legislative investigatory documents to be released if claims are substantiated, whereas most other state policies require such documents to be kept confidential to the extent possible.

Legislator investigations. The committee received information regarding procedures for investigating a member of the legislature for sexual harassment. The information presented included an explanation of the various entities that investigate complaints, recommendations for punishment, and the composition of committees that impose consequences. The presenters noted that Maryland is the only state that has a review committee comprised of members from both chambers.

Human Resources Department Structure

The ILG report recommends that the Colorado General Assembly create an Office of Legislative Culture (OLC) led by a HR director who would oversee three positions, including an Equal Employment Opportunity (EEO) Officer, a workplace culture specialist, and a workplace culture ombudsman.

To better understand the ILG recommendations and their application in the legislative workplace, the committee heard testimony about the structure of HR departments from NCSL, HR administrators from the town of Parker and the University of Colorado – Boulder (CU), and the recently hired Legislative HR Administrator.

NCSL specifically discussed state legislature HR office organization in terms of location, jurisdiction, and scope, and the different models employed, ranging from no official HR office or personnel, to caucus- or chamber-based offices to a centralized office that serves all legislative personnel. The

HR administrators from the town of Parker and CU explained their respective organizational structures and the responsibilities of various positions, particularly in relation to harassment complaints and trainings.

The Legislative HR Administrator made recommendations to the committee about the size and employee relations function of the new office.

Committee discussion. The OLLS staff facilitated committee discussion regarding the HR structure recommended in the ILG report. Topics addressed during these discussions included:

- what HR functions should be handled by the new agency or department;
- whether a new legislative office should be created or if the HR functions and staff should be housed in an existing legislative staff agency;
- how many HR employees are necessary and where the HR office should be physically located; and
- establishing an anonymous hotline and its operation.

Committee recommendations. As a result of its discussion, the committee recommends that a new office named the Office of Legislative Workplace Relations (OLWR) be created in OLLS. The Summary of Recommendations and related exhibits, which begin on page 8 of this report, detail the committee's recommendations regarding the HR functions for which the staff of the proposed OLWR should be responsible, recommended office locations and staffing for the OLWR, and establishment of an anonymous complaint reporting tool.

Complaint and Resolution Process

The ILG report explains how workplace harassment complaints vary in their seriousness and complexity and recommends that there be informal and formal ways to handle or process complaints depending upon the circumstance.

Informal resolution process. Informal procedures, as outlined in the ILG report, are voluntary and confidential, but flexible enough to address situations in an expedient, problem-solving manner. The report stresses that the goal of an informal process is to stop or redirect behavior before it escalates. The ILG report recommends that the HR staff offer mediation, meetings, coaching, training, crisis management, referrals, and other remedial actions in these circumstances.

Formal complaint process. The formal procedure is a more traditional investigatory process that substantiates a complaint with evidence and an investigation. The ILG report outlines the formal resolution process and the roles of the HR administrator, EEO officer, and third-party investigators in the process. The ILG report recommends that an independent EEO advisory panel and legislative culture committees be created to address formal complaints filed against legislators and employees of the OLC.

Overall process. Other complaint and resolution recommendations applied to both the informal and formal process and proposed expanding the number of contacts or positions who may receive a report, including an anonymous hotline option, while centralizing responsibility for tracking purposes. Further recommendations touched upon confidentiality, anti-retaliation plans, notifications, timelines, privacy, and open records.

The committee heard testimony about the ILG recommendations from OLLS staff, the Legislative HR Administrator, and a representative from the Colorado Department of Personnel and Administration. This panel also discussed how complaints are handled in the private sector and other state agencies.

Committee discussion. The OLLS staff facilitated committee discussion regarding the ILG recommendations on the complaint and resolution process. Topics addressed during these discussions included:

- community safety, confidentiality, and overriding factors to elevate a complaint from informal to formal;
- lobbyists and Joint Rule 36, which addresses lobbying practices;
- mandatory or voluntary participation in a complaint investigation for employees, third parties, lobbyists, legislators, and staff; and
- composition, responsibility, and appointment of the independent EEO advisory panel and legislative culture committee to investigate complaints against legislators.

Committee recommendations. As a result of its discussion, the committee recommends establishing an informal resolution process; revising the procedures for formal workplace harassment complaints against nonpartisan staff, partisan staff, and legislators; and amending Joint Rule 36 of the Senate and House of Representatives on lobbying practices to address complaints against lobbyists. The committee also made recommendations regarding confidentiality related to the informal resolution process and formal workplace harassment complaints. The Summary of Recommendations and related exhibits, which begin on page 8 of this report, detail the committee's recommendations regarding the complaint and resolution process.

Culture, Training, and Transparency

The committee reviewed the ILG recommendations regarding culture, training, and transparency. Additionally, the committee heard from a panel of experts including representatives from the National Women's Law Center, the U.S. Equal Employment Opportunity Commission, and the law office of Truhlar and Truhlar. The panel discussed ways to improve workplace culture, what training works best, the role of that training, and the importance of transparency.

Culture. The ILG report includes the following recommendations regarding culture:

- defining the expectations for workplace behavior above legal compliance and committing to these higher expectations;
- empowering one of the newly hired OLC employees to implement the commitment to these higher expectations;

- providing tools to proactively meet the higher expectations; and
- offering training that reflects the General Assembly's vision for how its community will act, not just how it will not act.

The ILG report outlines other options to improve legislative culture, including creating additional protections for interns; creating a bicameral orientation for interns; and conducting positive outreach, training, team building, listening sessions, coaching, workplace assessments, and awareness campaigns.

In changing culture, the panelists highlighted the prominence of leadership in bringing about change in the workplace. The panel discussed elements to include in the respectful workplace policy, including having clear definitions, providing examples of harassment, and prohibiting bullying. The panel addressed developing a culture survey to improve workplace culture.

During its deliberations, the committee discussed developing a code of conduct. The ILG report highlights a document developed by the Kentucky Legislative Research Commission that contains a mission statement, vision statement, and values statement. The committee received codes of conduct from various Colorado executive branch agencies to review.

Training. With regard to training, the ILG report recommends requiring annual trainings for all members of the legislative workplace, which includes legislators, partisan staff, nonpartisan staff, legislative aides, student interns, lobbyists, vendors, custodians, security personnel, volunteers, and others. The ILG report recommends the following training requirements and opportunities:

- one orientation training session and an annual retraining session on respect in the workplace and anti-harassment policies for members of the legislative workplace and third parties;
- one orientation training session for legislators, directors, managers, and supervisors specific to their obligations as leaders;
- one additional training for student interns as part of the student intern orientation program;
- periodic voluntary assertiveness training; and
- additional specific training for complaint contacts and OLC staff.

Regarding training, the panelists suggested best practices for training. Those suggestions included making training mandatory for employees, providing training in small groups based on employee classifications, potentially hiring outside trainers, addressing both harassment and workplace culture in the trainings, and including role playing and bias awareness activities. The panel cautioned that training should not be the only tool used to change workplace culture.

Transparency. The ILG report outlines recommendations regarding annual reporting and review of the workplace policy. The annual report is to include the total number of complaints and the resolution of each complaint. According to the ILG recommendations, the report should be appropriately redacted to protect confidential personnel decisions and party identities. The ILG recommendations include having the OLC maintain a publicly available list of legislators who have attended mandatory and voluntary trainings. Finally, the ILG report outlines the process for the annual review of the workplace policy. The panel touched on the importance of transparency and

how it adds credibility to the process. The panel suggested that any reports must protect confidentiality by providing aggregated information.

Committee discussion. The OLLS staff facilitated committee discussions regarding the ILG recommendations on culture, training, and transparency. Topics addressed during these discussions included:

- whether there should be a separate workplace culture policy or if provisions of culture should be incorporated into the workplace harassment policy;
- whether there should be a workplace culture specialist in the HR office;
- what training should be offered to legislators, lobbyists, aides, interns, and partisan and nonpartisan staff; and
- whether to create and conduct awareness campaigns to reinforce the General Assembly's values and commitment to a respectful workplace.

Committee recommendations. As a result of its discussions, the committee recommends creating a workplace expectations policy, separate from the workplace harassment policy of the General Assembly; conducting awareness campaigns on the workplace expectations policy; conducting annual surveys on workplace harassment and culture; and conducting trainings on harassment prevention and the legislative workplace culture. The committee also recommends providing annual reports containing nonidentifying, statistical data on informal, formal, and anonymous complaints, as well as on the annual surveys. The Summary of Recommendations and related exhibits, which begin on page 8 of this report, detail the committee's recommendations regarding culture, training, and transparency.

Estimated Costs

Fiscal impact of ILG recommendations. Legislative Council Staff provided a memorandum to the committee estimating the preliminary fiscal impact of implementing ILG's recommendations. The memo identified the costs of hiring new employees in the newly created OLC; hiring a third-party ombudsman; creating an independent EEO advisory panel; establishing new standing committees to hear complaints against legislators; establishing an anonymous hotline; creating and administering new trainings; and other costs associated with establishing a new legislative office. The analysis estimated the total cost to be \$490,067 in FY 2019-20 and \$530,316 in FY 2020-21. The full memorandum can be found as Addendum A. However, the fiscal impact contained in the memorandum is not reflective of the fiscal impact of the committee's final recommendations.

Third-party investigation costs. Legislative Council Staff also provided a memorandum to the committee outlining the amount of money the General Assembly spent on third-party investigations related to workplace harassment. From FY 2013-14 to FY 2017-18, \$74,833 has been spent on third-party investigations related to workplace harassment complaints involving the General Assembly. The full memorandum can be found as Addendum B.

Summary of Recommendations

Prepared by the Office of Legislative Legal Services

As a result of the committee's activities, the committee made the following recommendations to the Executive Committee of the Legislative Council for consideration. This report indicates when recommendations were not unanimous.

I. **Structure of new human resources office:**

- A. The Legislative Workplace Interim Study Committee ("Committee") considered establishing the human resources office (the "Office") as a new service agency and also considered establishing it as part of either the Legislative Council Staff or the Office of Legislative Legal Services. The Committee recommends that the new human resources office be established as part of the Office of Legislative Legal Services ("OLLS"). OLLS has experience in some of the functions recommended to be assigned to the new Office, can offer legal advice to the Office, has current confidentiality requirements, and has experience offering assistance to all service agencies. While the Committee considered whether to adopt additional protections to insulate the Office from partisan issues, because the Office was placed under OLLS, the Committee recommends that no further protections are necessary.
- B. The Committee considered a broad range of human resources functions that could be assigned to the Office. The Committee believes that the Office should be responsible for the following functions for the legislative department:
 - a. Employee relations, including consultation regarding personnel issues and performance management, assistance with development of policies (i.e. employee handbooks), response to requests for information related to unemployment claims, and response to requests for information related to formal Equal Employment Opportunity or Colorado Civil Rights Division claims;
 - b. Overseeing an anonymous complaint reporting tool, as described in subsection I.F., below;
 - c. Receiving and resolving formal and informal workplace complaints, as described in sections II. through VI. below;
 - d. Drafting guidelines for appropriate accountability with a list of potential violations and potential consequences;
 - e. Cultivating workplace respect under a new workplace expectations joint rule and policy, as described in section IX. below;
 - f. Creating and conducting or overseeing harassment prevention training for members, staff, and third parties, as described in section X. below;
 - g. Handling complaints concerning the federal Americans with Disabilities Act.

- C. The Committee considered the number of employees necessary to fulfill the responsibilities assigned to the Office and determines that the Office will require at least two full-time employees.
- D. The Committee was concerned about the location of offices for employees of the Office. The Committee recommends that the Office have physical locations in both the Capitol and on the sixth floor of 1525 Sherman Street. To maintain privacy and confidentiality, the offices need to have doors opening directly into a public hallway so that persons may enter the office without going through another agency's front office.
- E. The Committee recognized that the new Office does not fulfill many of the duties generally served by a human resources office, such as payroll, compensation and classification, and benefits administration, and calling the Office the Office of Human Resources may lead to confusion. The committee recommends that the office be called the "Office of Legislative Workplace Relations". From this point on in these recommendations, "Office" refers to the Office of Legislative Workplace Relations.
- F. The Committee considered whether there should be an anonymous complaint reporting tool. The Committee was told that an outside anonymous tool could be established at a yearly cost of approximately \$12,000 (or possibly less given the potential for a government discount). Five of the six members recommended that such a tool be established. One member believed that anonymous complaints should not be accepted. The Office shall collect nonidentifying, aggregate, statistical data regarding anonymous complaints and shall annually submit a report to the General Assembly on anonymous complaints received during the previous calendar year.
- G. The Investigations Law Group ("ILG") report recommended that there be an ombudsperson within the Office. The Committee recommends that there not be a formal ombudsperson in the Office, but that the Office make available nonlegal advocates to both victims and respondents. Victims and respondents should also be allowed to choose their own attorneys at their own cost.

II. Persons who may receive complaints under the policies:

The Committee considered who should receive complaints under the workplace harassment policy or the workplace expectations policy. The Committee recommends that employees of the Office be the primary persons who may accept complaints; except that, if necessary, the director of the Office may designate a person of the opposite gender of the employees of the Office to accept complaints. The director of OLLS, or the director's designee of the opposite gender, would be able to accept complaints related to the conduct of the employees of the Office.

III. Informal workplace complaint resolution process:

- A. The ILG report recommended that there be an informal process for resolving workplace complaints. The Committee also heard that there had been informal

resolutions of such complaints previously. The Committee recommends that an informal resolution process be established.

- B. The informal process should be as flexible as possible and be open to any member, employee, or third party.
- C. The informal process is voluntary on the part of both the complainant and the respondent and should be handled within the Office with the goal of completing the process within thirty days after the parties agree to the process.
- D. During the informal complaint process, the Office shall offer practical remedial and protective accommodation measures to both the complainant and the respondent. The General Assembly shall pay for victim advocate services for complainants and navigator services for respondents. Such services include counseling and accompanying a party to interviews and hearings, but do not include representation or speaking for or on behalf of the party. A person providing victim advocate services or navigator services shall keep all information received confidential.
- E. At any time during the process, the complainant may initiate a formal complaint, as described in section IV. below.
- F. Statements made by a complainant or respondent during the informal process shall not be used against that person in a complaint or investigation under the formal process described in section IV. below.
- G. The informal process is to be confidential, except that:
 - a. While the Office is to maintain records, such records remain confidential and should be maintained by the Office for ten years or after the last party involved is no longer within the legislative workplace, whichever is longer;
 - b. If the Office finds a pattern of issues with a respondent under the informal process, the Office, following notice to the complainants when practicable, may disclose to the respondent's supervisor or caucus leadership the issues raised without disclosing the identity of any person involved in the process except for the respondent;
 - c. The Office shall collect nonidentifying, aggregate, statistical data regarding informal complaints and shall annually submit a report to the General Assembly on informal complaints received during the previous calendar year.

IV. **All formal workplace harassment complaints:**

- A. A formal workplace harassment complaint investigation will only be initiated with the approval of the complainant unless the Office determines that the actions alleged constitute an immediate threat to the safety of the workplace, such as:
 - a. Sexual assault;
 - b. Physical violence;
 - c. Threats of violence against a complainant or others;

- d. A repeated pattern or history of harassing behavior or other criminal behavior, either explicit or implicit; and
 - e. Four members agreed with the recommendation of ILG that retaliation should be handled as a formal complaint resolution process and one member thought it should be handled on a case-by-case basis.
- B. If a formal complaint process proceeds without the consent of the initial complainant, the identity of the complainant shall not be disclosed during the process, and it shall be considered retaliation if the complainant's identity is disclosed, unless otherwise permitted by law.
- C. Participation in a formal workplace complaint investigation, including as a witness, is:
 - a. Mandatory for partisan and nonpartisan staff, except for complainants;
 - b. Voluntary for members, but if a member does not participate in an investigation, the Office may report the lack of participation to leadership; and
 - c. Encouraged for third parties.
- D. Prior to meeting with a respondent, the investigator shall inform the respondent of the general nature of the allegations, but shall not provide the respondent with a copy of any complaint.
- E. The Office shall orally inform both the complainant and the respondent of the following and offer the information in writing, but shall not send the information to the party, except through a private email account designated by the individual that is not accessible by aides, interns, or other staff:
 - a. The process, including a timeline;
 - b. The party's rights and responsibilities, including the requirement or importance of maintaining confidentiality;
 - c. The prohibition on retaliation and the consequences, including that disclosing the identity of a party or witness may be considered retaliation unless the identity of that party or witness has previously been disclosed by others; and
 - d. The resources available to the party.
- F. The Office shall offer practical remedial and protective accommodation measures to both the complainant and the respondent. The General Assembly shall pay for victim advocate services for complainants and navigator services for respondents. Such services include counseling and accompanying a party to interviews and hearings, but do not include representation or speaking for or on behalf of the party. A person providing victim advocate services or navigator services shall keep all information received confidential.
- G. An anti-retaliation plan shall be offered to each party and to any witness and shall only disclose to others, such as leadership or the state patrol, the information necessary to implement the anti-retaliation plan. Four members believed that the policy should provide that retaliation includes either party releasing the identity of the other party

unless the party's identity has previously been disclosed by others. One member believed this should be determined on a case-by-case basis.

- H. Factual finding in an investigation shall be made based on a preponderance of the evidence. A finding of a violation of the policy would require both a finding that the complainant subjectively found the actions to be offensive and an objective finding that a reasonable person in the complainant's position would have found the actions to be offensive.
- V. **Formal workplace harassment complaints against nonpartisan staff:**
- A. All formal complaints against nonpartisan staff shall be handled by the Office. The Office may either conduct the investigation in-house or contract with another entity to conduct the investigation.
 - B. Investigatory report:
 - a. Three members recommended that the Office provide the complainant and respondent with an executive summary of the investigatory report. Executive summaries are to contain the factual findings of the investigation but shall not disclose the identity of the complainant, respondent, or any witnesses. Two members recommended that the parties receive a copy of the full, unredacted report.
 - b. Three members recommended that the Office provide the director of the nonpartisan office with a copy of the investigatory report with the names of the complainant and the witnesses redacted, and two members recommended that the Office provide the director of the nonpartisan office with a full, unredacted copy of the investigatory report.
 - C. Following the investigation:
 - a. The Office shall determine whether the facts establish a violation of the policy and recommend to the director an appropriate range of accountability;
 - b. The director shall impose the appropriate discipline;
 - c. If the director imposes a level of discipline outside of the range recommended by the Office, the Office may inform the Executive Committee of this fact.
- VI. **Formal workplace harassment complaints against partisan staff and members:**
- A. Committee to handle complaints:
 - a. All formal complaints against partisan staff shall be handled by a new committee that shall either direct that the Office conduct an investigation or contract with another entity to conduct an investigation. Four members believed that partisan staff should include aides, interns, and volunteers working for individual members and one believed that they should not be considered partisan staff.

- b. All formal complaints against members shall be handled by the new committee and the committee shall contract with an outside entity for the investigation.
- B. There was not consensus on the Committee on the makeup of this new committee:
 - a. Three members thought that the new committee should be composed of one member from each caucus appointed by the caucus's leadership and three additional, volunteer members appointed unanimously by the leadership of the four caucuses to include a human resources specialist, a victim's advocate, and an employment law attorney. These three members thought that having nonlegislative members on the committee appointed in a bipartisan manner would make the committee less political. They also expressed concern about having an even number of members on the committee because there would be no way to resolve a tie vote, which may mean that no accountability could be imposed.
 - b. Three other members thought that there should be separate committees for each chamber composed of three members from that chamber's caucuses appointed by the caucus's leadership. They recommended that leadership appoint members who were experienced, had the appropriate temperament for the duties of the committee, and were free from political or other concerns. These members opposed having nonlegislative members vote on issues related to members but would be willing to have the committee consult with experts retained by the committee.
- C. Investigatory report:
 - a. Three members recommended that the Office provide the complainant and respondent with an executive summary of the investigatory report containing the factual findings of the investigation; two members recommended that the parties receive a copy of the full, unredacted report; and one member recommended that the parties receive a redacted report.
 - b. Four members recommended that the Office provide the new committee with a redacted copy of the investigatory report not disclosing the names of the complainant or witnesses but identifying the witnesses by number, and two members recommended that the new committee receive a copy of the full, unredacted report.
 - c. Three members recommended that the Office provide the three highest ranking members of the caucus of the partisan staff person with an executive summary of the investigatory report; two members recommended that leadership from both parties receive a copy of the full, unredacted report; and one member recommended that leadership receive a redacted report.

- d. Three members also recommended that if the Committee finds that the report establishes a violation of the policy by a member, unless a complainant objects, an executive summary of the report disclosing the name of the respondent be a public document that the Office may disclose upon receipt of a request under the Colorado Open Records Act. If a complainant objects, the Committee will balance the request of the complainant with the need for transparency and openness in the legislative process.
 - e. In the case of the filing of a resolution for reprimand, censure, or expulsion:
 - 1. Three members recommended that the Office provide members of the chamber with a redacted copy of the investigatory report at which point the complainant and respondent would also be provided with a redacted copy of the report.
 - 2. Two members recommended that the members of the chamber receive a copy of the full, unredacted report.
 - 3. One member recommended that if a motion for reprimand or censure is filed, the chamber should receive a redacted report and that if a motion for expulsion is filed, the chamber should receive a full, unredacted report.
 - f. For new leadership, four members recommended that in November, prior to the start of the first general session, leadership from each caucus should meet with the Office and be briefed on any formal or informal complaints filed against partisan staff or members of that caucus, and one member thought that leadership from each caucus should receive redacted copies of any investigatory reports on staff or members of that caucus.
- D. Following the investigation:
- a. For a complaint against partisan staff:
 - 1. The new committee shall recommend to the staff person's immediate supervisor and caucus leadership whether it believes that the findings establish a violation of the policy and an appropriate range of accountability;
 - 2. The staff person's immediate supervisor, in consultation with caucus leadership, shall determine whether the facts establish a violation and the appropriate accountability; and
 - 3. If any party is not satisfied with the determination regarding a violation of the policy or the accountability, they may bring the issue to the attention of the new committee. Four members recommended that the new committee only review the actions of the immediate supervisor or caucus leadership and not the investigation. One member did not believe that any additional review was necessary.

- b. For a complaint against a member:
 - 1. The new committee shall determine whether the facts found in the investigation more likely than not establish a violation of the policy;
 - 2. If the new committee finds that the actions warrant reprimand, censure, or expulsion, the members of the committee who voted in favor of such discipline shall jointly introduce a resolution calling for such discipline;
 - 3. If the new committee finds that the actions warrant accountability other than that which would require a resolution, the committee shall inform the responding member of the recommended accountability and indicate that if the member fails to accept the accountability or fails to satisfy any conditions of the accountability, the committee may recommend that a resolution for reprimand, censure, or expulsion be filed.

VII. Complaints against a lobbyist:

The Committee recommends that Joint Rule 36 on Lobbying Practices be amended to add that it is a prohibited practice for a person engaging in lobbying to violate the workplace harassment policy or the workplace expectations policy.

VIII. Confidentiality:

- A. The Office shall include in all policies confidentiality provisions that must include:
 - a. The Office shall keep confidential all information received concerning inquiries and complaints under the workplace harassment policy or the workplace expectations policy to the extent permitted by law; except as necessary to conduct an investigation, implement remedial or protective measures, or when it determines that the actions alleged constitute an immediate threat to the safety of the workplace. The Office may disclose nonidentifying, statistical information on complaints under both policies, including information concerning any complaints received under the anonymous complaint reporting tool, an informal complaint process, or a formal complaint process.
 - b. Others:
 - 1. Partisan and nonpartisan staff shall maintain the confidentiality of all information received concerning inquiries and complaints under the workplace harassment policy or the workplace expectations policy;
 - 2. Pursuant to a joint rule, members are required to maintain confidentiality of all information received concerning inquiries and complaints under the workplace harassment policy or the workplace expectations policy and may be subject to another complaint under the

policy if they are found to have violated the confidentiality provisions of either policy;

3. All other parties are required to keep the investigation confidential to the extent permitted by law.

- B. The Office shall inform complainants and respondents of the importance of maintaining the confidentiality of all information received concerning inquiries and complaints under the workplace harassment policy or the workplace expectations policy.

IX. Culture:

- A. The Committee recommends that there be a separate workplace expectations policy that is aspirational rather than prescriptive. The policy should be established pursuant to a joint rule.
- B. The Office shall also prepare a document summarizing and specifying the core values of the legislative workplace for approval by the Executive Committee. The Committee recommends that the Office work with interested members, partisan and nonpartisan staff, and third parties in developing the document.
- C. The Office shall handle awareness campaigns on the workplace expectations policy, including training on the appropriate workplace culture.
- D. The Office shall conduct annual surveys on workplace harassment and culture to see what issues exist in the workplace. The Office shall prepare an annual report to the Executive Committee on its findings from the surveys that should not include any personally identifying information. The report may include recommendations for additional training or other steps to improve the workplace culture.

X. Training:

- A. For members:
 - a. The Committee recommends that training on harassment prevention and the legislative workplace culture be included in new member orientation. For returning members, annual training on harassment prevention should be provided and, if warranted by the annual surveys conducted by the Office, additional training on the workplace culture.
 - b. Four members believed that attendance at annual training should be recorded and that it should be a public document. One member did not think that attendance should be disclosed.
- B. The Committee recommends that training on harassment prevention and the legislative workplace culture prior to or soon after the start of the first session be mandatory for all new partisan and nonpartisan staff. Thereafter, partisan and nonpartisan staff are required to attend annual training on harassment prevention,

and, if warranted by the annual surveys conducted by the Office, additional mandatory training on the workplace culture shall be provided.

- C. Four members believed that training should be offered to third parties, but would not be made mandatory. One member did not believe that training for third parties was necessary.

XI. **Additional recommended changes to the workplace harassment policy:**

A. Disclosure of consensual, intimate relationships within the legislative workplace:

- a. Three members recommended that members and all staff are required to disclose to the Office any consensual, intimate relationship with a person who supervises the individual or whom the individual supervises and that it is expected that members and all staff will disclose to the Office any such relationship with anyone else in the legislative workplace. Such disclosures are part of the personnel file and are not subject to disclosure under CORA or to leadership. During an investigation under the workplace harassment policy, a complainant or respondent may release to the investigator his or her disclosure statement, but may not release the disclosure statement of the other party.

b. One member recommended:

- 1. For nonpartisan staff, the person shall disclose a consensual, intimate relationship to the director of the person's office and the director may disclose the relationship to legislative leadership if the director deems it appropriate;
- 2. For partisan staff, the person shall disclose such a relationship to the leadership of the person's caucus and to additional leadership if the relationship crosses party or chamber; and
- 3. For members, the person shall disclose such a relationship with:
 - a. Another member, to leadership of both members' caucus;
 - b. A partisan staff member, to leadership of the member and the staff's caucuses;
 - c. A nonpartisan staff, to leadership of the member's caucus and to the director of the nonpartisan agency; and
 - d. A lobbyist, to the leadership of the member's caucus and the lobbyist shall not lobby the member.

- c. One member did not believe that disclosure of such relationships should be required.

B. The ILG report recommended that the false reporting provision of the current workplace harassment policy be deleted. Three members recommended that it be deleted and three members recommended that it stay in the policy.

XII. Changes to the Colorado Open Records Law:

- A. Three members recommended that CORA be amended to prevent the disclosure of any documents related to either the workplace harassment policy or the workplace expectations policy, except for nonidentifying statistical information. These members did not believe that the Committee had the authority to recommend that changes be made to CORA that would extend to other state or local public entities.
- B. One member recommended that the current exception for records of sexual harassment complaints be expanded to include harassment based upon other protected classes but should be amended to allow a person in interest full access to all records of the complaint. This member would not recommend deleting any of the current exceptions.
- C. The ILG report recommended repealing the current exception in CORA that allows a person in interest to make available for public inspection the record if an allegation has been publically reported and the record supports a contention that the allegation is false. Three members recommended repealing this exception and one member recommended not repealing it.

XIII. Changes to the Open Meetings Law:

Five members agreed that a meeting of the new committee on complaints under the workplace harassment policy should be in executive session, and that votes for formal action of the committee be public, but that the identities of parties and witnesses must not be disclosed during the public hearing.

XIV. Recommended actions:

To implement these recommendations, the Committee recommends the following actions be taken:

- A. That the current Executive Committee consider adopting the amendments to the workplace harassment policy of the General Assembly, as shown in Exhibit 1, which do not require changes to Joint Rule 38 and can be implemented immediately.
- B. That the next Executive Committee consider sponsoring during the 2019 regular session:
 - a. The joint resolution attached as Exhibit 2 that repeals and reenacts Joint Rule 38 of the rules of the Senate and House of Representatives to authorize the Office to prepare for consideration by the Executive Committee a new workplace harassment policy and a workplace expectations policy;
 - b. The bill attached as Exhibit 3 that:
 - 1. Adds provisions concerning that the new Office be part of OLLS;
 - 2. Amends the Open Meetings Law to allow the workplace harassment committee or committees to meet and vote in Executive Session; and

3. Amends CORA to restrict disclosure of documents under the workplace harassment policy and workplace expectations policy, except as provided in those policies or, alternatively, expands the current exception to cover all discriminatory harassment rather than just sexual harassment and authorizes parties in interest to receive full access to all records of the investigation and unredacted reports.
- c. If the Executive Committee recommends a joint workplace harassment committee, the bill should include section 1 of Exhibit 3, that creates the joint committee in statute, and, if the Executive Committee wants separate workplace harassment committees for each chamber, the Executive Committee should sponsor the Senate resolution attached as Exhibit 4 and the House resolution attached as Exhibit 5, that create the committees in the rules of each chamber.
- C. After the bill and resolution or resolutions have been enacted, the Executive Committee should consider approving the new workplace harassment policy attached as Exhibit 6 and the workplace expectations policy attached as Exhibit 7.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://leg.colorado.gov/committees/legislative-workplace-interim-study-committee/2018-regular-session>

Meeting Date and Topics Discussed

July 9, 2018

- ♦ Review of current structure of and process for changes to legislative workplace laws, rules, and policies
- ♦ Overview of legislative workplaces in other states
- ♦ Overview of the Investigations Law Group (ILG) 2018 Legislative Workplace Study
- ♦ Panel discussion concerning ILG recommendations regarding HR department structure

August 15, 2018

- ♦ Presentation on legislative workplaces in other states
- ♦ Presentation regarding the fiscal impact of the ILG recommendations
- ♦ Committee discussion of initial drafting concepts regarding HR department structure
- ♦ Overview of ILG recommendations regarding the complaint and resolution process
- ♦ Panel discussion of ILG recommendations regarding the complaint and resolution process
- ♦ Committee discussion of initial drafting concepts regarding the complaint process, informal resolution process, and formal investigation process

August 30, 2018

- ♦ Committee discussion of initial drafting concepts regarding formal investigation and resolution process
- ♦ Overview of ILG recommendations regarding culture, training, and transparency
- ♦ Panel discussion of ILG recommendations regarding culture, training, and transparency
- ♦ Public testimony
- ♦ Committee discussion of initial drafting concepts regarding culture, training, and transparency

September 13, 2018

- ♦ Review of initial committee positions and address remaining questions
- ♦ Committee discussion and drafting instructions for committee recommendations

October 11, 2018

- ♦ Review of written public feedback on draft recommendations
- ♦ Review and approval of final committee recommendations

Interim Workplace Harassment Policy of the General Assembly

Prepared by the Office of Legislative Legal Services

A. WORKPLACE HARASSMENT POLICY STATEMENT

1. Pursuant to the workplace harassment policy ~~contained~~ SET FORTH in Joint Rule 38, it is the policy of the General Assembly to create and maintain a work environment in which all members of the General Assembly, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from harassment, both subtle and overt. Therefore, the General Assembly will strive to eliminate harassing behavior based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry ~~which~~ THAT members, legislative employees, and third parties may encounter in the course of their work.

B. APPLICABILITY

1. This Policy is applicable to all legislative employees who are not subject to the state personnel system, each member of the General Assembly, and third parties.

C. DEFINITIONS

1. As used in this Policy:
 - a. "Contact person" means:
 - I. The director of Legislative Council, or the director's designee of the opposite gender, for legislative employees of that office;
 - II. The director of the Office of Legislative Legal Services, or the director's designee of the opposite gender, for legislative employees of that office;
 - III. The staff director of the Joint Budget Committee, or the staff director's designee of the opposite gender, for legislative employees of that office;

- IV. The State Auditor, or the State Auditor's designee of the opposite gender, for legislative employees of that office who are not in the state personnel system;
- V. The secretary of the Senate, or the secretary's designee of the opposite gender, for legislative employees of the Senate;
- VI. The chief clerk of the House of Representatives, or the chief clerk's designee of the opposite gender, for legislative employees of the House of Representatives;
- VII. Either the President of the Senate, or the President's designee of the opposite gender, or the Speaker of the House of Representatives, or the Speaker's designee of the opposite gender, for members, third parties, and any other persons with a complaint; or
- VIII. In addition to a designee described in ~~subparagraphs I. through VII. of this paragraph a.~~ SUBSECTIONS 1.a.I. TO 1.a.VII. OF THIS SECTION C., a person of the same gender designated at the discretion of a legislative service agency director, the State Auditor, the secretary of the Senate, or the chief clerk of the House of Representatives for legislative employees of their respective offices or chamber, or at the discretion of the President of the Senate or the Speaker of the House of Representatives for members, third parties, and any other persons with a complaint.

- b. "Legislative human resources administrator" or "administrator" means the legislative human resources administrator in the Office of Legislative Legal Services.
- c. "Legislative employee" means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, including any legislative aide to a member. For purposes of this Policy, "legislative employee" also includes a legislative intern and volunteer staff.
- d. "Third party" means a newsperson, lobbyist, and member of the general public who has business at the state capitol or who is doing business with

one or more of the legislative service agencies, the Senate, or the House of Representatives.

- e. "Workplace harassment" means any harassment based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry, including verbal or physical behavior or conduct, that denigrates or shows hostility or aversion toward an individual because of that individual's disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry or that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While "workplace harassment" includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. Therefore, sexual harassment warrants separate emphasis and is further described in sections D. and E. of this Policy.

D. SEXUAL HARASSMENT

1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

E. EXAMPLES OF SEXUAL HARASSMENT

1. The following are examples of conduct or communication which may constitute sexual harassment:
 - a. **VERBAL:**
 - I. Sexual comments or innuendos about one's clothing, body, or

sexual activity;

- II. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories;
- III. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection be positive or negative; OR
- IV. Using sexual words or phrases.

b. **NONVERBAL:**

- I. Displaying sexually explicit pictures or objects in the work area;
- II. Giving personal gifts of a sexual nature;
- III. Making A sexually suggestive gesture;
- IV. Making unwelcome visits to a member's, legislative employee's, or third party's home or hotel room; OR
- V. Displaying cartoons or sending emails, text messages, instant messages, or notes any of which contain sexual pictures, words, or phrases.

c. **PHYSICAL:**

- I. Kissing of a member, legislative employee, or third party, unless the kissing is a customary demonstration of affection, is clearly not objected to, and is made in connection with a greeting or parting, such as a "peck" on the cheek;
- II. Patting, pinching, or intentionally brushing against a member's, legislative employee's, or third party's body; OR
- III. Sexual contact, intercourse, or assault.

2. The examples in ~~paragraph 1.~~ SUBSECTION 1. OF THIS SECTION E. are illustrative of the communications and conduct that may constitute sexual harassment if unwelcome and depending upon the totality of the circumstances. In that regard, the following ~~should~~ MUST be kept in mind:
 - a. A single incident may or may not constitute sexual harassment;
 - b. Whether a particular action is sexual harassment will depend on the facts, and determinations will be made on a case-by-case basis;
 - c. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
 - d. Other conduct or a communication not expressly described in the examples, but which is substantially similar to the examples, may ~~be violative of~~ VIOLATE this Policy.

F. CONSULTATION WITH LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR

1. A MEMBER, LEGISLATIVE EMPLOYEE, OR THIRD PARTY WHO HAS CONCERNS ABOUT POTENTIAL HARASSMENT UNDER THIS POLICY MAY CONSULT WITH THE LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR. THE ADMINISTRATOR MAY OFFER ADVICE CONCERNING WHETHER AND HOW TO FILE A FORMAL COMPLAINT UNDER THIS POLICY AND MAY OFFER THE PERSON ACCOMMODATIONS WHETHER OR NOT THE PERSON FILES A FORMAL COMPLAINT. ALL INFORMATION CONCERNING THE CONSULTATION WITH THE ADMINISTRATOR MUST REMAIN CONFIDENTIAL, UNLESS THE ADMINISTRATOR DETERMINES THE ACTIONS ALLEGED CONSTITUTE AN IMMEDIATE THREAT TO THE SAFETY OF THE WORKPLACE.

F G. COMPLAINTS REGARDING WORKPLACE HARASSMENT

1. A member, legislative employee, or third party who believes he or she is the subject of any type of workplace harassment, SEXUAL HARASSMENT, OR RETALIATION in any manner from anyone, should submit a complaint directly to the appropriate contact person DEFINED IN SECTION C.1.a. OF THIS POLICY.
2. The complainant may submit the complaint to either gender contact person. The

complaint should specifically describe the incident or incidents. The contact person who receives the complaint shall investigate the complaint as promptly and confidentially as practicable by interviewing the complainant, the person accused, and any witnesses or coworkers and by considering the circumstances surrounding the alleged incident or incidents ~~which~~ THAT form the basis of the complaint. THE CONTACT PERSON MAY ALSO CONTRACT WITH A QUALIFIED THIRD PARTY TO CONDUCT THE INVESTIGATION IN ACCORDANCE WITH SUBSECTION 8. OF THIS SECTION G.

THE CONTACT PERSON SHALL PROMPTLY NOTIFY THE LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR OF A COMPLAINT. THE ADMINISTRATOR IS AVAILABLE TO PROVIDE CONSULTATION AND RECOMMENDATIONS CONCERNING THE CONDUCT OF THE INVESTIGATION.

- 2.3. The contact person may gather the following facts in ~~such~~ an investigation from the complainant, the ~~person accused~~ RESPONDENT, ~~and~~ OR any witnesses or coworkers:

a. **FROM THE COMPLAINANT:**

- I. A description of the incident or incidents, including where and when the incident or incidents took place;
- II. Whether a similar incident or incidents has or have happened before;
- III. An explanation of how the incident or incidents affected the complainant's work;
- IV. A description of the complainant's reaction to the incident or incidents; AND
- V. Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.

b. **FROM THE ~~PERSON ACCUSED~~ RESPONDENT:**

- I. An explanation of the facts surrounding the complainant's allegations and a request for a response;
- II. Any reason why the complainant might be fabricating the

complaint; AND

- III. Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.

c. FROM WITNESSES OR COWORKERS:

- I. What they observed;
- II. How they reacted to the facts surrounding the incident; AND
- III. What the complainant or the ~~person accused of workplace harassment~~ RESPONDENT told them ABOUT THE ALLEGED INCIDENT.

- ~~3.4.~~ Nothing in ~~paragraph b. of subsection 2. of this section F.~~ SUBSECTION 3.b. OF THIS SECTION G., or any other provision of this Policy, requires any ~~person accused of workplace harassment~~ RESPONDENT to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an investigation of a complaint or to involuntarily sign a written statement or confession.
- 5. A CONTACT PERSON MAY PURSUE INTERIM STEPS TO ACCOMMODATE A COMPLAINANT OR RESPONDENT WHILE THE INVESTIGATION IS PENDING. DEPENDING ON THE CASE AND THE PARTY'S WISHES, THESE STEPS MAY INCLUDE CHANGES TO WORKING SITUATIONS IF SUCH ACCOMMODATIONS ARE REASONABLY AVAILABLE. THE ADMINISTRATOR IS AVAILABLE TO PROVIDE CONSULTATION AND RECOMMENDATIONS ON ACCOMMODATIONS.
- 6. IN MAKING FACTUAL DETERMINATIONS, THE CONTACT PERSON OR INVESTIGATOR SHALL USE THE PREPONDERANCE OF THE EVIDENCE STANDARD. IN DETERMINING WHETHER THE EVIDENCE ESTABLISHED A VIOLATION OF THIS POLICY, THE CONTACT PERSON MUST FIND BOTH THAT THE COMPLAINANT SUBJECTIVELY FOUND THE ACTIONS TO BE OFFENSIVE AND THAT A REASONABLE PERSON IN THE COMPLAINANT'S POSITION WOULD HAVE FOUND THE ACTIONS TO BE OFFENSIVE.
- 4.7. Following the investigation and, after any appropriate consultation, the contact person ~~may~~ shall resolve the complaint pursuant to ~~section I.~~ SECTION J. of this Policy. RESOLUTION MAY INCLUDE DISCIPLINARY ACTION, WHEN APPROPRIATE.

~~The contact person shall make records of the complaint maintained by the contact person available to the person accused of workplace harassment. (See section H. of this Policy) The contact person shall inform both the complainant and the person accused RESPONDENT of the outcome of the investigation. Resolution may include disciplinary action when appropriate.~~

- 5.8. Under some circumstances, an outside individual or entity, ~~such as the Mountain States Employers Council or other credible group,~~ may be used to investigate the complaint and to make recommendations. In such circumstances, the contact person may provide information related to the complaint to the outside individual or entity conducting the investigation.

G.H. RETALIATION PROHIBITED

1. ~~No person will be subject to retaliation for having complained of workplace harassment or for having assisted or participated in an investigation of alleged workplace harassment. Any person who believes that he or she may have been the subject of retaliation for having complained of workplace harassment or for having assisted or participated in an investigation related to an allegation of workplace harassment should report that information to the appropriate contact person.~~ RETALIATION IS AN ACT OF PUNISHMENT, REPRISAL, OR REVENGE THAT IS TAKEN AGAINST A PERSON BECAUSE THAT PERSON COMPLAINED OF BEHAVIOR, ASSISTED IN A COMPLAINT UNDER THIS POLICY, OR PARTICIPATED IN AN INVESTIGATION UNDER THIS POLICY. RETALIATION CAN TAKE MANY FORMS IN A LEGISLATIVE WORKPLACE, AS DESCRIBED IN THIS SECTION H., BUT ESSENTIALLY RETALIATION CAN BE ANY ACTION THAT IS TAKEN AGAINST A PERSON THAT WOULD DETER A REASONABLE PERSON FROM COMING FORWARD TO COMPLAIN OF MISBEHAVIOR UNDER THIS POLICY.
2. RETALIATION IS A SERIOUS PROBLEM, AND A FEAR OF RETALIATION PREVENTS ISSUES FROM SURFACING, PREVENTS PEOPLE FROM RAISING PROBLEMS, AND ENABLES A CULTURE OF HARASSMENT TO FESTER. THE GENERAL ASSEMBLY RECOGNIZES THE SERIOUSNESS OF RETALIATION AND IS COMMITTED TO RESPONDING TO AND ADDRESSING RETALIATION CONCERNS PROACTIVELY AND REACTIVELY UPON RECEIPT OF A COMPLAINT OF RETALIATION.
3. THE GENERAL ASSEMBLY PROHIBITS RETALIATION AGAINST ANY PERSON FOR HAVING COMPLAINED ABOUT VIOLATIONS OF THIS POLICY, ASSISTING IN A COMPLAINT, OR PARTICIPATING IN AN INVESTIGATION INTO SUCH A COMPLAINT.

4. MEMBERS, LEGISLATIVE EMPLOYEES, AND THIRD PARTIES ARE ENCOURAGED TO REPORT VIOLATIONS OF THIS SECTION H. BY FOLLOWING THE FORMAL COMPLAINT PROCESS DESCRIBED IN SECTION G. OF THIS POLICY.

H.I. RECORD KEEPING

1. Complaints of workplace harassment, SEXUAL HARASSMENT, OR RETALIATION will be investigated and handled as AND information shared with those having a need to know and in accordance with the law as follows:
 - a. When a workplace harassment, SEXUAL HARASSMENT, OR RETALIATION complaint is made, the contact person shall create a separate file under the complainant's name. The contact person shall place all written documentation arising from the complaint in the file including, but not limited to the following: The complaint, if it is in writing; the contact person's or other investigator's investigatory notes, information, and other writings; witness statements; and the disposition, if any, of the complaint. AT THE CONCLUSION OF THE PROCESS, THE CONTACT PERSON SHALL PROVIDE THE COMPLETE FILE TO THE LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR. Except as otherwise specifically stated in this Policy, the ~~contact person~~ ADMINISTRATOR shall keep the records in the ~~workplace harassment~~ file confidential.
 - b. Section 24-72-204 (3)(a)(X.5), C.R.S., applies to records maintained of sexual harassment complaints under this Policy. Specifically, it provides that:
 - I. Any records of sexual harassment complaints and investigations maintained pursuant to Joint Rule 38 are not subject to public inspection;
 - II. Disclosure of the records of the complaint and the investigation to a "person in interest", which includes the complainant and the ~~person accused~~ RESPONDENT, is permissible; AND
 - III. A ~~person accused~~ RESPONDENT IN A sexual harassment COMPLAINT may make records kept pursuant to this Policy available for public inspection in order to support the contention that an allegation of sexual harassment against that person is false.

I.J. RESOLUTION OF A WORKPLACE HARASSMENT COMPLAINT COMPLAINTS

1. If the contact person determines that this Policy has been violated, appropriate ~~disciplinary~~ REMEDIAL action will follow. As a general rule, remedies will be assessed proportionate to the seriousness of the violation. For legislative employees, this may include an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, or termination. If the contact person determines that a member of the General Assembly has violated this Policy, the contact person shall inform leadership of the respective body which shall, in turn, handle the ~~disciplinary~~ REMEDIAL action, if any, according to the rules of the appropriate house of the General Assembly.
2. The appropriate contact person ~~will~~ SHALL handle the resolution of complaints involving legislative employees. If a member is involved in a complaint situation, the contact person may discuss resolution directly with the member or take the matter to leadership of the respective body, depending on the circumstances; however, only leadership OF THE APPROPRIATE HOUSE may handle any disciplinary action involving a member. If a third party is involved, the contact person shall handle the resolution thereof.
3. THE LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR IS AVAILABLE TO PROVIDE CONSULTATION AND RECOMMENDATIONS TO ALL CONTACT PERSONS AND LEADERSHIP OF THE APPLICABLE HOUSES REGARDING DETERMINATIONS OF POLICY VIOLATIONS AND APPROPRIATE REMEDIAL ACTIONS.
- ~~3-4.~~ 4. If the workplace harassment, SEXUAL HARASSMENT, OR RETALIATION recurs after a complaint is made, the complainant ~~should~~ SHALL immediately bring the matter to the attention of the appropriate contact person.

K. PARTIES' RIGHTS AND RESPONSIBILITIES DURING AN INVESTIGATION

1. FOR INVESTIGATIONS OF COMPLAINTS FILED UNDER SECTION G. OF THIS POLICY, BOTH THE COMPLAINANT AND RESPONDENT HAVE CERTAIN RIGHTS AND RESPONSIBILITIES.
 - a. THE COMPLAINANT AND RESPONDENT HAVE THE RESPONSIBILITY TO:

- I. PARTICIPATE FULLY AND IN GOOD FAITH IN THE INVESTIGATION PROCESS, UNLESS THE COMPLAINANT CHOOSES NOT TO PARTICIAPTE;
 - II. TELL THE TRUTH IN INVESTIGATIVE INTERVIEWS AND PROCEEDINGS;
 - III. REFRAIN FROM INFLUENCING, COERCING, OR OTHERWISE TAMPERING WITH WITNESSES OR EVIDENCE;
 - IV. KEEP THE INVESTIGATION PROCESS, PARTIES, AND ISSUES CONFIDENTIAL DURING THE INVESTIGATION;
 - V. PROVIDE ALL INFORMATION RELEVANT TO THE MATTER WITHIN THEIR POSSESSION AND NOT WITHHOLD RELEVANT INFORMATION; AND
 - VI. MEET DEADLINES AS REQUESTED BY THE CONTACT PERSON OR INVESTIGATOR DURING THE FORMAL RESOLUTION PROCESS. CONTACT PERSONS AND INVESTIGATORS MAY ONLY GRANT EXTENSIONS OF TIME FOR GOOD CAUSE SHOWN, AND THE PARTIES SHALL BE PROVIDED WRITTEN NOTICE OF EXTENSIONS AS APPLICABLE.
- b. THE COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO:
- I. BE TREATED WITH DIGNITY AND RESPECT THROUGHOUT THE PROCESS;
 - II. A MEANINGFUL OPPORTUNITY TO PRODUCE ANY EVIDENCE IN THEIR POSSESSION TO DEFEND THEMSELVES FROM ALLEGATIONS OR COUNTER-ALLEGATIONS BY BEING AFFORDED:
 - i. A FULL DESCRIPTION OF THE ALLEGATIONS AGAINST THEM;
 - ii. THE OPPORTUNITY TO PROVIDE A WRITTEN STATEMENT, THE IDENTITY OF RELEVANT WITNESSES, ADDITIONAL EVIDENCE, AND QUESTIONS FOR THE INVESTIGATORS TO

ASK THE OTHER PARTY, DURING AND FOR A REASONABLE TIME FOLLOWING THEIR INITIAL WITNESS INTERVIEW (CONTINGENT ON INVESTIGATION DEADLINES); AND

- iii. THE OPPORTUNITY FOR A FOLLOW-UP INTERVIEW IF NEW EVIDENCE IS DISCOVERED OR, IF EVIDENCE INCONSISTENT WITH THEIR VERSION OF MATERIAL EVENTS IS DISCOVERED, AND THE OPPORTUNITY TO EXPLAIN OR OTHERWISE RESPOND TO EVIDENCE NOT AVAILABLE AT THE TIME OF THEIR INITIAL WITNESS INTERVIEW. THIS RIGHT IS SUBJECT TO THE INVESTIGATION TIMELINE.

III. BRING AN ADVISOR TO ANY MEETING OR INTERVIEW AND:

- i. THE ADVISOR MAY BE AN ATTORNEY OR ANY SUPPORT PERSON;
- ii. THE ADVISOR MAY NOT SPEAK ON BEHALF OF THE COMPLAINANT OR RESPONDENT DURING ANY PROCEEDING OF THE FORMAL RESOLUTION PROCESS; AND
- iii. IT IS THE COMPLAINANT OR RESPONDENT'S OBLIGATION TO SELECT AN ADVISOR WHOSE SCHEDULE ALLOWS ATTENDANCE WITHIN THE TIMEFRAMES DESIGNATED IN SECTION L. OF THIS POLICY.

L. TIMELINES FOR THE RESOLUTION PROCESS

1. VIOLATIONS OF THIS POLICY AND THE COMPLAINT RESOLUTION PROCESS DESCRIBED IN THIS POLICY MAY BE DIFFICULT AND STRESSFUL FOR THE PEOPLE INVOLVED AND DISRUPTIVE FOR THE GENERAL ASSEMBLY'S WORKPLACE AND LEGISLATIVE BUSINESS OPERATIONS. FOR THESE REASONS, IT IS CRITICAL THAT COMPLAINT RESOLUTION BE COMPLETED AS QUICKLY AS POSSIBLE WHILE MAINTAINING A FULL AND FAIR INVESTIGATIVE PROCESS. WITH THAT GUIDING PRINCIPLE IN MIND, THE FOLLOWING TIMELINES HAVE BEEN ESTABLISHED FOR THE PROMPT RESOLUTION OF COMPLAINTS UNDER THIS POLICY.
2. THE RESOLUTION PROCESS MUST BE COMPLETED WITHIN NINETY DAYS AFTER A CONTACT PERSON IS NOTIFIED OF THE COMPLAINT, AS FOLLOWS:

- a. IF THE CONTACT PERSON ELECTS TO CONTRACT WITH A THIRD-PARTY INVESTIGATOR, THAT INVESTIGATOR MUST BE ASSIGNED WITHIN FOURTEEN DAYS AFTER THE CONTACT PERSON IS NOTIFIED OF THE COMPLAINT;
 - b. THE THIRD-PARTY INVESTIGATOR OR CONTACT PERSON SHALL COMPLETE THE INVESTIGATION, MAKE FACTUAL FINDINGS, AND PREPARE AND DELIVER AN INVESTIGATION REPORT, IF APPLICABLE, WITHIN FORTY-FIVE DAYS AFTER THE THIRD-PARTY INVESTIGATOR IS RETAINED OR WITHIN FORTY-FIVE DAYS AFTER THE CONTACT PERSON IS NOTIFIED OF THE COMPLAINT IF A THIRD-PARTY INVESTIGATOR IS NOT RETAINED;
 - c. THE CONTACT PERSON SHALL DETERMINE WHETHER THE RESPONDENT VIOLATED THIS POLICY, DOCUMENT THE DETERMINATION, AND TRANSMIT THE DETERMINATION AND RECOMMENDATIONS TO THE APPROPRIATE DECISION-MAKER WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE INVESTIGATION REPORT FROM THE THIRD-PARTY INVESTIGATOR OR WITHIN FOURTEEN DAYS AFTER COMPLETING THE INVESTIGATION AND REPORT IF A THIRD-PARTY INVESTIGATOR IS NOT RETAINED;
 - d. IN A MATTER INVOLVING A RESPONDENT WHO IS NOT A MEMBER OF THE GENERAL ASSEMBLY, THE CONTACT PERSON SHALL DETERMINE WHAT REMEDIAL ACTION IS APPROPRIATE, IF ANY, WITHIN FOURTEEN DAYS OF THE DETERMINATION OF A VIOLATION; AND
 - e. IN A MATTER INVOLVING A RESPONDENT WHO IS A MEMBER OF THE GENERAL ASSEMBLY, LEADERSHIP OF THE APPROPRIATE HOUSE SHALL DETERMINE WHAT REMEDIAL ACTION IS APPROPRIATE, IF ANY, AS SOON AS PRACTICABLE PURSUANT TO THE RULES OF THE APPROPRIATE LEGISLATIVE BODY.
3. THERE MAY BE SITUATIONS WHEN THE TIMELINE OF THE PROCESS MUST BE EXTENDED TO ENSURE A THOROUGH, FAIR, AND IMPARTIAL PROCESS. THE CONTACT PERSON SHALL NOTIFY BOTH PARTIES, IN WRITING, OF ANY REASONS FOR DEVIATING FROM THE TIMELINE SET FORTH IN THIS SECTION L. AND SHALL DOCUMENT THE REASONS IN THE COMPLAINT FILE.

J.M. FALSE COMPLAINTS

1. Complaints of workplace harassment SUBMITTED PURSUANT TO THIS POLICY that are found to be intentionally or recklessly dishonest or malicious will not be tolerated.

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

RECOMMENDED DRAFT

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LLS NO. Jerry Barry x4342

Committees

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____ JOINT RESOLUTION

101 **CONCERNING CHANGES TO THE JOINT RULES OF THE SENATE AND**
 102 **HOUSE OF REPRESENTATIVES TO IMPLEMENT CHANGES IN**
 103 **WORKPLACE POLICIES.**

1 *Be It Resolved by the _____ of the Seventy-second General*
 2 *Assembly of the State of Colorado, the _____ concurring herein:*

3 That in the Joint Rules of the Senate and House of
 4 Representatives, Joint Rule No. 36, **amend** (d)(4); and **add** (b)(11) as
 5 follows:

6 **36. Lobbying Practices**

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.

- 1 (b) ***Lobbying practices.*** No person engaging in lobbying shall:
- 2 (11) VIOLATE THE WORKPLACE HARASSMENT POLICY OF THE
- 3 GENERAL ASSEMBLY OR THE WORKPLACE EXPECTATIONS
- 4 POLICY OF THE GENERAL ASSEMBLY ADOPTED PURSUANT
- 5 TO JOINT RULE NO. 38.
- 6 (d) ***Violation - complaint.***
- 7 (4) (A) EXCEPT AS PROVIDED IN SUBSECTION (d)(4)(B) OF
- 8 THIS JOINT RULE, all proceedings of the committee
- 9 shall be public. The accused shall be entitled to be
- 10 present during the proceedings. The committee
- 11 members shall submit a report to the Executive
- 12 Committee.
- 13 (B) IF THE COMPLAINT IS BASED ON SUBSECTION (b)(11)
- 14 OF THIS JOINT RULE, THE COMMITTEE SHALL HOLD
- 15 ALL MEETINGS IN EXECUTIVE SESSION, AND THE
- 16 COMMITTEE MEMBERS SHALL NOT RELEASE ANY
- 17 INFORMATION ABOUT THE MEETINGS OR THE
- 18 TESTIMONY RECEIVED, BUT, IF IT FINDS THAT THE
- 19 ACTIONS VIOLATED THIS JOINT RULE, THE
- 20 COMMITTEE MAY RELEASE A REDACTED REPORT
- 21 KEEPING THE IDENTITIES OF THE COMPLAINANT AND
- 22 WITNESSES CONFIDENTIAL.

23 That in the Joint Rules of the Senate and the House of

24 Representatives, **repeal and reenact** Joint Rule No. 38 as follows:

25 **38. Workplace Harassment and Expectations Policies**

26

- 27 (a) ***Declaration.*** THE GENERAL ASSEMBLY IS COMMITTED TO
- 28 MAINTAINING A WORKPLACE THAT ENCOURAGES MUTUAL RESPECT
- 29 AND PROMOTES RESPECTFUL, PROFESSIONAL, AND CONGENIAL
- 30 RELATIONSHIPS AND THAT IS FREE FROM HARASSMENT FROM OR
- 31 TOWARD LEGISLATORS, LEGISLATIVE EMPLOYEES, OR THIRD
- 32 PARTIES. THE CITIZENS OF THE STATE OF COLORADO EXPECT THEIR
- 33 ELECTED OFFICIALS TO BEHAVE IN A MANNER BEFITTING THE
- 34 HONOR AND PRIVILEGE THEY HOLD AS REPRESENTATIVES OF THE
- 35 CITIZENS OF COLORADO. THE GENERAL ASSEMBLY HOLDS THE
- 36 MEMBERS OF ITS COMMUNITY AND LEGISLATORS, IN PARTICULAR,
- 37 TO A HIGHER STANDARD OF CONDUCT THAN SIMPLY AVOIDING
- 38 UNLAWFUL HARASSMENT. WHEN DISRESPECTFUL BEHAVIOR AND
- 39 HARASSMENT PERSIST, EVEN WHEN NOT UNLAWFUL OR DIRECTED
- 40 AT AN INDIVIDUAL BECAUSE THAT PERSON IS A MEMBER OF A
- 41 PROTECTED CLASS, IT DIMINISHES THE DIGNITY AND STATURE OF
- 42 THE INSTITUTION OF THE GENERAL ASSEMBLY AND CAN LEAD TO
- 43 UNLAWFUL HARASSMENT.
- 44 (b) ***Workplace Harassment Policy.***

EXHIBIT 2

- 1 (1) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS IN
2 THE OFFICE OF LEGISLATIVE LEGAL SERVICES, IN
3 CONSULTATION WITH THE SECRETARY OF THE SENATE, THE
4 CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES, THE
5 STATE AUDITOR, AND THE DIRECTORS OF THE NONPARTISAN
6 STAFF AGENCIES OF THE GENERAL ASSEMBLY, SHALL
7 DEVELOP A WORKPLACE HARASSMENT POLICY. THE
8 WORKPLACE HARASSMENT POLICY IS APPLICABLE TO ALL
9 LEGISLATORS; LEGISLATIVE EMPLOYEES, EXCEPT TO SUCH
10 LEGISLATIVE EMPLOYEES WHO ARE SUBJECT TO THE STATE
11 PERSONNEL SYSTEM; AND THIRD PARTIES. THE POLICY, AND
12 ANY AMENDMENT TO THE POLICY, IS SUBJECT TO THE
13 APPROVAL OF THE EXECUTIVE COMMITTEE OF THE
14 LEGISLATIVE COUNCIL.
- 15 (2) THE WORKPLACE HARASSMENT POLICY MUST INCLUDE:
- 16 (A) BOTH A FORMAL AND INFORMAL COMPLAINT
17 RESOLUTION PROCESS;
- 18 (B) THAT THE INFORMATION OBTAINED DURING THE
19 INFORMAL COMPLAINT PROCESS OR THE FORMAL
20 COMPLAINT PROCESS REMAINS CONFIDENTIAL,
21 EXCEPT TO PERSONS HAVING A DEMONSTRABLE
22 NEED TO KNOW AND EXCEPT FOR NONIDENTIFYING,
23 STATISTICAL INFORMATION;
- 24 (C) THAT, EXCEPT AS SPECIFICALLY ALLOWED UNDER
25 THE WORKPLACE HARASSMENT POLICY,
26 LEGISLATORS AND LEGISLATIVE EMPLOYEES SHALL
27 KEEP ALL MATTERS RELATING TO AN ALLEGED
28 VIOLATION OF THE POLICY CONFIDENTIAL AND THIRD
29 PARTIES SHALL KEEP SUCH MATTERS CONFIDENTIAL
30 TO THE EXTENT PERMITTED BY LAW;
- 31 (D) THAT BOTH COMPLAINANTS AND RESPONDENTS BE
32 GIVEN EQUAL ACCESS TO INFORMATION AND
33 SERVICES;
- 34 (E) THAT A VIOLATION UNDER THE POLICY MUST BE
35 FOUNDED ON A CLAIM OF HARASSMENT BASED ON AN
36 INDIVIDUAL'S DISABILITY, RACE, CREED, COLOR, SEX,
37 SEXUAL ORIENTATION, RELIGION, AGE FORTY AND
38 OLDER, NATIONAL ORIGIN, MILITARY STATUS,
39 GENETIC INFORMATION OR ANCESTRY, OR ANY
40 OTHER CLASS PROTECTED BY STATE OR FEDERAL
41 LAW OR ON AN ACT OF RETALIATION UNDER THE
42 POLICY; AND
- 43 (F) THAT FACTUAL DETERMINATIONS BE FOUND BY A
44 PREPONDERANCE OF THE EVIDENCE STANDARD AND
45 THAT VIOLATIONS BE BASED ON BOTH A SUBJECTIVE

1 STANDARD THAT THE COMPLAINANT FOUND THE
2 ACTION OR ACTIONS TO BE OFFENSIVE AND AN
3 OBJECTIVE STANDARD THAT A REASONABLE PERSON
4 IN THE COMPLAINANT'S POSITION WOULD HAVE
5 FOUND THE ACTION OR ACTIONS TO BE OFFENSIVE.

6 (c) ***Workplace Expectations Policy.***

7 (1) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS IN
8 THE OFFICE OF LEGISLATIVE LEGAL SERVICES, IN
9 CONSULTATION WITH THE SECRETARY OF THE SENATE, THE
10 CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES, THE
11 STATE AUDITOR, AND THE DIRECTORS OF THE NONPARTISAN
12 STAFF AGENCIES OF THE GENERAL ASSEMBLY, SHALL
13 DEVELOP A WORKPLACE EXPECTATIONS POLICY. THE
14 WORKPLACE EXPECTATIONS POLICY IS APPLICABLE TO ALL
15 LEGISLATORS; LEGISLATIVE EMPLOYEES, EXCEPT SUCH
16 LEGISLATIVE EMPLOYEES WHO ARE SUBJECT TO THE STATE
17 PERSONNEL SYSTEM; AND THIRD PARTIES. THE POLICY, AND
18 ANY AMENDMENT TO THE POLICY, IS SUBJECT TO THE
19 APPROVAL OF THE EXECUTIVE COMMITTEE OF THE
20 LEGISLATIVE COUNCIL.

21 (2) THE WORKPLACE EXPECTATIONS POLICY MUST INCLUDE:

- 22 (A) AN INFORMAL COMPLAINT RESOLUTION PROCESS;
- 23 (B) THAT THE INFORMATION OBTAINED DURING THE
24 INFORMAL COMPLAINT PROCESS REMAINS
25 CONFIDENTIAL, EXCEPT TO PERSONS HAVING A
26 DEMONSTRABLE NEED TO KNOW AND EXCEPT FOR
27 NONIDENTIFYING, STATISTICAL INFORMATION; AND
- 28 (C) EXCEPT AS SPECIFICALLY ALLOWED UNDER THE
29 WORKPLACE EXPECTATIONS POLICY, LEGISLATORS
30 AND LEGISLATIVE EMPLOYEES SHALL KEEP ALL
31 MATTERS RELATING TO AN ALLEGED VIOLATION OF
32 THE POLICY CONFIDENTIAL AND THIRD PARTIES
33 SHALL KEEP SUCH MATTERS CONFIDENTIAL TO THE
34 EXTENT PERMITTED BY LAW.

35 (d) ***Personnel Manuals and Review.***

36 (1) FOLLOWING APPROVAL BY THE EXECUTIVE COMMITTEE OF
37 THE LEGISLATIVE COUNCIL, THE WORKPLACE HARASSMENT
38 POLICY AND THE WORKPLACE EXPECTATIONS POLICY MUST
39 BE INCLUDED IN EACH AGENCY'S OR HOUSE'S PERSONNEL
40 MANUAL OR EQUIVALENT DOCUMENT AND POSTED
41 PROMINENTLY ON THE GENERAL ASSEMBLY'S HOME PAGE
42 ON THE INTERNET.

43 (2) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS

EXHIBIT 2

1 SHALL ANNUALLY REVIEW THE POLICIES AND, AFTER
2 CONSULTATION WITH THE SECRETARY OF THE SENATE, THE
3 CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES, THE
4 STATE AUDITOR, AND THE DIRECTORS OF THE NONPARTISAN
5 STAFF AGENCIES OF THE GENERAL ASSEMBLY, MAY
6 RECOMMEND CHANGES TO THE POLICIES TO THE EXECUTIVE
7 COMMITTEE.

8 (e) ***Confidentiality.***

9 (1) EXCEPT AS PERMITTED UNDER THE WORKPLACE
10 HARASSMENT POLICY OR THE WORKPLACE EXPECTATIONS
11 POLICY, ALL DOCUMENTS RELATED TO ANY INQUIRY OR
12 COMPLAINT UNDER EITHER OF THE POLICIES ARE
13 CONFIDENTIAL AND ARE NOT SUBJECT TO PUBLIC
14 INSPECTION UNDER PART 2 OF ARTICLE 72 OF TITLE 24,
15 COLORADO REVISED STATUTES.

16 (2) MEETINGS OF A WORKPLACE HARASSMENT COMMITTEE AT
17 WHICH A COMPLAINT, INVESTIGATION, OR REMEDIAL ACTION
18 IS DISCUSSED MAY BE CONDUCTED IN EXECUTIVE SESSION
19 AS DESCRIBED IN SECTION 24-6-402 (3)(a)(III), COLORADO
20 REVISED STATUTES.

21 (f) ***Training.***

22 (1) PRIOR TO THE COMMENCEMENT OF EACH REGULAR SESSION
23 OF THE GENERAL ASSEMBLY, THE OFFICE OF LEGISLATIVE
24 WORKPLACE RELATIONS SHALL PROVIDE TRAINING ON THE
25 WORKPLACE EXPECTATIONS POLICY AND THE WORKPLACE
26 HARASSMENT POLICY TO NEWLY ELECTED MEMBERS. THE
27 OFFICE SHALL PROVIDE ANNUAL TRAINING ON THE POLICIES
28 TO RETURNING MEMBERS OF THE GENERAL ASSEMBLY.

29 (2) PRIOR TO OR SOON AFTER THE COMMENCEMENT OF EACH
30 REGULAR SESSION OF THE GENERAL ASSEMBLY, THE OFFICE
31 SHALL PROVIDE MANDATORY TRAINING ON THE POLICIES TO
32 ALL NEWLY EMPLOYED LEGISLATIVE EMPLOYEES. THE
33 OFFICE SHALL PROVIDE ANNUAL, MANDATORY TRAINING ON
34 THE POLICIES TO EMPLOYEES OF THE GENERAL ASSEMBLY.

35 (g) ***Definitions.*** AS USED IN THIS JOINT RULE:

36 (1) "LEGISLATIVE EMPLOYEE" MEANS AN EMPLOYEE OF THE
37 LEGISLATIVE COUNCIL STAFF, THE OFFICE OF LEGISLATIVE
38 LEGAL SERVICES, THE JOINT BUDGET COMMITTEE STAFF,
39 THE OFFICE OF THE STATE AUDITOR, THE SENATE, OR THE
40 HOUSE OF REPRESENTATIVES, OR ANY LEGISLATIVE AIDE TO
41 A MEMBER, LEGISLATIVE INTERN, OR VOLUNTEER STAFF.

42 (2) "THIRD PARTIES" MEANS LOBBYISTS, MEMBERS OF THE
43 MEDIA, AND MEMBERS OF THE GENERAL PUBLIC WHO HAVE

EXHIBIT 2

1
2
3

BUSINESS AT THE STATE CAPITOL OR WHO ARE DOING
BUSINESS WITH LEGISLATIVE SERVICE AGENCIES, THE
SENATE, OR THE HOUSE OF REPRESENTATIVES.

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

RECOMMENDED DRAFT

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LLS NO.Jerry Barry x4341

_____ BILL

Committees

Committees

A BILL FOR AN ACT

101 **CONCERNING STATUTORY CHANGES REQUIRED BY THE ADOPTION OF**
102 **WORKPLACE POLICIES OF THE GENERAL ASSEMBLY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters or bold & italic numbers indicate new material to be added to existing law.

Dashes through the words indicate deletions from existing law.

<{Section 1 of the bill should be included if the Executive Committee adopts the recommendation of three members of the interim committee for a joint legislative harassment committee that includes 3 nonlegislative members.}> **Section 1** of the bill creates a joint committee on workplace harassment composed of 7 members, 4 members of the general assembly and 3 nonlegislative members. The committee is charged with overseeing complaints against partisan staff and members of the general assembly under the workplace harassment policy.

Section 2 allows a state public body to meet in executive session to consider a matter related to the workplace expectations or workplace harassment policies of the general assembly. The records of the committee are confidential and not subject to public inspection.

Section 3 provides that a disclosure of an intimate relationship filed in accordance with a policy of the general assembly is part of an individual's personnel file, and therefore not subject to public inspection under the Colorado Open Records Act (CORA).

<{Sections 4 and 5 rather than 6 and 7 should be included if the Executive Committee adopts the recommendations of three members of the interim committee that the provisions related to the confidentiality of records apply only to the general assembly, and the exception for persons in interest should be removed for records of the general assembly.}> **Section 4** provides one option to create an office of legislative workplace relations (office) within the office of legislative legal services and to make the records of that office exempt from public inspection. The office is charged with handling matters related to employee relations, including the handling of complaints under the workplace expectations and workplace harassment policies. Records of the office related to complaints, investigations, and other inquiries are exempted from the definition of public records and are not subject to public inspection; except that the office is required to release an annual statistical report of the numbers of complaints received and their resolution. In addition, if a workplace harassment committee recommends the introduction of a resolution to expel or censure a member, the executive summary of the investigation is made public, unless the complainant objects, in which case the committee determines whether to release the summary. **Section 5** makes a conforming amendment in CORA, clarifying that all custodians are required to deny a request to inspect records that are created or provided by the general assembly's office of legislative workplace relations and that relate to complaints, investigations, or inquiries related to workplace harassment or conduct under the general assembly's policies.

<{Sections 6 and 7 should be included if the Executive Committee adopts the recommendations of other interim committee

members to expand the current language in CORA to require confidentiality of records of all types of workplace harassment for all custodians of records, and to maintain the exception related to persons in interest for all custodians.}> **Section 6** provides a second option to create the office within the office of legislative legal services. The office is charged with handling matters related to employee relations, including the handling of complaints under the workplace expectations and workplace harassment policies. The office is required to release an annual statistical report of the number of complaints received and their resolution. **Section 7** amends CORA to make the records of all workplace harassment complaints, investigations, and reports exempt from public inspection. A person in interest is entitled to receive a record of a workplace harassment report, complaint, or investigation at the conclusion of the investigation. A person in interest is prohibited from making such a record available for public inspection, unless the allegations of the complaint have been publicly reported and the record supports a contention that the allegations are false.

Be it enacted by the General Assembly of the State of Colorado:

<{**Note: Section 1 of this bill should be included if the Executive Committee determines that a joint committee should handle complaints against a member or partisan staff member.**}>

SECTION 1. In Colorado Revised Statutes, **add** part 18 to article 3 of title 2 as follows:

PART 18

JOINT COMMITTEE ON WORKPLACE HARASSMENT

2-3-1801. Joint committee on workplace harassment - duties - definitions. (1) AS USED IN THIS PART 18, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMITTEE" MEANS THE JOINT COMMITTEE ON WORKPLACE HARASSMENT ESTABLISHED PURSUANT TO SUBSECTION (2)(a) OF THIS

1 SECTION.

2 (b) "JOINT RULES" MEANS THE JOINT RULES OF THE SENATE AND
3 THE HOUSE OF REPRESENTATIVES.

4 (c) "PARTISAN STAFF" MEANS PERSONS APPOINTED BY AND
5 SERVING AT THE PLEASURE OF A MEMBER OF THE GENERAL ASSEMBLY AND
6 INCLUDES AIDES, INTERNS, AND VOLUNTEERS.

7 (d) "WORKPLACE HARASSMENT POLICY" MEANS THE WORKPLACE
8 HARASSMENT POLICY ADOPTED BY THE EXECUTIVE COMMITTEE OF THE
9 LEGISLATIVE COUNCIL PURSUANT TO JOINT RULE 38 OF THE JOINT RULES
10 OF THE SENATE AND HOUSE OF REPRESENTATIVES.

11 (2) (a) THERE IS ESTABLISHED A JOINT COMMITTEE OF THE SENATE
12 AND HOUSE OF REPRESENTATIVES, KNOWN AS THE JOINT COMMITTEE ON
13 WORKPLACE HARASSMENT, TO OVERSEE COMPLAINTS AGAINST MEMBERS
14 OR PARTISAN STAFF UNDER THE WORKPLACE HARASSMENT POLICY. THE
15 COMMITTEE CONSISTS OF THE FOLLOWING SEVEN MEMBERS:

16 (I) (A) FOUR MEMBERS OF THE GENERAL ASSEMBLY, ONE
17 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, ONE
18 APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF
19 REPRESENTATIVES, ONE APPOINTED BY THE MAJORITY LEADER OF THE
20 SENATE, AND ONE APPOINTED BY THE MINORITY LEADER OF THE SENATE;

21 (B) LEGISLATIVE MEMBERS OF THE COMMITTEE SHOULD HAVE THE
22 APPROPRIATE EXPERIENCE AND DEMEANOR TO HANDLE POTENTIALLY
23 PARTISAN ISSUES IN AN OBJECTIVE MANNER;

24 (II) (A) ONE MEMBER WHO IS A HUMAN RELATIONS PROFESSIONAL
25 WHO HAS EXPERIENCE IN WORKPLACE HARASSMENT COMPLAINTS, ONE
26 WHO IS A VICTIM'S ADVOCATE, AND ONE WHO IS AN ATTORNEY LICENSED

EXHIBIT 3

1 IN COLORADO WHO HAS EXPERIENCE IN EMPLOYMENT LAW; AND

2 (B) THE THREE NONLEGISLATIVE MEMBERS SHALL BE APPOINTED
3 JOINTLY BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE
4 MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, THE MAJORITY
5 LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE SENATE.

6 (b) THE COMMITTEE SHALL ELECT A CHAIR AND A VICE-CHAIR, ONE
7 FROM EACH OF THE TWO MAJOR POLITICAL PARTIES. THE CHAIR SO
8 ELECTED SERVES AS CHAIR FOR THE FIRST REGULAR SESSION OF THE
9 GENERAL ASSEMBLY AT WHICH THE COMMITTEE IS TO SERVE AND AS
10 VICE-CHAIR FOR THE SECOND REGULAR SESSION. THE VICE-CHAIR SO
11 ELECTED SERVES AS CHAIR FOR THE SECOND REGULAR SESSION OF SAID
12 GENERAL ASSEMBLY.

13 (c) THE COMMITTEE SHALL MEET AS NECESSARY AT THE CALL OF
14 THE CHAIR.

15 (d) MEMBERS OF THE COMMITTEE SERVE WITHOUT
16 COMPENSATION; EXCEPT THAT EACH MEMBER IS ENTITLED TO BE
17 REIMBURSED FOR NECESSARY EXPENSES IN CONNECTION WITH THE
18 PERFORMANCE OF HIS OR HER DUTIES, AND LEGISLATIVE MEMBERS
19 RECEIVE THEIR PER DIEM FOR ATTENDANCE AT MEETINGS.

20 (3) IF THE CHAIR RECEIVES A COMPLAINT AGAINST A MEMBER OF
21 THE GENERAL ASSEMBLY OR A PARTISAN STAFF MEMBER UNDER THE
22 WORKPLACE HARASSMENT POLICY, THE CHAIR SHALL CONVENE A MEETING
23 OF THE COMMITTEE TO CONSIDER THE COMPLAINT AND SHALL PROCEED IN
24 ACCORDANCE WITH THE WORKPLACE HARASSMENT POLICY. PURSUANT TO
25 THE WORKPLACE HARASSMENT POLICY AND SECTION 24-6-402 (3)(a)(III),
26 MEETINGS OF THE COMMITTEE MAY OCCUR IN EXECUTIVE SESSION.

1 ADDITIONALLY, PURSUANT TO SECTION 24-72-204 (3)(a)(X.5), ALL
 2 DOCUMENTS RELATED TO ANY COMPLAINT ARE CONFIDENTIAL AND ARE
 3 NOT SUBJECT TO PUBLIC INSPECTION.

4 **SECTION 2.** In Colorado Revised Statutes, 24-6-402, **amend**
 5 (3)(a)(III) as follows:

6 **24-6-402. Meetings - open to public - definitions.** (3) (a) The
 7 members of a state public body subject to this part 4, upon the
 8 announcement by the state public body to the public of the topic for
 9 discussion in the executive session, including specific citation to the
 10 provision of this subsection (3) authorizing the body to meet in an
 11 executive session and identification of the particular matter to be
 12 discussed in as much detail as possible without compromising the purpose
 13 for which the executive session is authorized, and the affirmative vote of
 14 two-thirds of the entire membership of the body after such announcement,
 15 may hold an executive session only at a regular or special meeting and for
 16 the sole purpose of considering any of the matters enumerated in
 17 ~~paragraph (b) of this subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION
 18 or the following matters; except that no adoption of any proposed policy,
 19 position, resolution, rule, regulation, or formal action, except the review,
 20 approval, and amendment of the minutes of an executive session recorded
 21 pursuant to ~~subparagraph (I) of paragraph (d.5) of subsection (2)~~
 22 SUBSECTION (2)(d.5)(I) of this section, shall occur at any executive
 23 session that is not open to the public:

24 (III) Matters required to be kept confidential by federal law or
 25 rules, state statutes, or in accordance with the requirements of any joint
 26 rule of the senate and the house of representatives pertaining to lobbying

1 practices OR WORKPLACE HARASSMENT OR WORKPLACE EXPECTATIONS
 2 POLICIES;

3 <{Note: Section 3 of this bill should be included if the Executive
 4 Committee adopts the recommendations of the committee related to
 5 disclosures of intimate relationships.}>

6 **SECTION 3.** In Colorado Revised Statutes, 24-72-202, **amend**
 7 (4.5) as follows:

8 **24-72-202. Definitions.** As used in this part 2, unless the context
 9 otherwise requires:

10 (4.5) "Personnel files" means and includes home addresses,
 11 telephone numbers, financial information, ~~and~~ A DISCLOSURE OF AN
 12 INTIMATE RELATIONSHIP FILED IN ACCORDANCE WITH THE POLICIES OF THE
 13 GENERAL ASSEMBLY, other information maintained because of the
 14 employer-employee relationship, and other documents specifically
 15 exempt from disclosure under this part 2 or any other provision of law.
 16 "Personnel files" does not include applications of past or current
 17 employees, employment agreements, any amount paid or benefit provided
 18 incident to termination of employment, performance ratings, final
 19 sabbatical reports required under section 23-5-123, ~~C.R.S.~~, or any
 20 compensation, including expense allowances and benefits, paid to
 21 employees by the state, its agencies, institutions, or political subdivisions.

22 <{Note: Sections 4 and 5 of this bill should be included if the Executive
 23 Committee determines that the provisions related to the confidentiality
 24 of records apply only to the general assembly, and the exception for
 25 persons in interest should be removed for records of the general

1 assembly.}>

2 **SECTION 4.** In Colorado Revised Statutes, **add** 2-3-511 as
3 follows:

4 **2-3-511. Office of legislative workplace relations - creation -**
5 **duties - records - definitions.** (1) THE OFFICE OF LEGISLATIVE
6 WORKPLACE RELATIONS IS CREATED IN THE OFFICE OF LEGISLATIVE LEGAL
7 SERVICES. THE HEAD OF THE OFFICE IS THE DIRECTOR OF THE OFFICE OF
8 LEGISLATIVE WORKPLACE RELATIONS. THE DIRECTOR OF THE OFFICE OF
9 LEGISLATIVE LEGAL SERVICES SHALL APPOINT THE DIRECTOR OF THE
10 OFFICE OF LEGISLATIVE WORKPLACE RELATIONS AND MAY APPOINT SUCH
11 ADDITIONAL STAFF AS MAY BE NECESSARY FOR THE EFFICIENT OPERATION
12 OF THE OFFICE, IN ACCORDANCE WITH SECTION 2-3-503 (1).

13 (2) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS SHALL
14 PROVIDE SERVICES TO THE GENERAL ASSEMBLY, ITS EMPLOYEES, AND THE
15 LEGISLATIVE STAFF AGENCIES RELATED TO EMPLOYEE RELATIONS;
16 TRAINING; COMPLIANCE; WORKPLACE CULTURE, INCLUDING THE
17 INVESTIGATION OF COMPLAINTS UNDER THE WORKPLACE EXPECTATIONS
18 POLICY; AND WORKPLACE HARASSMENT, INCLUDING THE INVESTIGATION
19 OF COMPLAINTS UNDER THE WORKPLACE HARASSMENT POLICY.

20 (3) RECORDS CREATED AND MAINTAINED BY THE OFFICE OF
21 LEGISLATIVE WORKPLACE RELATIONS THAT ARE RELATED TO A
22 WORKPLACE HARASSMENT COMPLAINT OR INVESTIGATION, A COMPLAINT
23 UNDER THE WORKPLACE EXPECTATIONS POLICY, OR AN INQUIRY OR
24 REQUEST CONCERNING WORKPLACE HARASSMENT OR CONDUCT, WHETHER
25 OR NOT THE INQUIRY OR REQUEST LEADS TO A FORMAL OR INFORMAL
26 COMPLAINT OR RESOLUTION PROCESS, ARE NOT PUBLIC RECORDS AS

EXHIBIT 3

1 DEFINED IN SECTION 24-72-202 (6) AND SHALL NOT BE MADE AVAILABLE
2 FOR PUBLIC INSPECTION; EXCEPT THAT, NOTWITHSTANDING THE
3 PROVISIONS OF SECTION 24-72-204 (3)(a)(X):

4 (a) THE DIRECTOR OF THE OFFICE OF LEGISLATIVE WORKPLACE
5 RELATIONS SHALL PUBLISH AND MAKE AVAILABLE TO THE PUBLIC AN
6 ANNUAL STATISTICAL REPORT SHOWING THE TOTAL NUMBER OF
7 COMPLAINTS RECEIVED UNDER THE WORKPLACE HARASSMENT POLICY AND
8 THE WORKPLACE EXPECTATIONS POLICY AND THEIR RESOLUTION. THE
9 DIRECTOR SHALL ENSURE THAT THE REPORT DOES NOT CONTAIN
10 INFORMATION THAT WOULD DISCLOSE THE IDENTITY OF A COMPLAINANT,
11 RESPONDENT, OR WITNESS.

12 (b) (I) EXCEPT AS PROVIDED IN SUBSECTION (3)(b)(II) OF THIS
13 SECTION, IF, AFTER AN INVESTIGATION IN ACCORDANCE WITH THE
14 WORKPLACE HARASSMENT POLICY, A JOINT WORKPLACE HARASSMENT
15 COMMITTEE FINDS THAT THE FACTS FOUND MORE LIKELY THAN NOT IN THE
16 INVESTIGATION ESTABLISH A VIOLATION OF THE POLICY, THE DIRECTOR OF
17 THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS SHALL MAKE
18 AVAILABLE TO THE PUBLIC THE EXECUTIVE SUMMARY OF THE REPORT OF
19 THE INVESTIGATION AND THE NAME OF THE RESPONDENT. THE DIRECTOR
20 SHALL ENSURE THAT THE EXECUTIVE SUMMARY DOES NOT CONTAIN
21 INFORMATION THAT WOULD DISCLOSE THE IDENTITY OF THE COMPLAINANT
22 OR ANY WITNESS.

23 (II) IF THE COMPLAINANT OBJECTS TO THE RELEASE OF THE
24 EXECUTIVE SUMMARY IN ACCORDANCE WITH SUBSECTION (3)(b)(I) OF THIS
25 SECTION, THE COMPLAINANT SHALL NOTIFY THE DIRECTOR OF THE OFFICE
26 OF LEGISLATIVE WORKPLACE RELATIONS AND THE CHAIR OF THE JOINT

EXHIBIT 3

1 WORKPLACE HARASSMENT COMMITTEE. THE COMMITTEE SHALL MEET IN
2 EXECUTIVE SESSION AND SHALL DETERMINE WHETHER TO RELEASE THE
3 EXECUTIVE SUMMARY OR ANY PORTION THEREOF, TAKING INTO
4 CONSIDERATION THE COMPLAINANT'S WISHES FOR CONFIDENTIALITY, THE
5 SEVERITY OF THE CONDUCT ALLEGED, ANY PATTERNS OF HARASSING
6 BEHAVIOR BY THE LEGISLATOR, AND THE PUBLIC'S INTEREST IN BEING
7 INFORMED OF THE CONDUCT OF ELECTED OFFICIALS.

8 (c) RECORDS OF THE EXPENDITURE OF PUBLIC MONEY ON
9 COMPLAINTS, INVESTIGATIONS, OR OTHER FUNCTIONS OF THE OFFICE OF
10 LEGISLATIVE WORKPLACE RELATIONS ARE PUBLIC RECORDS SUBJECT TO
11 INSPECTION IN ACCORDANCE WITH PART 2 OF ARTICLE 72 OF TITLE 24,
12 EXCEPT TO THE EXTENT THAT THEY CONTAIN INFORMATION THAT WOULD
13 DISCLOSE THE DETAILS OF, OR THE IDENTITY OF AN INDIVIDUAL INVOLVED
14 IN, A COMPLAINT, INVESTIGATION, OR INQUIRY OR REQUEST CONCERNING
15 WORKPLACE HARASSMENT OR CONDUCT.

16 (4) AS USED IN THIS SECTION:

17 (a) "WORKPLACE EXPECTATIONS POLICY" MEANS THE WORKPLACE
18 EXPECTATIONS POLICY ADOPTED BY THE EXECUTIVE COMMITTEE OF THE
19 LEGISLATIVE COUNCIL PURSUANT TO THE JOINT RULES.

20 (b) "WORKPLACE HARASSMENT POLICY" MEANS THE WORKPLACE
21 HARASSMENT POLICY ADOPTED BY THE EXECUTIVE COMMITTEE OF THE
22 LEGISLATIVE COUNCIL PURSUANT TO THE JOINT RULES.

23 **SECTION 5.** In Colorado Revised Statutes, 24-72-204, **add**
24 (3)(a)(X.5) as follows:

25 **24-72-204. Allowance or denial of inspection - grounds -**
26 **procedure - appeal - definitions - repeal.** (3) (a) The custodian shall

1 deny the right of inspection of the following records, unless otherwise
 2 provided by law; except that any of the following records, other than
 3 letters of reference concerning employment, licensing, or issuance of
 4 permits, shall be available to the person in interest pursuant to this
 5 subsection (3):

6 (X.5) RECORDS CREATED, MAINTAINED, OR PROVIDED TO A
 7 CUSTODIAN BY THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS
 8 CREATED IN SECTION 2-3-511 THAT ARE RELATED TO A WORKPLACE
 9 HARASSMENT COMPLAINT OR INVESTIGATION, A COMPLAINT UNDER THE
 10 WORKPLACE EXPECTATIONS POLICY, OR AN INQUIRY OR REQUEST
 11 CONCERNING WORKPLACE HARASSMENT OR CONDUCT, WHETHER OR NOT
 12 THE RECORDS ARE PART OF A FORMAL OR INFORMAL COMPLAINT OR
 13 RESOLUTION PROCESS.

14 <{Note: Sections 6 and 7 of this bill should be included if the Executive
 15 Committee determines that the provisions related to the confidentiality
 16 of records apply to all custodians of records, and the exception related
 17 to persons in interest should remain in place for all custodians.}>

18 **SECTION 6.** In Colorado Revised Statutes, **add** 2-3-511 as
 19 follows:

20 **2-3-511. Office of legislative workplace relations - creation -**
 21 **duties.** (1) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS IS
 22 CREATED IN THE OFFICE OF LEGISLATIVE LEGAL SERVICES. THE HEAD OF
 23 THE OFFICE IS THE DIRECTOR OF THE OFFICE OF LEGISLATIVE WORKPLACE
 24 RELATIONS. THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL
 25 SERVICES SHALL APPOINT THE DIRECTOR OF THE OFFICE OF LEGISLATIVE
 26 WORKPLACE RELATIONS AND MAY APPOINT SUCH ADDITIONAL STAFF AS

EXHIBIT 3

1 MAY BE NECESSARY FOR THE EFFICIENT OPERATION OF THE OFFICE, IN
2 ACCORDANCE WITH SECTION 2-3-503 (1).

3 (2) THE OFFICE OF LEGISLATIVE WORKPLACE RELATIONS SHALL
4 PROVIDE SERVICES TO THE GENERAL ASSEMBLY, ITS EMPLOYEES, AND THE
5 LEGISLATIVE STAFF AGENCIES RELATED TO EMPLOYEE RELATIONS;
6 TRAINING; COMPLIANCE; WORKPLACE CULTURE, INCLUDING THE
7 INVESTIGATION OF COMPLAINTS UNDER THE WORKPLACE EXPECTATIONS
8 POLICY ADOPTED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE
9 COUNCIL ACCORDING TO THE JOINT RULES; AND WORKPLACE
10 HARASSMENT, INCLUDING THE INVESTIGATION OF COMPLAINTS UNDER THE
11 WORKPLACE HARASSMENT POLICY ADOPTED BY THE EXECUTIVE
12 COMMITTEE OF THE LEGISLATIVE COUNCIL PURSUANT TO THE JOINT RULES.

13 (3) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-72-204
14 (3)(a)(X), THE DIRECTOR OF THE OFFICE OF LEGISLATIVE WORKPLACE
15 RELATIONS SHALL PUBLISH AND MAKE AVAILABLE TO THE PUBLIC AN
16 ANNUAL STATISTICAL REPORT SHOWING THE TOTAL NUMBER OF
17 COMPLAINTS RECEIVED UNDER THE WORKPLACE HARASSMENT POLICY AND
18 THE WORKPLACE EXPECTATIONS POLICY AND THEIR RESOLUTION. THE
19 DIRECTOR SHALL ENSURE THAT THE REPORT DOES NOT CONTAIN
20 INFORMATION THAT WOULD DISCLOSE THE IDENTITY OF A COMPLAINANT,
21 RESPONDENT, OR WITNESS.

22 **SECTION 7.** In Colorado Revised Statutes, 24-72-204, **amend**
23 (3)(a)(X)(A), (3)(a)(X)(B), and (3)(a)(X)(C) as follows:

24 **24-72-204. Allowance or denial of inspection - grounds -**
25 **procedure - appeal - definitions - repeal.** (3) (a) The custodian shall
26 deny the right of inspection of the following records, unless otherwise

1 provided by law; except that any of the following records, other than
2 letters of reference concerning employment, licensing, or issuance of
3 permits, shall be available to the person in interest pursuant to this
4 subsection (3):

5 (X) (A) Any records of ~~sexual~~ WORKPLACE harassment REPORTS,
6 complaints, and investigations, whether or not such records are
7 maintained as part of a personnel file, AND WHETHER OR NOT SUCH
8 REPORTS OR COMPLAINTS BECOME PART OF A FORMAL OR INFORMAL
9 INVESTIGATION OR RESOLUTION PROCESS; except that, an administrative
10 agency investigating the complaint may, upon a showing of necessity to
11 the custodian of records, gain access to information necessary to the
12 investigation of such a complaint. This ~~sub-subparagraph (A) shall~~
13 SUBSECTION (3)(a)(X)(A) DOES not apply to records of ~~sexual~~
14 WORKPLACE harassment complaints and investigations that are included
15 in court files and records of court proceedings. ~~Disclosure of all or a part~~
16 ~~of any records of sexual harassment complaints and investigations to the~~
17 ~~person in interest is permissible to the extent that the disclosure can be~~
18 ~~made without permitting the identification, as a result of the disclosure,~~
19 ~~of any individual involved. This sub-subparagraph (A) shall~~ SUBSECTION
20 (3)(a)(X)(A) DOES not preclude disclosure of all or part of the results of
21 an investigation of the general employment policies and procedures of an
22 agency, office, department, or division, to the extent that the disclosure
23 can be made without permitting the identification, as a result of the
24 disclosure, of any individual involved.

25 (B) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION
26 (3)(a)(X)(A) OF THIS SECTION, A RECORD OF A WORKPLACE HARASSMENT

EXHIBIT 3

1 COMPLAINT OR INVESTIGATION SHALL BE PROVIDED TO A PERSON IN
2 INTEREST AT THE CONCLUSION OF THE INVESTIGATION AT THE REQUEST OF
3 THE PERSON IN INTEREST. A person in interest under this subparagraph (X)
4 SUBSECTION (3)(a)(X) includes the person making a complaint and the
5 person whose conduct is the subject of such a complaint.

6 (C) ~~A person in interest may make a record maintained pursuant~~
7 ~~to this subparagraph (X) available for public inspection when such record~~
8 ~~supports the contention that a~~ A PERSON IN INTEREST SHALL NOT MAKE A
9 RECORD OF A WORKPLACE HARASSMENT COMPLAINT OR INVESTIGATION
10 AVAILABLE FOR PUBLIC INSPECTION; EXCEPT THAT, IF THE ALLEGATIONS
11 IN THE COMPLAINT HAVE BEEN publicly reported, written, printed, or
12 spoken ~~allegation of sexual harassment~~ against such person, ~~is~~ THE
13 PERSON IN INTEREST MAY MAKE A RECORD AVAILABLE IF THE RECORD
14 SUPPORTS THE CONTENTION THAT THE ALLEGATIONS IN THE COMPLAINT
15 ARE false.

16 **SECTION 8. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.

19 <{*Note: In order for the new policies to have the protections of this*
20 *bill, the bill and joint resolution authorizing the new policies should*
21 *have the same effective date.*}>

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

RECOMMENDED DRAFT

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LLS NO. _____ Jerry Barryx4341

SENATE SPONSORSHIP

Senate Committees

SENATE RESOLUTION

101 **CONCERNING CHANGES TO RULES OF THE SENATE TO IMPLEMENT**
102 **WORKPLACE POLICIES OF THE GENERAL ASSEMBLY.**

1 *Be It Resolved by the Senate of the Seventy-second General*
2 *Assembly of the State of Colorado:*

3 <{***Note: The introduction of this resolution is necessary if the Executive***
4 ***Committee adopts the recommendations of three members of the***
5 ***interim committee who recommended separate workplace harassment***
6 ***committees for each chamber that would not include nonlegislators.}**>*

7 That in the Rules of the Senate, Rule No. 21, **amend** (b); and **add**
8 (g) as follows:

9 **21. Committees**

10 (b) The following committees shall be appointed at the beginning of
11 each regular session of the General Assembly convening after a
12 general election and at such other times as may be necessary, and
13 the members of the committees shall serve at the pleasure of the
14 appropriate appointing authority:

15 **Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.
16 *Capital letters or bold & italic numbers indicate new material to be added to existing law.*
17 *Dashes through the words indicate deletions from existing law.*

- 1 (1) Senate Services.
- 2 (2) Joint Budget Committee.
- 3 (3) WORKPLACE HARASSMENT COMMITTEE.

4 The majority leader of the Senate shall appoint the majority
 5 members to these committees, with the majority leader appointing
 6 to the Joint Budget Committee the majority party members elected
 7 by the Senate majority party caucus to serve on this committee.
 8 The minority leader shall appoint the minority members to these
 9 committees, with the minority leader appointing to the Joint
 10 Budget Committee the minority party member elected by the
 11 Senate minority party caucus to serve on this committee.

12 (g) (1) THE SENATE WORKPLACE HARASSMENT COMMITTEE SHALL
 13 HANDLE COMPLAINTS UNDER THE WORKPLACE
 14 HARASSMENT POLICY OF THE GENERAL ASSEMBLY
 15 AGAINST A MEMBER OF THE SENATE OR A PARTISAN STAFF
 16 PERSON OF THE SENATE. THE SENATE WORKPLACE
 17 HARASSMENT COMMITTEE CONSISTS OF SIX MEMBERS,
 18 THREE APPOINTED BY THE MAJORITY LEADER AND THREE
 19 APPOINTED BY THE MINORITY LEADER. MEMBERS OF THE
 20 SENATE WORKPLACE HARASSMENT COMMITTEE SHOULD
 21 HAVE THE APPROPRIATE EXPERIENCE AND DEMEANOR TO
 22 HANDLE POTENTIALLY PARTISAN ISSUES IN AN OBJECTIVE
 23 MANNER.

24 (2) THE SENATE WORKPLACE HARASSMENT COMMITTEE SHALL
 25 ELECT A CHAIR AND A VICE-CHAIR, ONE FROM EACH OF THE
 26 TWO MAJOR POLITICAL PARTIES. THE CHAIR SO ELECTED
 27 SERVES AS CHAIR FOR THE FIRST REGULAR SESSION OF THE
 28 GENERAL ASSEMBLY AT WHICH THE WORKPLACE
 29 HARASSMENT COMMITTEE IS TO SERVE AND AS VICE-CHAIR
 30 FOR THE SECOND REGULAR SESSION. THE VICE-CHAIR SO
 31 ELECTED SERVES AS CHAIR FOR THE SECOND REGULAR
 32 SESSION OF SAID GENERAL ASSEMBLY.

33 (3) IF THE CHAIR RECEIVES A COMPLAINT AGAINST A MEMBER
 34 OF THE SENATE OR A PARTISAN STAFF PERSON OF THE
 35 SENATE UNDER THE WORKPLACE HARASSMENT POLICY,
 36 THE CHAIR SHALL CONVENE A MEETING OF THE SENATE
 37 WORKPLACE HARASSMENT COMMITTEE TO CONSIDER THE
 38 COMPLAINT AND SHALL PROCEED IN ACCORDANCE WITH THE
 39 WORKPLACE HARASSMENT POLICY. PURSUANT TO THE
 40 WORKPLACE HARASSMENT POLICY AND SECTION 24-6-402
 41 (3)(a)(III), COLORADO REVISED STATUTES, MEETINGS OF
 42 THE SENATE WORKPLACE HARASSMENT COMMITTEE MAY
 43 OCCUR IN EXECUTIVE SESSION. ADDITIONALLY, PURSUANT
 44 TO SECTION 24-72-402 (3)(a)(X.5), COLORADO REVISED
 45 STATUTES, ALL DOCUMENTS RELATED TO ANY WORKPLACE
 46 HARASSMENT COMPLAINT ARE CONFIDENTIAL AND ARE NOT

1

SUBJECT TO PUBLIC INSPECTION.

2

(4) AS USED IN THIS SUBSECTION (g), "PARTISAN STAFF PERSON
3 OF THE SENATE" MEANS A PERSON WHO IS SUPERVISED BY
4 A MEMBER OF THE SENATE AND INCLUDES CAUCUS STAFF
5 PERSONS AND AIDES, INTERNS, AND VOLUNTEERS
6 SUPERVISED BY A MEMBER OF THE SENATE.

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LLS NO. R19 Jerry Barry x4341

HOUSE SPONSORSHIP

House Committees

HOUSE RESOLUTION

101 **CONCERNING CHANGES TO RULES OF THE HOUSE OF REPRESENTATIVES**
102 **TO IMPLEMENT WORKPLACE POLICIES OF THE GENERAL**
103 **ASSEMBLY.**

1 *Be It Resolved by the House of Representatives of the*
2 *Seventy-second General Assembly of the State of Colorado:*

3 < { ***Note: The introduction of this resolution is necessary if the Executive***
4 ***Committee adopts the recommendations of three members of the***
5 ***interim committee who recommended separate workplace harassment***
6 ***committees for each chamber that would not include nonlegislators*** } >

7 That in the Rules of the House of Representatives, Rule No. 25,
8 **amend** (d) and (g); and **add** (b)(3) and (f.5) as follows:

9 **25. Committees**

10 (b) Other permanent committees of the House shall be:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.

- 1 (3) WORKPLACE HARASSMENT.
- 2 (d) EXCEPT FOR THE HOUSE WORKPLACE HARASSMENT COMMITTEE,
3 from the members appointed to each committee specified in
4 SUBSECTIONS (a) and (b) ~~above~~ OF THIS RULE, the Speaker shall
5 designate the chairman and the vice-chairman of each committee.
- 6 (f.5) (1) THE HOUSE WORKPLACE HARASSMENT COMMITTEE
7 SHALL HANDLE COMPLAINTS UNDER THE WORKPLACE
8 HARASSMENT POLICY OF THE GENERAL ASSEMBLY
9 AGAINST A MEMBER OF THE HOUSE OF REPRESENTATIVES
10 OR A PARTISAN STAFF PERSON OF THE HOUSE OF
11 REPRESENTATIVES. THE HOUSE WORKPLACE
12 HARASSMENT COMMITTEE CONSISTS OF SIX MEMBERS,
13 THREE APPOINTED BY THE SPEAKER AND THREE
14 APPOINTED BY THE MINORITY LEADER. MEMBERS OF THE
15 HOUSE WORKPLACE HARASSMENT COMMITTEE SHOULD
16 HAVE THE APPROPRIATE EXPERIENCE AND DEMEANOR TO
17 HANDLE POTENTIALLY PARTISAN ISSUES IN AN OBJECTIVE
18 MANNER.
- 19 (2) THE HOUSE WORKPLACE HARASSMENT COMMITTEE
20 SHALL ELECT A CHAIR AND A VICE-CHAIR, ONE FROM
21 EACH OF THE TWO MAJOR POLITICAL PARTIES. THE CHAIR
22 SO ELECTED SERVES AS CHAIR FOR THE FIRST REGULAR
23 SESSION OF THE GENERAL ASSEMBLY AT WHICH THE
24 HOUSE WORKPLACE HARASSMENT COMMITTEE IS TO
25 SERVE AND AS VICE-CHAIR FOR THE SECOND REGULAR
26 SESSION. THE VICE-CHAIR SO ELECTED SERVES AS CHAIR
27 FOR THE SECOND REGULAR SESSION OF SAID GENERAL
28 ASSEMBLY.
- 29 (3) IF THE CHAIR RECEIVES A COMPLAINT AGAINST A MEMBER
30 OF THE HOUSE OF REPRESENTATIVES OR A PARTISAN
31 STAFF PERSON OF THE HOUSE OF REPRESENTATIVES
32 UNDER THE WORKPLACE HARASSMENT POLICY, THE
33 CHAIR SHALL CONVENE A MEETING OF THE HOUSE
34 WORKPLACE HARASSMENT COMMITTEE TO CONSIDER
35 THE COMPLAINT AND SHALL PROCEED IN ACCORDANCE
36 WITH THE WORKPLACE HARASSMENT POLICY. PURSUANT
37 TO THE WORKPLACE HARASSMENT POLICY AND SECTION
38 24-6-402 (3)(a)(III), COLORADO REVISED STATUTES,
39 MEETINGS OF THE HOUSE WORKPLACE HARASSMENT
40 COMMITTEE MAY OCCUR IN EXECUTIVE SESSION.
41 ADDITIONALLY, PURSUANT TO SECTION 24-72-204
42 (3)(a)(X.5), COLORADO REVISED STATUTES, ALL
43 DOCUMENTS RELATED TO ANY COMPLAINT ARE
44 CONFIDENTIAL AND ARE NOT SUBJECT TO PUBLIC
45 INSPECTION.

EXHIBIT 5

- 1 (4) AS USED IN THIS SUBSECTION (f.5), "PARTISAN STAFF
2 PERSON OF THE HOUSE OF REPRESENTATIVES" MEANS A
3 PERSON WHO IS SUPERVISED BY A MEMBER OF THE HOUSE
4 OF REPRESENTATIVES AND INCLUDES CAUCUS STAFF
5 PERSONS AND AIDES, INTERNS, AND VOLUNTEERS
6 SUPERVISED BY A MEMBER OF THE HOUSE OF
7 REPRESENTATIVES.
- 8 (g) EXCEPT FOR THE HOUSE WORKPLACE HARASSMENT
9 COMMITTEE, all committees shall consist of not fewer than nine
10 nor more than nineteen members, as determined by the Speaker.

Workplace Harassment Policy of the General Assembly

Prepared by the Office of Legislative Workplace Relations

A) APPLICABILITY

This Policy is applicable to each member of the General Assembly, all legislative employees who are not subject to the state personnel system, and third parties.

B) DEFINITIONS

As used in this Policy:

1. **Complainant** means a person who files a complaint, whether formal or informal, under this Policy.
2. **Harassment** is verbal or physical conduct that demeans, stereotypes, or shows hostility or aversion toward a person or group because of the individual's protected class. A "protected class" includes a person's race, color, religion, national origin, sex (including pregnancy, childbirth, and related medical conditions), ancestry, sexual orientation, age, disability status, marital status, genetic information, gender identity or expression, active military personnel status, citizenship status, transgender status, or any other class, attribute, or affiliation that is protected by state or federal law, or a person's association with others in a protected class. Harassment is conduct directed towards a member of a protected class where the conduct:
 - a. Has the purpose or effect of creating an intimidating, hostile, humiliating, or offensive working environment;
 - b. Has the purpose or effect of unreasonably interfering with a person's work performance; or
 - c. Otherwise adversely affects a person's employment opportunities.

Harassment can be a single serious incident or a series of incidents over time and is not determined by looking at the intention of the person who engaged in the behavior. Discriminatory harassment is determined by asking: (1) Did the recipient of the behavior him or herself find it unwelcome, offensive, hostile, insulting, intimidating, demeaning, humiliating, hurtful, or degrading (or any other synonym for these concepts); and (2) Would a reasonable person in the recipient's position find the behavior similarly offensive?

While harassment includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. As such, sexual harassment is defined separately in section B.11. of this Policy;

No policy can provide an exhaustive list of behaviors that can rise to the level of harassment. Some examples of harassment might include, but are not limited to, the following conduct if it is severe or pervasive under all of the circumstances:

- Epithets, slurs, insults, innuendo, or negative stereotyping comments related to the protected classes;
 - Mocking someone's accent, speech, attire, or mobility;
 - Acts or jokes that are hostile or demeaning with regard to the protected classes;
 - Threatening, intimidating, or hostile acts that relate to the protected classes;
 - Racially offensive words or phrases;
 - Written or graphic material that insults, stereotypes, or shows aversion or hostility to an individual or group because of protected class and that is placed on walls, bulletin boards, email, voicemail, or elsewhere on the premises of the legislative workplace;
 - Displays of symbols, slogans, or items that are associated with hate or intolerance towards any select group, such as swastikas or nooses;
 - Pranks or hazing directed at someone because of their protected class; and
 - Physical aggression or gestures based on someone's protected class.
3. **Legislative employee** means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, including any legislative aide to a member. For purposes of this Policy, "legislative employee" also includes a legislative intern and volunteer staff.
 4. **Legislative workplace** means the capitol complex and premises, the legislative services building, and the state services building, or any other surrounding buildings or office spaces utilized by the General Assembly.
 5. **Member** means a legislative member of the General Assembly.
 6. **Nonpartisan staff** means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, or an employee of the Senate or the House of Representatives who does not work for any specific member and who does not represent any political affiliation. For purposes of this Policy, "nonpartisan staff" may also include volunteer staff when the other criteria under this definition is met.

7. **Partisan staff** means an employee of the Senate or House of Representatives who works for a specific member or who represents a political affiliation within the General Assembly. For purposes of this Policy, "partisan staff" also includes a legislative intern and may include volunteer staff when the other criteria under this definition is met.
8. **Protection of the workplace** means the Office of Legislative Workplace Relations (Office) determines that the initiation of an investigation or sharing of information is necessary because the allegations in a complaint establish a threat of imminent harm to individuals in the workplace. Such instances may occur when complaints include allegations of:
 - Sexual assault;
 - Physical violence;
 - Threats of violence against a complainant or others;
 - Retaliation;
 - A repeated pattern or history of inappropriate or harassing behavior; or
 - Other criminal behavior, either explicit or implicit.
9. **Respondent** means a person who is accused of wrongdoing under this Policy.
10. **Retaliation** is an act of punishment, reprisal, or revenge that is taken against a person because they complained of behavior under this Policy or because they assisted or participated in an investigation of a complaint under this Policy. Retaliation can take many forms in a legislative workplace, but essentially retaliation can be any action that is taken against a person that would deter a reasonable person from coming forward to complain of misbehavior under this Policy.

Retaliation in a legislative work environment can take many forms and can be work-related or not work-related. Some examples can include but are not limited to:

Work-related retaliation:

- Disparaging a person to a caucus or other legislative body;
- Changing the person's role, responsibilities, supervisory, or legislative authority;
- Newfound scrutiny of work performance by a supervisor;
- Demotion, suspension, termination, or denial of a promotion;
- Warnings, reprimands, or poor performance evaluations;
- Exclusion from beneficial networking or other opportunities;
- Requiring reverification of work status;
- Encouraging coworker shunning;
- Exclusion from work-related activities;
- Workplace surveillance or workplace or legislative sabotage; or

- Assignment of disproportionate workload.

Non-work-related retaliation:

- Disparaging the person to others or in the media;
- Disparaging the person to potential new employers;
- Threatening legal action;
- Threatening immigration action; or
- Abusive verbal or physical behavior.

11. **Sexual harassment** is a form of harassment. The General Assembly prohibits sexual harassment and will take prompt and appropriate action in response to complaints or knowledge of violations of this Policy.

- a. Sexual harassment can be "quid pro quo" or "this for that" harassment. This includes direct or implied requests by a member or individual in a position of real or perceived authority for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or support of legislation or other legislative processes.
- b. Sexual harassment can also be "hostile work environment" harassment. This includes sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:
 - Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment;
 - It is used as a basis for employment decisions;
 - Submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or
 - Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.
- c. Examples of sexual harassment include, but are not limited to, the following conduct, if unwelcome by the recipient and sufficiently severe or pervasive under all of the circumstances:

Inappropriate commentary:

- Sexual "kidding," epithets, jokes, written or oral references to sexual conduct;
- Gossip regarding a person's sex life;
- Commenting on a person's body or sexual activity, deficiencies, or prowess;
- Sexually suggestive comments about a person's clothing;

- Vocal activity like catcalls or whistles;
- Leering or staring at a person or part of their body;
- Obscene letters, notes, emails, text messages, photographs, cartoons, articles, or other written or pictorial materials of a sexual nature; or
- Sexting or sexual messages or images posted on social media, for example, texts, instant messages, Facebook posts, Tweets, Snapchats, Instagrams, or blog entries.

Direct sexual propositions:

- Persistent requests for dates, drinks, or other personal contact after being informed that the interest is unwelcome;
- Inappropriate sexually themed communication in person, online, or via mobile devices;
- Indecent exposure; or
- Unwelcome sexual advances or invitations, including but not limited to, requests for sexual activity or intimate meetings at one's home, in the legislative workplace, or a hotel room.

Sexual coercion and retaliation:

- Quid pro quo harassment, including explicit or implicit requests for sexual activity or silence about harassment in exchange for reward, position, or career advancement; support of legislative initiatives; introductions; referrals; meetings or "facetime"; invitations to exclusive events; support for candidacies; position stability and continuation; or any other such condition or potential benefit;
- Sexual coercion under threat of punishment, including demotion, firing, negative reviews, opposition to legislative initiatives, blacklisting, or otherwise interfering with someone's access to fellow lawmakers or opportunities; or
- Retaliating against a member of the legislative workplace for refusing a sexual advance or reporting an incident of possible sexual harassment per this Policy or the person's other legal avenues for reporting.

Sexual contact:

- Unwanted physical touching or assault or blocking or impeding movements;
- Unconsented physical contact of a sexual nature, including but not limited to, touching, groping, or kissing;
- Sexual contact without proper consent due to intoxication; or
- Rape.

- d. Sexual harassment may involve individuals of the same or different genders, or those who do not identify as gender binary;

- e. Sexual harassment can be a single serious incident or a series of incidents over time;
 - f. Sexual harassment is assessed using the same standard described above in the harassment definition.
12. **Third party** means a lobbyist, member of the media, or member of the general public who is interacting with the General Assembly or with legislative service agencies, the Senate, or the House of Representatives.
13. **Workplace expectations** means the expected behaviors and responsibilities of individuals in the legislative work environment based on the General Assembly's commitment to dignity and respect. These expectations are defined in a separate policy document.

C) WORKPLACE HARASSMENT PROHIBITED

The General Assembly prohibits harassment by members of the General Assembly, legislative employees, or third parties and will take prompt and appropriate action in response to complaints or knowledge of harassment.

D) SEXUAL HARASSMENT PROHIBITED

Sexual harassment is a form of workplace harassment. The General Assembly prohibits sexual harassment by members of the General Assembly, legislative employees, or third parties and will take prompt and appropriate action in response to complaints or knowledge of sexual harassment.

E) RETALIATION PROHIBITED

The General Assembly prohibits retaliation against any person for having complained about alleged violations of this Policy or the Workplace Expectations, assisting in such a complaint, or participating in an investigation into such a complaint.

Retaliation is a serious problem, and a fear of retaliation prevents issues from surfacing, keeps people from raising problems, and enables a culture of harassment to fester. The General Assembly recognizes the seriousness of retaliation and is committed to responding to and addressing retaliation concerns proactively and reactively upon receipt of a complaint of retaliation. As such, a complaint of retaliation may constitute a violation of this Policy and be subject to the informal or formal processes described in this Policy. **<Note: Four members of the interim committee recommended that claims for retaliation should always be handled**

under the formal complaint process. One member recommended that it be handled on a case-by-case basis.>

F) REPORTING PROCESS

1. Any member, legislative employee, or third party who wishes to report a violation of this Policy or who believes he or she is the subject of any type of workplace harassment, sexual harassment, or retaliation in any manner from anyone, should submit a complaint directly to the Office or its opposite gender designee, if applicable.

If the complaint concerns a staff member from the Office, a complainant should submit a complaint to the director of the Office of Legislative Legal Services or his or her opposite gender designee.

Complainants may also submit complaints through the General Assembly's anonymous reporting hotline ([link/phone number/info here](#)). Please note that while the General Assembly is committed to responding appropriately to all complaints under this Policy, reporting a complaint anonymously may limit the degree to which it can be effectively and thoroughly investigated, based on the information provided.

2. Upon receipt or notification of a complaint of workplace harassment, sexual harassment, or retaliation, the Office shall proceed as follows:

The Office shall assess the complaint and work with the complainant to determine the most appropriate course of action, including whether to proceed with a formal or informal resolution process as described in sections G. and H. of this Policy. A formal harassment complaint investigation will only be initiated with the approval of the complainant unless the Office determines that the actions alleged constitute an immediate threat to the safety of the workplace, such as:

- Sexual assault;
 - Physical violence;
 - Threats of violence against a complainant or others;
 - Retaliation; **<Note: Four members of the interim committee recommended that claims for retaliation should always be handled under the formal complaint process. One member recommended that it be handled on a case-by-case basis.>**
 - A repeated pattern or history of inappropriate or harassing behavior; or
 - Other criminal behavior, either explicit or implicit.
3. If a formal complaint process proceeds without the consent of the initial complainant, the identity of the complainant shall not be disclosed during the process, and it shall be considered retaliation if the complainant's identity is disclosed, unless otherwise permitted by law.

G) INFORMAL RESOLUTION PROCESS

1. The informal resolution process is, as the name suggests, flexible and intentionally open to individualized responses and resources. This shall be a confidential process, and the parties' names, the process itself, and any resolution shall not be subject to disclosure except as necessary to implement any steps agreed to in the resolution or as provided in section I. or G. 4. of this Policy. The informal resolution process is intended to stop and redirect inappropriate behavior and prevent it from reoccurring.
2. The Office shall take such steps as necessary to understand the complaint and find facts to determine if the behavior occurred. These steps need not follow the formal investigation protocols set forth below in section H. of this Policy and are not subject to the same requirements. After the informal fact finding has concluded, the Office will determine a range of resources to offer to the parties to resolve the issues.
3. The Office has internal and external resources that it can provide as part of the informal resolution process, including:
 - Facilitated mediation;
 - Meetings between the Office and respondents on behalf of complainants;
 - Individual or joint coaching;
 - Training and educational opportunities;
 - Team rebuilding and crisis management;
 - Reasonable accommodations that may include referrals to counseling, advocacy, and wellness support; and
 - Other remedial actions.
4. The Office shall create a record of all complaints handled under the informal resolution process and the outcome and shall maintain such records in secure and confidential files ten years or after the last party involved is no longer within the legislative workplace, whichever is longer. All such records and work product of this process must be confidential, except that:
 - a. If the Office finds a pattern of issues with a respondent under the informal process, the Office, following notice to a complainant when practicable, may disclose to the respondent's supervisor or caucus leadership the issues raised without disclosing the identity of any person involved in the process except for the respondent; and
 - b. The Office shall collect nonidentifying, statistical data regarding informal complaints and shall annually submit an aggregate report to the General Assembly on informal complaints received during the previous calendar year.

5. Participation in the informal resolution process shall be voluntary. If the parties agree to the informal resolution process, they shall be expected to participate fully and in good faith. In all cases of nonparticipation, the Office shall document the allegations and responses in the complaint file, and this information may be considered as grounds for more serious treatment of future complaints about the same respondent, should they arise.
6. The Office shall strive to complete the informal resolution process within thirty (30) days of the Office's receipt of the complaint. It should be noted that remedial action such as ongoing coaching, training, or other efforts may be decided upon within the thirty (30) day timeline but may be ongoing after that time frame has elapsed.
7. There is nothing in this Policy or in the informal resolution process that precludes future advancement into the formal resolution process described in section H. of this Policy, should the alleged behavior qualify under that policy. Statements made by a complainant or respondent during the informal process shall not be used against that person in a complaint or investigation under the formal process described in section H. of this Policy.

H) FORMAL RESOLUTION PROCESS

1. The formal resolution process is a more traditional investigative response to complaints alleging facts that could constitute workplace or sexual harassment or retaliation. This shall be a confidential process, and the parties' names, witness names, the process itself and any resolution shall not be subject to disclosure except as necessary to conduct an investigation, implement remedial or protective measures for the necessary protection of the workplace, or as otherwise provided in section I. or H.3. of this Policy. The formal resolution process is intended to stop serious misbehavior and prevent it from reoccurring.
2. The Office has internal and external resources that it can provide as part of the formal resolution process, including:
 - Internal staff trained in thorough and impartial investigations;
 - Trauma-informed interviewers and data assessors;
 - Referrals to qualified third-party investigators to use when circumstances require outside expertise;
 - Remedial, accommodative, and protective measures;
 - Access to external support persons for complainants and respondents. Such services include counseling and accompanying a party to interviews and hearings, but do not include representation or speaking for or on behalf of the party. A person providing victim advocate services or navigator services shall keep all information received confidential.

- A standing legislative committee (Committee), to use when allegations present facts that could constitute workplace or sexual harassment or retaliation by a member or partisan staff; and
 - All of the resources available in the informal resolution process, which can be employed as necessary in the formal resolution process.
3. The Office will make a record of all complaints handled under the formal resolution process and the outcome and shall maintain such records in secure and confidential files ten years or after the last party involved is no longer within the legislative workplace, whichever is longer. All such records and work product of this process will be confidential except as described in section G.4. of this Policy and as necessary to investigate and to enact protective and remedial measures.
4. Participation in the formal resolution process, including as a witness, is:
- Mandatory for partisan and nonpartisan staff, except for complainants;
 - Voluntary for members (if a member does not participate in an investigation, the Office may report the lack of participation to leadership); and
 - Encouraged for third parties.
5. As part of every formal resolution process, the Office shall make certain notifications to the parties, make referrals to resources available for parties, and ensure that an anti-retaliation plan is created.
- a. The Office shall provide the following notifications to both the complainant and respondent in the formal resolution process. These notifications shall be provided verbally and offered in written format. Notifications via email will only be sent to a private email account designated by the individual that is not accessible by aides, interns, or other staff:
- An explanation of the investigatory procedures, including the contemplated timeline of the process;
 - An advisement on the requirement and importance of confidentiality, as well as the applicable limits on confidentiality;
 - A reminder of the prohibition against retaliation and reporting options concerning retaliation, including that disclosing the identity of a party or witness may be considered retaliation unless the identity of that party or witness has previously been disclosed by others; and
 - A listing of resources available to support the parties through the formal resolution process, which may include mental health services, counseling, anti-retaliation support, and wellness services or referral to other support services.

Such notification shall ordinarily occur, in the case of the complainant, when the Office receives the complaint; and in the case of the respondent, at the time of his or her first investigation interview.

- b. The Office shall meet with the complainant upon receiving the complaint and with the respondent at the time of his or her first interview, to discuss and create a proactive anti-retaliation plan with both parties. The Office has flexibility in designing such a plan. The process for creating this plan, and some of its contents, may include:
 - Discussion with complainant regarding his or her feelings or fears about retaliation, and identifying individualized areas of concern for monitoring and proactive involvement;
 - Discussion with complainant about anti-retaliation protections generally, including information on how to report retaliation and support available for dealing with personal feelings and fear about retaliation while carrying out employment or legislative business;
 - Discussion with any witnesses, at the time they are interviewed, about anti-retaliation protections generally, including information on how to report retaliation and support available for dealing with personal feelings and fear about retaliation while carrying out employment or legislative business;
 - Discussion with respondent about the obligation not to retaliate, ways to avoid engaging in retaliation, support available for dealing with personal feelings about the allegations while carrying out managerial or legislative business and the possibility for increased severity of potential penalties for misconduct if retaliation occurs, and any concerns or fears about retaliation that the respondent may have;
 - Review of projects, pending legislation, or work projects on which complainant and respondent are working together to identify possible areas of concern to monitor for possible retaliation;
 - Exploring options for physically separating the parties during the investigation, including (where available) leaves of absence, reassignment, and office moves;
 - Devising a schedule for periodic check in by the Office with the parties to determine whether compliance with anti-retaliation is happening; and
 - Devising other communication or monitoring plans to enable the Office to be aware of complainant's work performance, proposed legislation, or projects with an eye toward identifying and interrupting possible retaliation occurring.

The anti-retaliation plan will be made part of the permanent confidential investigation file.

6. In investigations in the formal resolution process, both complainant and respondent have certain rights and responsibilities.

a. Complainant and respondent have the responsibility to:

- Participate fully and in good faith in the investigation process;
- Tell the truth in investigative interviews and proceedings;
- Refrain from influencing, coercing, or otherwise tampering with witnesses or evidence;
- Keep the investigation process, parties, and issues confidential during the investigation; and
- Provide all information relevant to the matter within their possession and not withhold relevant information.

b. Complainant and respondent have the right to:

- Be treated with dignity and respect throughout the process;
- A meaningful opportunity to produce any evidence in their possession to defend themselves from allegations or counter-allegations by being afforded:
 - A full description of the allegations against them, which ordinarily shall be provided verbally during their initial witness interview;
 - The opportunity to provide a written statement, other evidence, the identity of relevant witnesses, and additional evidence or questions for investigators to ask the other party, during and for a reasonable time after their initial interview (contingent on investigation deadlines); and
 - The opportunity for a follow-up interview if new evidence is discovered or, if evidence inconsistent with their version of material events is discovered, the opportunity to explain or otherwise respond to evidence not available in their initial interview. This right is subject to the investigation timeline.
- Access to trauma-informed interviewers and investigators, if the circumstances require it; and
- Referrals to counseling, mental health and wellness resources, and to any other resources available from the Office.

7. There are different investigative paths in the formal resolution process, dependent on who the respondent is:

a. Complaints against nonpartisan staff: The Office shall conduct a confidential impartial investigation or may hire a professional third-party investigator to do so, at the Office's discretion.

- b. Complaints against members and partisan staff: The Office shall refer the matter to the Committee. The Committee shall hire a professional third-party investigator or direct that the Office conduct the investigation and will oversee the investigative process.
 - c. Complaints against employees of the Office shall go to the director of the Office of Legislative Legal Services. The director shall conduct a confidential impartial investigation or may hire a professional third-party investigator to do so, at the director's discretion.
8. The investigator shall conduct a thorough and impartial investigation of the allegations:
- a. The Office or the Committee shall set the scope of the investigation under their supervision. The "scope" refers to the specific questions that the investigation will seek to answer. The scope shall be documented in writing. If the scope of the investigation changes during the investigation, the investigator shall discuss the change with the Office or Committee at the time, and if the change is approved, it shall be noted in writing in the file.
 - b. The investigation shall conform to professional practice standards in the workplace investigations industry, including at a minimum:
 - (i) Witness interviews should generally be in person unless witnesses are unavailable. This is particularly important with complainant and respondent interviews.
 - (ii) Interviews should generally occur in an environment and with a method that maximizes the chances of getting reliable information and should be documented in a reliable and consistent fashion, either through note taking, recording, or witness statements;
 - (iii) Documentary evidence and electronically stored information should be gathered in a way that preserves its integrity;
 - (iv) Investigators shall be provided with full access to witnesses, evidence, and data within the control of the General Assembly that the investigator deems necessary for a thorough investigation of the matter; and
 - (v) The investigator shall document his or her methodology and the material evidence on both sides of each issue, so that there is a reliable record of the evidence the investigator relied upon in reaching his or her findings.

9. The Office or the Committee, whomever is managing the investigation, shall check in with both complainant and respondent during the investigation once interviews commence to provide timeline updates as to whether the investigation is on track to be completed within the timelines set forth below. It should be noted that things change during an investigation, and an update that the investigation is "on track" does not guarantee that it will remain on track.
10. After all evidence has been gathered, the investigator shall analyze the evidence using the preponderance of the evidence standard and shall reach findings of fact that are consistent with the scope of the investigation:
 - a. Findings of fact shall be based on evidence that a reasonable mind might accept as more or less likely than not to have occurred; and
 - b. The investigator's findings of facts shall be final and shall not be reinvestigated unless new relevant factual information becomes available.
11. At the conclusion of the investigation, the investigator shall prepare an investigation report and transmit it to either the Office or the Committee, whichever one appointed him or her. Investigation reports are confidential documents and shall not be disclosed to either party, members, legislative staff, or third parties, except as set forth in this Policy. The investigation report shall:
 - a. Describe the complaint and scope of the investigation;
 - b. Include a statement of the investigation methodology;
 - c. Summarize the material facts on both sides of each issue;
 - d. Provide an analysis of the material facts; and
 - e. State the factual finding(s).

All reports submitted to the Committee or a director shall be anonymized to remove the names of witnesses, and, when practicable, the complainant.

<{Note: Sections V.B. and VI.C. of the Recommendations include differing recommendations about what information from the investigation should be shared with various decision-makers depending on the circumstances. When the Executive Committee makes decisions about these recommendations, the Policy will be updated to include that information.}>

12. There are different paths in the formal resolution process to determine whether the facts as found in the investigation establish a violation of this Policy, dependent on who the respondent is:

- a. Complaints against nonpartisan staff: The Office shall determine whether the facts, based on a finding that behavior was more likely than not to have occurred, establish a violation of this Policy.
- b. Complaints against partisan staff: The Committee shall recommend to the staff member's caucus leadership and the supervising member whether the facts, based on a finding that behavior was more likely than not to have occurred, establish a violation of this Policy. The supervising member shall make the determination in consultation with caucus leadership.
- c. Complaints against members: The Committee shall determine whether the facts, based on a finding that behavior was more likely than not to have occurred, establish a violation of this Policy.

13. At the conclusion of the formal resolution process, if it is determined that an individual has violated this Policy's prohibition against workplace or sexual harassment or retaliation, prompt and appropriate action will be taken to address the policy violation. There are different recommended action paths in the formal resolution process, dependent on who the respondent is:

- a. Complaints against nonpartisan staff: The Office shall recommend to the relevant director an appropriate range of accountability. The relevant director shall determine and implement the accountability measures. If the director's decision is outside the range recommended by the Office, the Office may advise the Executive Committee of the Legislative Council.
- b. Complaints against partisan staff: The Committee shall recommend to the staff member's caucus leadership and the supervising member an appropriate range of accountability. The supervising member shall determine and implement the accountability measures, in consultation with caucus leadership. If any party is not satisfied with the accountability measures, they may bring the matter to the attention of the Committee, which shall review the choices of the supervising member.
- c. Complaints against members: The Committee shall determine the accountability measures:

- (i) If the Committee finds that the actions warrant reprimand, censure, or expulsion, the members of the Committee who voted in favor of such discipline shall jointly introduce a resolution calling for such discipline;
- (ii) If the Committee finds that the actions warrant accountability other than that which would require a resolution, the Committee shall inform the responding member of the recommended accountability and indicate that if the member fails to accept the accountability or fails to satisfy any conditions of the accountability, the Committee may recommend that a resolution for reprimand, censure, or expulsion be filed.

14. The Office or Committee shall strive to complete the formal resolution process within ninety (90) days, as follows:

- a. When an external investigator is utilized, an investigator must be assigned within fourteen (14) days of the Office's receipt of complaint;
- b. An investigator shall complete the investigation, make factual findings, and prepare and deliver the report to the Office within forty-five (45) days of assignment;
- c. Determination or recommendation of policy violation, documentation of same, and transmittal to decision-maker shall be completed within fourteen (14) days of receipt of investigation report;
- d. Determination of action:
 - (i) For nonmember respondents, the determination shall be made within fourteen (14) days of receipt of recommendations;
 - (ii) For member respondents, the determination shall be made as soon as practicable pursuant to the rules of the Committee and legislative body.

There may be situations when the timeline of the process must be extended to ensure a thorough and impartial process. Any reasons for deviating from this timeline shall be documented by the Office or the Committee and included in the case file.

15. After final action has been taken in response to the complaint, the Office shall close the file and maintain it in a secure and confidential file under both parties' names.

I) CONFIDENTIALITY

1. The Office shall keep confidential all information received concerning inquiries and complaints under this Policy to the extent permitted by law, except as necessary to conduct an investigation, implement remedial or protective measures, or when it determines that the actions alleged constitute an immediate threat to the safety of the workplace. The Office may disclose nonidentifying, statistical information on complaints, including information concerning any complaints received under the anonymous complaint reporting tool, an informal complaint process, or a formal complaint process.
2. Partisan and nonpartisan staff shall maintain the confidentiality of all information received concerning inquiries and complaints under this Policy.
3. Pursuant to Joint Rule 38, members are required to maintain confidentiality of all information received concerning inquiries and complaints under this Policy.
4. All other parties are required to keep the investigation confidential to the extent permitted by law.
5. The Office shall inform complainants and respondents of the importance of maintaining the confidentiality of all information received concerning inquiries and complaints under this Policy.
6. Violations of these confidentiality provisions may constitute a violation of this Policy or the Workplace Expectations, subject to the informal or formal processes as described in sections G. and H. of this Policy.

Workplace Expectations of the General Assembly

Prepared by the Office of Legislative Workplace Relations

A) APPLICABILITY

This Policy is applicable to each member of the General Assembly, all legislative employees who are not subject to the state personnel system, and third parties.

B) DEFINITIONS

As used in this Policy:

1. **Complainant** means a person who files a complaint, whether formal or informal, under this Policy.
2. **Consensual relationship** means and refers to any relationship, either past or present, which is romantic, intimate, or sexual in nature and to which both parties consent or consented. This includes marriage and civil unions.
3. **Legislative employee** means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, including any legislative aide to a member. For purposes of this Policy, "legislative employee" also includes a legislative intern and volunteer staff.
4. **Legislative workplace** means the capitol complex and premises, the legislative services building and the state services building, or any other surrounding buildings or office spaces utilized by the General Assembly.
5. **Member** means a legislative member of the General Assembly.
6. **Nonpartisan staff** means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, or an employee of the Senate or the House of Representatives who does not work for any specific member and who does not represent any political affiliation. For purposes of this Policy, "nonpartisan staff" may also include volunteer staff when the other criteria under this definition is met.
7. **Partisan staff** means an employee of the Senate or House of Representatives who works for a specific member or who represents a political affiliation within the General

Assembly. For purposes of this Policy, "partisan staff" also includes a legislative intern and may include volunteer staff when the other criteria under this definition is met.

8. **Professionalism** means conducting one's self in a manner that is consistently appropriate in tone and content. Elements of "professionalism" include adhering to workplace policies, consistent and timely attendance, demonstrating accountability for one's own actions, and communicating respectfully.
9. **Respondent** means a person who is accused of wrongdoing under this Policy.
10. **Retaliation** is an act of punishment, reprisal, or revenge that is taken against a person because he or she complained of behavior under this Policy or because he or she assisted or participated in an investigation of a complaint under this Policy. Retaliation can take many forms in a legislative workplace, but essentially retaliation can be any action that is taken against a person that would deter a reasonable person from coming forward to complain of misbehavior under this Policy.

Retaliation in a legislative work environment can take many forms and can be work-related or not work-related. Some examples can include, but are not limited to:

Work-related retaliation:

- Disparaging a person to a caucus or other legislative body;
- Changing the person's role, responsibilities, supervisory, or legislative authority;
- Newfound scrutiny of work performance by a supervisor;
- Denial of a promotion, demotion, suspension, or termination;
- Warnings, reprimands, or poor performance evaluations;
- Exclusion from beneficial networking or other opportunities;
- Requiring reverification of work status;
- Encouraging coworker shunning;
- Exclusion from work-related activities;
- Workplace surveillance or workplace or legislative sabotage; or
- Assignment of disproportionate workload.

Non-work-related retaliation:

- Disparaging the person to others or in the media;
- Disparaging the person to potential new employers;
- Threatening legal action;
- Threatening immigration action; or
- Abusive verbal or physical behavior.

11. **Third party** means a lobbyist, member of the media, or member of the general public who is interacting with the General Assembly or with legislative service agencies, the Senate, or the House of Representatives.

C) EXPECTATIONS

The General Assembly is committed to creating and maintaining a work environment in which all individuals are treated with dignity and respect. Members of the General Assembly, legislative employees, and third parties are expected to conduct their duties with the highest standards of integrity and professionalism. Members, legislative employees, and third parties shall:

1. Be professional, respectful, truthful, and courteous to all in the legislative workplace at all times;
2. Always strive to perform at the highest level possible;
3. Serve as a positive role model to others;
4. Be responsive to member and coworker requests and needs;
5. Accept responsibility for their own work, behavior, and actions;
6. Communicate in a professional and respectful manner;
7. Resolve conflicts in an appropriate, respectful, timely, and courteous manner;
8. Be active learners who are committed to forward-looking innovation and solutions;
9. Treat everyone fairly and demonstrate respect for all people and their ideas;
10. Avoid conflicts of interest that may harm the reputation of the General Assembly;
11. Act on the values of the General Assembly and be good stewards of public trust; and
12. Adhere to all federal and state laws, General Assembly policies, and legislative service agency, Senate, and House of Representatives policies and procedures.

D) CONSENSUAL RELATIONSHIPS

The General Assembly does not interfere with private choices regarding personal relationships when these relationships do not interfere with the values and policies of the General Assembly. However, consensual romantic or sexual relationships in which one party retains a direct

supervisory or authoritative position over the other party have the potential to interfere with these values and policies.

A romantic, intimate, or sexual relationship in which one individual is in a position to exercise authority over the other creates conflicts of interest and perceptions of undue advantage or disadvantage. When both parties have consented at the outset to a romantic, intimate, or sexual relationship, this consent does not remove grounds for a charge of a violation of this Policy or the Workplace Harassment Policy, based upon subsequent unwelcome conduct.

Pursuant to its commitment to dignity and respect, the following represents the General Assembly's expectations regarding consensual relationships in the work environment:

1. If the consensual relationship exists between a supervisor and supervisee, in a direct evaluative relationship, or between a member and any other person in the legislative workplace, it must be disclosed to the Office of Legislative Workplace Relations (Office) with all parties present. The disclosure will be documented in writing and kept within each individual's personnel file. The responsibility to disclose rests with the person in the evaluative or authoritative position.
2. If a relationship that has been disclosed to the Office ends, either party may update the disclosure to state that the relationship ended and the date on which it ended. The updated information will be documented in writing and kept within each individual's personnel file.
3. The Office and the individuals in the relationship shall preserve confidentiality, sharing names and pertinent information only with individuals who have a legitimate need to know, as described in section H. of this Policy; and
4. The Office may disclose the relationship to the appropriate director or legislative leadership when it determines that the relationship may pose a direct conflict of interest and the work environment must be managed to appropriately minimize the conflict.

E) RETALIATION PROHIBITED

The General Assembly prohibits retaliation against any person for having complained about alleged violations of this Policy, assisting in such a complaint, or participating in an investigation into such a complaint.

Retaliation is a serious problem, and a fear of retaliation prevents issues from surfacing, keeps people from raising problems, and enables a culture of harassment to fester. The General Assembly recognizes the seriousness of retaliation and is committed to responding to and addressing retaliation concerns proactively and reactively upon receipt of a complaint of retaliation. As such, a complaint of retaliation may constitute a violation of this Policy or the

Workplace Harassment Policy and be subject to the informal or formal processes described in this Policy and in sections G. and H. of the Workplace Harassment Policy. **<Note: Four members of the interim committee recommended that claims for retaliation should always be handled under the formal complaint process. One member recommended that it be handled on a case-by-case basis.>**

F) REPORTING PROCESS

Any member, legislative employee, or third party who wishes to report a violation of this Policy should submit a complaint directly to the Office or its opposite gender designee, if applicable.

If the complaint concerns a staff member from the Office, a complainant should submit a complaint to the director of the Office of Legislative Legal Services or his or her opposite gender designee.

Complainants may also submit complaints through the General Assembly's anonymous reporting hotline ([link/phone number/info here](#)). Please note that while the General Assembly is committed to responding appropriately to all complaints under this Policy, reporting a complaint anonymously may limit the degree to which it can be effectively and thoroughly resolved, based on the information provided.

G) INFORMAL RESOLUTION PROCESS

1. Complaints submitted under this Policy are addressed via an informal resolution process. The informal resolution process is, as the name suggests, flexible and intentionally open to individualized responses and resources. This shall be a confidential process, and the parties' names, the process itself, and any resolution shall not be subject to disclosure except as necessary to implement any steps agreed to in the resolution or as provided in section I. or G. 4. of the Workplace Harassment Policy. The informal resolution process is intended to stop and redirect inappropriate behavior and prevent it from reoccurring.
2. The Office shall take such steps as necessary to understand the complaint and find facts to determine if the behavior occurred. After the informal fact finding has concluded, the Office will determine a range of resources to offer to the parties to resolve the issues.
3. The Office has internal and external resources that it can provide as part of the informal resolution process, including:
 - Facilitated mediation;
 - Meetings between the Office and respondents on behalf of complainants;
 - Individual or joint coaching;
 - Training and educational opportunities;
 - Team rebuilding and crisis management;

- Referrals to counseling, advocacy, and wellness support; and
 - Other remedial actions.
4. The Office shall create a record of all complaints handled under the informal resolution process and the outcome and shall maintain such records in secure and confidential files ten years or after the last party involved is no longer within the legislative workplace, whichever is longer. All such records and work product of this process must be confidential, except that:
 - a. If the Office finds a pattern of issues with a respondent under the informal process, the Office, following notice to a complainant when practicable, may disclose to the respondent's supervisor or caucus leadership the issues raised without disclosing the identity of any person involved in the process except for the respondent; and
 - b. The Office shall collect nonidentifying, statistical data regarding informal complaints and shall annually submit an aggregate report to the General Assembly on informal complaints received during the previous calendar year.
 5. Participation in the informal resolution process shall be voluntary. If the parties agree to the informal resolution process, they shall be expected to participate fully and in good faith. In all cases of nonparticipation, the Office shall document the allegations and responses in the complaint file, and this information may be considered as grounds for more serious treatment of future complaints about the same respondent, should they arise.
 6. The Office shall strive to complete the informal resolution process within thirty (30) days of the Office's receipt of the complaint. It should be noted that remedial action such as ongoing coaching, training, or other efforts may be decided upon within the thirty (30) day timeline but may be ongoing after that time frame has elapsed.
 7. There is nothing in this Policy or in the informal resolution process that precludes future advancement into the formal resolution process described in section H. of the Workplace Harassment Policy, should the alleged behavior qualify under that Policy. Statements made by a complainant or respondent during the informal process shall not be used against that person in a complaint or investigation under the formal process described in section H. of the Workplace Harassment Policy.

H) CONFIDENTIALITY

1. The Office shall keep confidential all information received concerning inquiries and complaints under this Policy to the extent permitted by law, except as necessary to conduct an investigation, implement remedial or protective measures, or when it determines that the actions alleged constitute an immediate threat to the safety of the

workplace. The Office may disclose nonidentifying, statistical information on complaints, including information concerning any complaints received under the anonymous complaint reporting tool, an informal complaint process, or a formal complaint process.

2. Partisan and nonpartisan staff shall maintain the confidentiality of all information received concerning inquiries and complaints under this Policy.
3. Pursuant to Joint Rule 38, members are required to maintain confidentiality of all information received concerning inquiries and complaints under this Policy.
4. All other parties are required to keep the investigation confidential to the extent permitted by law.
5. The Office shall inform complainants and respondents of the importance of maintaining the confidentiality of all information received concerning inquiries and complaints under this Policy.
6. Violations of these confidentiality provisions may constitute a violation of this Policy or the Workplace Harassment Policy, subject to the informal or formal processes as described in section G. of this Policy and sections G. and H. of the Workplace Harassment Policy, respectively.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

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Memorandum

August 10, 2018

TO: Members of the Legislative Workplace Culture Study Committee

FROM: Aaron Carpenter, Fiscal Analyst, 303-866-4918

SUBJECT: Fiscal Estimate for the Office of Legislative Culture

Summary

Below please find an estimate on the cost to create the Office of Legislative Culture (OLC), as recommended by Investigations Law Group (ILG). This analysis estimates the total cost to be \$490,067 in FY 2019-20 and \$530,316 in FY 2020-21, paid from the General Fund. **Please note that these estimates are preliminary and subject to change with new information or the timing and content of any proposed legislation.**

Background

During the 2018 Regular Session, the General Assembly hired ILG to study workplace harassment at the General Assembly and to make recommendations on how to improve the workplace culture. ILG recommended that the General Assembly create the OLC, staffed with a full-time Human Resource Director, a full-time Equal Employment Opportunity (EEO) Officer, a part-time Workplace Culture Specialist that would eventually transition to full-time, and a part-time, third-party Ombudsman. The report also recommended training, setting up a hotline to report harassment, creating an independent panel to oversee complaints against legislators, and creating specific standing legislative committees.

Assumptions

This estimate assumes that the OLC will be its own office and will initially include the recommended staffing of 2.5 FTE. This includes the positions of: 1.0 FTE Human Resource Director, 1.0 FTE EEO Officer, 0.5 FTE Workplace Culture Specialist, and a contracted, third-party Workplace Culture Ombudsman. In FY 2020-21, this estimate incorporates the recommendation that the Culture Specialist transition to full-time, increasing the total FTE number for the OLC to 3.0 FTE. Although the General Assembly has hired a Human Resource Coordinator that could transition into the Human Resource Director role, this analysis estimates the total cost to implement the recommendations and therefore includes the full cost of a Human Resource Director. The estimate also assumes that additional office space relative to current costs will be needed to house the OLC.

The Office of Legislative Legal Services (OLLS) will require 0.2 FTE Staff Attorney to advise the EEO Advisory Panel and to staff and advise each chamber's standing committee. These amounts are prorated in the first fiscal year.

Number of complaints. For this estimate, it is assumed that there will be four complaints that require a meeting of the EEO Advisory Panel and the respective chamber's standing committee each year. For each complaint, there will be two EEO Advisory Panel meetings and one meeting for the respective chamber's standing committee. The EEO Advisory Panel meetings will consist of one meeting to hire an investigator and one to review the investigation, determine if there was a violation, and recommend any consequences. Each chamber's respective standing committee will hear the findings of the investigation, any recommendations from the EEO Advisory Panel, and recommend consequences. The estimate further assumes that there will be 12 members on the House's standing committee and six members on Senate's standing committee. Based on the total number of legislators in each chamber, the estimate assumes that three of the complaints will go to the House committee and one will go to the Senate. Each committee will also have one meeting for harassment training, for a total of four meetings in the House and two in the Senate. Finally, the estimate assumes that two meetings for the House and one for the Senate will happen during the interim.

State Expenditures

If the OLC is created on July 1, 2019, state General Fund expenditures will increase by \$490,067 and 2.6 FTE in FY 2019-20, and by \$530,317 and 3.2 FTE in FY 2020-21 and future years, as shown in Table 1 and discussed below.

Table 1
General Fund Expenditures for the OLC

	FY 2019-20	FY 2020-21
Personnel	\$278,022	\$322,197
Standard Operating and Capital Outlay	\$16,294	\$2,850
Third Party Ombudsman	\$41,000	\$41,000
New Office Costs	\$18,175	\$18,175
Hotline	\$12,000	\$12,000
EEO Panel	\$49,320	\$49,320
Standing Committees	\$6,120	\$6,120
Training Expenses	\$5,000	\$5,000
Centrally Appropriated Costs	\$64,136	\$73,655
Total	\$490,067	\$530,317
FTE Total	2.6 FTE	3.2 FTE

Personnel costs. Implementing the recommendations from ILG is estimated to increase expenditures by \$278,022 and 2.6 FTE in FY 2019-20 and by \$322,197 and 3.2 FTE in FY 2020-21 to hire a full-time Human Resource Director, a full-time EEO Officer, and a part-time Workplace Culture Specialist who transitions to full-time in FY 2020-21. The OLLS will also require 0.2 FTE Staff Attorney. These costs are prorated for the General Fund paydate shift for any new staff in FY 2019-20.

Standard operating and capital outlay costs. It is estimated that expenditures will increase by \$16,294 in FY 2019-20 and \$2,850 in FY 2020-21. This includes operating expenses such as supplies and telephones as well as one-time capital outlay expenses in FY 2019-20 including furniture, computers, and software for each additional FTE in the OLC.

Third-party ombudsman. It is estimated that contracting a third-party ombudsman will cost \$41,000 per year. This rate is based on the average salary of an ombudsman at the University of Colorado.

Office costs. Starting in FY 2019-20, the OLC will have additional costs associated with operating its office. Expenditures will increase by \$18,175 per year starting in FY 2019-20 for any in-state and out-state travel, membership dues (such as the Employers Council), and other miscellaneous costs. This number is based on current legislative office expenditures, adjusted for the number of employees.

Hotline contractor. ILG recommended that the General Assembly set up an anonymous reporting hotline to report harassment at the Capitol. Starting in FY 2019-20, this will increase expenditures by \$12,000 per year to contract with a vendor.

EEO Advisory Panel. Starting in FY 2019-20, expenditures will increase by \$49,320 per year for the EEO Advisory Panel. In the last fiscal year, there were six investigations ranging from \$2,310 to \$20,825, for a total of \$50,158. This estimate assumes that two investigations will be on the lower end of the range, estimated at about \$2,500 per investigations, and two at the high end of \$20,000, totaling \$45,000 per year. Assuming the five-person panel is organized similarly to the Independent Ethics Commission, it is assumed that EEO Advisory Panel members will not be compensated, but will be reimbursed for any actual and necessary expenses. Reimbursement for EEO Advisory Panel members are estimated to increase expenditures by \$4,320 per year.

Standing committees. It is estimated that expenditures will increase by \$6,120 per year starting in FY 2019-20 for members to serve on their chamber's standing committee. For every meeting that falls in the interim, there are increased costs for member per diem and travel reimbursement. Meetings assumed to occur during the legislative session will not incur additional costs.

Training expenses. Starting in FY 2019-20, expenditures will increase by \$5,000 per year to create and purchase harassment training materials, such as videos, and surveys.

Legislative service agencies. Starting in FY 2019-20, it is estimated that workload for legislative service agencies that are currently handling harassment complaints will decrease. It is assumed that this decrease in workload will not require a reduction in appropriations for any individual agency.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills. These costs, which include supplemental employee retirement payments, are estimated to be \$64,136 in FY 2019-20 and \$73,655 in FY 2020-21. This cost also includes 873 square feet of leasing space, per FTE, at \$23 per square foot. This is based on the average lease rate of other departments in the area and the Office of the State Architect's average of square feet of private office space needed per worker.



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Memorandum

August 9, 2018

TO: Legislative Workplace Interim Study Committee

FROM: Amanda King, Senior Research Analyst, 303-866-4332

SUBJECT: Third-party Investigator Payments

Overview of Payments for Third-Party Investigators

This memorandum provides information about the amount of taxpayer money that has been expended to pay for third-party investigators to investigate workplace harassment complaints involving the General Assembly. The Legislative Workplace Interim Study Committee is charged with studying the amount of taxpayer money that has been expended to pay for third-party investigators to investigate workplace complaints for the General Assembly. Typically, when an incident of workplace harassment occurs that is subject to the Workplace Harassment Policy of the General Assembly, the Office of Legislative Legal Services (OLLS) has been involved to address any related employment law questions. When an investigation is warranted, OLLS hires a third-party investigator, such as Employers Council, to conduct the investigation. Legislative Council Staff contacted the four legislative service agencies, the Secretary of the Senate, and the Chief Clerk of the House to confirm that all third-party investigations in the last five fiscal years have been coordinated by OLLS. According to a representative of OLLS, \$74,833.25 has been spent between FY 2013-14 through FY 2017-18 for third-party investigations related to workplace harassment complaints involving the General Assembly.