

HOUSE BILL REPORT

ESHB 2018

As Amended by the Senate

Title: An act relating to harassment and discrimination by legislators and legislative branch employees.

Brief Description: Concerning harassment and discrimination by legislators and legislative branch employees.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Morgan, Jinkins, Harris, Bergquist, Appleton, Cody, Tharinger, Pollet, Fey, Tarleton, Goodman, Pettigrew, Doglio, Senn, Lovick, Dolan, Kilduff, Ryu, Thai, Stanford, Lekanoff, Wylie, Slatter, Hansen, Shewmake, Robinson, Chapman, Santos, Walen, Chopp, Fitzgibbon, Hudgins, Leavitt, Macri, Valdez, Irwin, Reeves, Pellicciotti, Frame and Ormsby).

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/20/19, 2/22/19 [DPS].

Floor Activity:

Passed House: 3/7/19, 98-0.

Senate Amended.

Passed Senate: 4/15/19, 34-11.

Brief Summary of Engrossed Substitute Bill

- Makes it a violation of the special privileges section of the Ethics in Public Service Act for legislators or legislative branch employees to harass or sexually harass another person.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Staff: Jason Zolle (786-7124).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Ethics in Public Service Act (Ethics Act) prohibits state officers and state employees from using their public employment for personal gain or private advantage, or creating the appearance of such impropriety. Some prohibited activities include:

- having financial interests or engaging in business activity that conflicts with the proper discharge of official duties;
- using public resources for private gain;
- receiving gifts or outside compensation for official duties;
- receiving compensation for certain activity outside one's official duties;
- using public resources for private benefit or political campaigns; and
- using one's position to secure special privileges or exemptions for oneself or others, except as required to perform duties within the scope of employment.

The Ethics Act is enforced by the state ethics boards. Any person may initiate a complaint, and state employees who file complaints have whistleblower protections. Each branch of government has its own board that investigates, conducts hearings, and—if necessary—issues civil sanctions for its respective employees' violations of these ethics rules. The Attorney General may investigate people not under the jurisdiction of an ethics board who were involved in unlawful transactions.

The Legislative Ethics Board has found violations of the special privileges provision in the following circumstances:

- a legislator employed as an attorney wrote to private clients and appeared to offer special access to legislators;
- a legislator solicited tickets to a sporting event from lobbyists in a campaign mailer;
- a legislator pressured an agency to take action favorable to a private business owned by family members; and
- a legislator used his position to advocate for a friend involved in a private dispute.

In January 2019 the Legislative Ethics Board issued an opinion that concluded that engaging in inappropriate and harassing communications with a staff person does not constitute using one's position to secure special privileges under the Ethics Act.

State agencies are required to develop and disseminate their own policies to define and prohibit sexual harassment in the workplace. Agencies must also include procedures that describe how the agency will address concerns, including appropriate sanctions and disciplinary action. Employees must also receive training and education to prevent and eliminate sexual harassment. Although the Legislature is not subject to that requirement, each chamber has a policy for respectful or appropriate workplace behavior that prohibits discrimination and harassment based on a person's protected status, abusive or offensive behavior and bullying regardless of the basis for the conduct, and retaliation.

Summary of Engrossed Substitute Bill:

The special privileges section of the Ethics Act is modified to prohibit legislators and legislative branch employees from harassing another person.

"Harassment" is defined as conduct that has the purpose or effect of interfering with the person's work performance, creates a hostile, intimidating, or offensive work environment, or constitutes sexual harassment.

"Sexual harassment" is defined as unwelcome or unwanted sexual or romantic conduct or communication to which submission is required as a condition of employment, that factors into decisions affecting an individual's employment, that unreasonably interferes with a person's work performance, or that creates a hostile, intimidating, or offensive work environment. Examples of prohibited conduct or communication of a sexual or romantic nature are provided.

The Legislative Ethics Board is required to adopt rules to coordinate its investigation of a complaint that alleges harassment or sexual harassment with any other investigations into whether the same conduct violates the legislative Code of Conduct or Respectful Workplace Policies.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment prohibits harassment only when a legislator or legislative branch employee uses his or her position to engage in the harassment, rather than prohibiting any harassment that meets the other criteria in the bill. The Senate amendment removes examples of prohibited sexual or romantic conduct, and it removes the requirement for the Legislative Ethics Board to adopt rules to coordinate its investigations of harassment with any related investigations under the Code of Conduct or a chamber's respectful workplace policy.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The #MeToo movement has revealed how pervasive discrimination and harassment are, even in our own Legislature. While the Legislature has made big strides, more work remains to be done. There is no provision in the Ethics Act to prohibit harassment, sexual harassment, and discrimination, and that is a glaring omission that puts staff and anyone we interact with at risk. The Legislature's meetings have been extensive, and the Code of Conduct is a good step. But staff members need a place to report sexual harassment that is independent from their superiors, who are often connected to the abuser. This bill is a critical piece to advancing the work to end sexual harassment in the workplace by allowing the Ethics Board to issue sanctions.

(Opposed) None.

Persons Testifying: Representative Morgan, prime sponsor; Lindsey Grad; Rebecca Johnson; Carrie Tellefson; and Negheen Kamkar.

Persons Signed In To Testify But Not Testifying: Christine Brewer.