

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 182

2019 Regular Session

Hewitt

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

SUITS AGAINST STATE. Provides for the participation of a sexual harasser in a settlement or judgment in a sexual harassment claim. (See Act)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Changes references to "a governmental entity" to "state government"
2. Specifically defines state government to mean the legislative branch, executive branch, and judicial branch of state government, but not any parish, municipality, or any other unit of local government, including a school board special district, mayor's court, justice of the peace court, district attorney, sheriff, clerk of court, coroner, tax assessor, registrar of voters, or any other elected parochial or municipal official.
3. Removes specific requirements regarding discipline to be taken against one who has committed sexual harassment or against the complainant if the claims of sexual harassment was intentionally false.
4. Removes the prohibition against execution of nondisclosure agreement with any person to settle a claim either prior to filing a lawsuit or at any time after a lawsuit is filed.
5. Provides that reimbursement provisions in proposed law take effect January 1, 2020.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

SB 182 Re-Reengrossed

2019 Regular Session

Hewitt

Present law prohibits sexual harassment in the workplace and requires each agency of a governmental entity to develop and institute a policy to prevent sexual harassment, which is applicable to all public servants, public employees, and elected officials.

Proposed law requires that an agency's policy include certain minimum provisions which include the following items:

- (1) A general description of the investigation process, including requiring the alleged sexual harasser and the alleged victim to participate in the investigation.
- (2) A general description of the possible disciplinary actions which may occur after conclusion of an investigation.
- (3) A statement apprising the individuals of applicable federal and state law on sexual harassment, including the right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.

Proposed law declares the public policy of the state, in order to reduce the impact of sexual harassment judgments and settlements on the taxpayers of the state, when there has been a determination that a valid claim of sexual harassment has occurred, the state should consider certain factors in determining whether the alleged sexual harasser should be required to pay all or a portion of the judgment or settlement.

Proposed law defines certain terms as relate to state government including the following:

- (a) "Agency" means a department, office, division, agency, commission, board, committee, or other organizational unit of state government.
- (b) "Elected official" means any person holding an office in state government which is filled by the vote of the electorate and includes any person appointed to fill a vacancy in that office.

Proposed law provides when a claim of sexual harassment has been brought and the office of risk management, or an exempted institution of higher education, determines that sexual harassment did occur, the sexual harasser shall be responsible for the payment of all or a portion of the amount of settlement or judgment. In determining the amount that the sexual harasser should be responsible for, the following factors should be considered:

- (1) Whether the sexual harasser was engaged in the performance of the duties of his office or employment with the state at the time the sexual harassment occurred.
- (2) The severity of the sexual harassment.
- (3) The stage of litigation.
- (4) The ability of the sexual harasser to pay.

Proposed law provides that when a lawsuit is filed against the state due to a claim of sexual harassment which results in a final judgment against the state, the attorney general, on behalf of the state, may file suit against the sexual harasser to assert and enforce the state's right to reimbursement and indemnity. The attorney general is also entitled to recover from the alleged sexual harasser all costs and reasonable attorney fees incurred in asserting that right.

Proposed law authorizes the attorney general to receive as compensation 25% of the total monies recovered from the enforcement of the state's right to reimbursement from the sexual harasser, with the funds to be deposited into the Dept. of Justice Debt Collection Fund. Further provides that the attorney general, the office of risk management or the exempted institution, and the agency shall determine whether the interests of the state are best served by litigation or by the making of an offer or the acceptance of an offer to settle or compromise the claim or litigation.

Proposed law requires that the commissioner of administration prepare a notice to be furnished to each agency head in the executive branch of state government for annual dissemination to each public servant in the executive branch advising them of their potential liability if they are determined by an agency head or a court of competent jurisdiction to have committed sexual harassment. Requires that this notice be disseminated to any newly elected, appointed, or employed public servant in the executive branch of state government.

Proposed law provides that any settlement executed in connection with a claim filed pursuant to proposed law is a public record, with the exception of the name of the victim of the sexual harassment.

Proposed law requires the Legislative Budgetary Control Council to prepare a notice for each agency head in the legislative branch of state government for annual dissemination to each public servant in the legislative branch of state government advising them of their potential liability if they are determined by the appropriate person in accordance with the public servant's agency's policy or by a court of competent jurisdiction to have committed sexual harassment. Requires that this notice also be disseminated to any newly elected, appointed, or employed public servant in the legislative branch of state government.

Proposed law further requires the chief justice of the supreme court shall prepare a notice for each agency head in the judicial branch of state government for annual dissemination to each public servant in the judicial branch of state government advising them of their potential liability if they are determined by an agency head or a court of competent jurisdiction to have

committed sexual harassment. Requires that this notice also be disseminated to any newly elected, appointed, or employed public servant in the judicial branch of state government.

Proposed law provisions regarding the minimum items to be included in agency policy regarding sexual harassment are effective upon signature of the governor or lapse of time for gubernatorial action. The remaining provisions regarding reimbursement of amounts paid by the state for sexual harassment claims are effective January 1, 2020.

(Amends R.S. 42:342(B) and R.S. 44:4.1(B)(28); adds R.S. 42:351-355)

Thomas L. Tyler
Deputy Chief of Staff