

ASSEMBLY, No. 4891

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED OCTOBER 26, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

Assemblywoman McKnight, Assemblymen Zwicker, Verrelli, Benson and Johnson

SYNOPSIS

Requires revision of State Legislature's anti-harassment policy; specifies investigation of discrimination and harassment complaint process.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/16/2020)

1 AN ACT concerning the Legislature's anti-harassment policy and
2 amending and supplementing P.L.2019, c.475 (C.52:11-85).

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2019, c.475 (C.52:11-85) is amended to read
8 as follows:

9 1. a. Each House of the Legislature and the Office of
10 Legislative Services shall adopt and maintain a policy that:
11 prohibits sexual harassment by members, officers, and employees of
12 the Legislature, and third parties; requires compliance with the
13 policy; requires that appropriate measures be taken to ensure that
14 prohibited conduct does not occur; and provides procedures for the
15 reporting, investigation, final determination, remediation, and
16 discipline of prohibited conduct. The policy shall include
17 provisions regarding confidentiality, retaliation, conflict of interest,
18 and false accusations. The conflict of interest provision shall, at a
19 minimum, describe the procedure pursuant to which a supervisor or
20 investigating officer or other individual who would participate in
21 any investigation of a sexual harassment complaint shall recuse
22 himself or herself due to a conflict of interest.

23 The policy shall be adopted in any manner deemed appropriate
24 by the presiding officer of each House and the executive director of
25 the Office of Legislative Services, as appropriate.

26 The policy, whether a separate policy adopted independently by
27 each House and the Office of Legislative Services, or as one policy
28 adopted jointly thereby, shall apply to all members of the
29 Legislature, and all officers and employees, including supervisors
30 and managers, of the partisan staff offices, district offices, Office of
31 Legislative Services, Office of Clerk of the General Assembly, and
32 Office of the Secretary of the Senate, as appropriate, and third
33 parties. The policy adopted by the Office of Legislative Services
34 shall apply to any agency, board, bureau, or commission within or
35 created by the Legislative Branch.

36 For the purposes of this section and section 2 of P.L. , c. (C.)
37 (pending before the Legislature of this bill), "third parties" means
38 any intern, volunteer, lobbyist, governmental affairs agent,
39 newspersons, and members of the public who have business at the
40 State capitol or who are doing business with the New Jersey
41 Legislature.

42 b. The policy shall be distributed to all members, officers,
43 interns, volunteers, and employees to whom it applies. Initially, the
44 policy shall be distributed to current members, officers, interns,
45 volunteers, and employees within 60 calendar days of the effective

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 date of this section, unless a policy that conforms with subsection a.
2 of this section was distributed within 180 days preceding enactment
3 of this act, P.L.2019, c.475. Thereafter, the policy shall be
4 distributed to a member, officer, intern, volunteer, or employee
5 within five business days of taking office, commencing intern or
6 volunteer activities, or commencing employment. Any member,
7 officer, intern, volunteer, or employee to whom the policy is
8 distributed shall acknowledge receipt thereof in writing to the
9 presiding officer of each House or to the executive director of the
10 Office of Legislative Services, as appropriate, or a designee thereof,
11 within 10 business days of receipt.

12 c. The policy shall be reviewed at least once every two years.
13 Modifications shall be adopted in the same manner as provided for
14 the adoption of the policy. The policy as modified shall be
15 distributed to all members, officers, interns, volunteers, and
16 employees to whom it applies within 30 calendar days of
17 modification. Members, officers, interns, volunteers, and
18 employees shall acknowledge in writing to the presiding officer of
19 each House or to the executive director of the Office of Legislative
20 Services, as appropriate, or a designee thereof, the receipt of the
21 modified policy within 10 business days of receipt.

22 d. The director of human resources of the Office of Legislative
23 Services shall prepare and maintain an online training program on
24 any policy adopted. Each member, officer, intern, volunteer, and
25 employee to whom the policy applies shall complete the online or
26 another approved training program, as determined by the presiding
27 officer of each House and by the executive director of the Office of
28 Legislative Services, as appropriate, **[no less than once]** no later
29 than 30 calendar days after the member, officer, intern, volunteer,
30 or employee's appointment date and at least once every two years,
31 thereafter, and shall submit a certification denoting completion
32 thereof. A member of the Legislature shall submit the certification
33 of completion for the member and the member's district office staff
34 to the executive director, or a designee thereof, in the partisan staff
35 office of the member's House and political party. Officers, interns,
36 volunteers, and employees of a partisan staff office shall submit the
37 certification of completion to the executive director of that office,
38 or a designee thereof. Officers, interns, volunteers, and employees
39 of the Secretary of the Senate and of the Clerk of the General
40 Assembly shall submit the certification of completion to the
41 Secretary and Clerk, as appropriate. Officers, interns, volunteers,
42 and employees of the Office of Legislative Services shall submit the
43 certification of completion to the director of human resources of
44 that office. Members, officers, interns, volunteers, and employees
45 of any agency, board, bureau, or commission within or created by
46 the Legislative Branch for whom a person has not already been
47 designated to receive the certification of completion pursuant to this

1 subsection shall submit the certification to the director of human
2 resources of the Office of Legislative Services.

3 All certifications of completion shall be public information.

4 e. The Office of Legislative Services shall publish any adopted
5 policy on the official website of the Legislature, along with the
6 contact information for its human resources office.

7 (cf: P.L.2019, c.475, s.1)

8

9 2. (New section) a. Any members, officers, and employees of
10 the Legislature, and third parties who has been subjected to any
11 form of prohibited discrimination or harassment, including sexual
12 harassment, or who witnesses others being subjected to such
13 discrimination or harassment, may promptly report the incident to a
14 supervisor or directly to the presiding officer of the House or the
15 executive director of the Office of Legislative Services. If a
16 discrimination or harassment complaint is reported to a supervisor,
17 the presiding officer of the House, or the executive director of the
18 Office of Legislative Services, the complaint shall be submitted to
19 the investigating officer or the director of human resources in the
20 Office of Legislative Services, as appropriate. A person who wishes
21 to take action about prohibited discrimination or harassment may
22 file a criminal complaint with the law enforcement agency of the
23 municipality where the incident occurred. A person may make both
24 a report to a law enforcement agency and a report to the
25 individual's supervisor, the presiding officer of the House, or the
26 executive director of the Office of Legislative Services.

27 Nothing in this section shall prevent any members, officers, and
28 employees of the Legislature, or third parties from filing a
29 complaint directly with external agencies that investigate
30 discrimination or harassment complaints, including, but not limited
31 to, the New Jersey Division on Civil Rights, the United States Equal
32 Employment Opportunity Commission, or any court of this State.

33 Upon the receipt of a discrimination or harassment complaint,
34 the investigating officer or the director of human resources of the
35 Office of Legislative Services, as appropriate, shall provide a
36 written copy of the Legislature's anti-harassment policy to the
37 complainant, including any additional information and options
38 available to individuals who have experienced discrimination or
39 harassment. Any complainant to whom the written copy of the
40 Legislature's anti-harassment policy is distributed to, including any
41 additional information on options available to the complainant,
42 shall acknowledge receipt thereof in writing to the investigating
43 officer or the director of human resources of the Office of
44 Legislative Services, as appropriate, within 10 business days of
45 receipt.

46 b. Each House of the Legislature and the Office of Legislative
47 Services shall investigate all reasonable and good faith complaints

1 that implicate the policy adopted and maintained pursuant to section
2 1 of P.L.2019, c. 475 (C.52:11-85). All members, officers, and
3 employees of the Legislature, or third parties shall cooperate with
4 investigations undertaken pursuant to this act. Failure to cooperate
5 in an investigation may result in administrative and disciplinary
6 action, up to and including the termination of employment. A
7 complainant may withdraw from a discrimination or harassment
8 complaint at any time and shall not face any disciplinary actions for
9 that withdrawal.

10 All persons interviewed, including complainants and witnesses,
11 shall be asked to use discretion in communicating any aspect of the
12 investigation to avoid interfering with the investigation. All
13 complainants shall be permitted to be accompanied by a support
14 person or advisor of their choice to any meeting or interview that is
15 conducted under the policy. A support person or advisor shall not
16 represent a complainant in a meeting or interview or otherwise
17 interfere in the investigation process.

18 Nothing in this subsection shall be interpreted as imposing any
19 restriction upon the rights of any member, officer, employee, or
20 third parties under State or federal law, including their right of free
21 speech or to communicate any allegations to another person.

22 c. When the investigating officer or the director of human
23 resources of the Office of Legislative Services, as appropriate, finds
24 that a violation of the policy has occurred, the presiding officer of
25 the House or the executive director of the Office of Legislative
26 Services shall take prompt and corrective action to stop the
27 behavior and deter its reoccurrence. The presiding officer of the
28 House or the executive director of the Office of Legislative Services
29 shall have the authority to take such action before a final
30 determination has been made regarding whether a violation of the
31 policy has occurred. The corrective action taken may include
32 counseling, training, intervention, mediation, the separation of
33 persons involved, the initiation of disciplinary action up to and
34 including the termination of employment, or the involvement of law
35 enforcement, when appropriate, for instances involving bodily harm
36 or serious bodily harm. Any corrective action that requires the
37 participation of the complainant shall not be implemented without
38 the consent of that complainant. The case may also be referred to
39 any other appropriate authority for review for possible violations of
40 State and federal statutes.

41 d. The investigation of a discrimination or harassment,
42 including sexual harassment, complaint shall be completed and a
43 final letter of determination shall be issued as soon as practicable,
44 but no later than 60 days following the initial intake of the
45 complaint is completed. The policy shall require the investigating
46 officer or the director of human resources of the Office of
47 Legislative Services, as appropriate, to make a final determination
48 based on the investigation and notify the respective parties and the

1 presiding officer of the House or the executive director of the
2 Office of Legislative Services. The presiding officer of the House
3 or the executive director of the Office of Legislative Services, a
4 member of the Legislature, or a supervisor shall promptly carry out
5 the appropriate disciplinary action as recommended by the
6 investigating officer or the director of human resources and confirm
7 the action to the investigating officer or the director of human
8 resources, in writing, to document these actions.

9 If any third parties, as defined in section 1 of P.L.2019, c.475
10 (C.52:11-85), are found to have violated the policy, the presiding
11 officer of the House or the executive director of the Office of
12 Legislative Services shall take other appropriate actions, including
13 the provision of notice to the persons employer and prohibiting the
14 person from the workplace or worksite.

15 e. The presiding officer of the House or the executive director
16 of the Office of Legislative Services shall notify in writing any
17 member, officer, employee, or third parties who has signed or signs
18 confidentiality forms related to, or as a party to a contract or
19 settlement agreement which has the purpose or effect of concealing
20 the details relating to a claim of discrimination or harassment,
21 including sexual harassment, or retaliation that such forms,
22 contracts, and agreements are deemed to be against public policy
23 and unenforceable pursuant to sections 1 and 2 of P.L.2019, c.39
24 (C.10:5-12.7 and C.10:45-12.8).

25 f. The Legislature shall issue an annual report, which shall
26 include, but need not be limited to, information on the total number
27 of discrimination or harassment complaints filed at the Legislature,
28 the number of complaints that were substantiated, the number of
29 disciplinary or corrective actions taken, and the number of
30 complaints that resulted in any legal actions against Legislature.
31 The Legislature shall make the report available to the public
32 through the Internet site of that State agency.

33 g. Notwithstanding the provision of P.L.1963, c.73 (C.47:1A-1
34 et seq.), commonly known as the open public records act,
35 investigatory reports shall be public information with the consent of
36 the complainant and shall apply retroactively to all complaints
37 reported and investigated prior to the effective date of this
38 act, P.L. , c. (C.) (pending before the Legislature of this bill).

39
40 3. This act shall take effect 30 days following the date of
41 enactment.
42
43

44 STATEMENT

45
46 This bill requires a revision of the New Jersey Legislature's anti-
47 harassment policy. The bill also clarifies that interns and volunteers
48 and other third parties are subject to the policy.

1 Under the bill, any members, officers, and employees of the
2 Legislature, and third parties who has been subjected to any form of
3 prohibited discrimination or harassment, including sexual
4 harassment, or who witnesses others being subjected to such
5 discrimination or harassment, may promptly report the incident to a
6 supervisor or directly to the presiding officer of the House or the
7 executive director of the Office of Legislative Services (OLS).
8 Nothing in the bill would prevent any members, officers, and
9 employees of the Legislature, or third parties from filing a
10 complaint directly with external agencies that investigate
11 discrimination or harassment complaints, including, but not limited
12 to, the New Jersey Division on Civil Rights, the United States Equal
13 Employment Opportunity Commission, or any court of this State.

14 The bill also requires each House of the Legislature and OLS to
15 investigate all reasonable and good faith complaints that implicate
16 the Legislature's anti-harassment policy. The bill requires, upon
17 the receipt of a discrimination or harassment complaint, the
18 investigating officer or the director of human resources of the
19 Office of Legislative Services to provide a written copy of the
20 Legislature's anti-harassment policy to the complainant, including
21 any additional information and options available to individuals who
22 have experienced discrimination or harassment.

23 All members, officers, and employees of the Legislature, or third
24 parties are required to cooperate with investigations undertaken
25 under the policy. All persons interviewed, including complainants
26 and witnesses, are required to use discretion in communicating any
27 aspect of the investigation to avoid interfering with the
28 investigation. However, nothing in this bill would impose any
29 restriction upon the rights of any member, officer, employee, or
30 third parties under State or federal law, including their right of free
31 speech or to communicate any allegations to another person.

32 The bill also permits all complainants to be accompanied by a
33 support person or advisor of their choice to any meeting or
34 interview that is conducted under the policy. Under the bill, a
35 support person or advisor is prohibited from representing a
36 complainant in a meeting or interview or otherwise interfere in the
37 investigation process.

38 The bill would also require the presiding officer of the House or
39 the executive director of OLS to take prompt and corrective action
40 to stop any prohibited behavior and deter its reoccurrence once the
41 investigating officer or the director of human resources of OLS
42 finds that a violation of the policy has occurred. The presiding
43 officer of the House or the executive director would have the
44 authority to take such action before a final determination has been
45 made regarding whether a violation of this bill has occurred. Under
46 the bill, the corrective action taken may include counseling,
47 training, intervention, mediation, the separation of persons
48 involved, the initiation of disciplinary action up to and including the

1 termination of employment, or the involvement of law enforcement,
2 when appropriate, for instances involving bodily harm or serious
3 bodily harm. The bill also prohibits any corrective action that
4 requires the participation of the complainant from being
5 implemented without the consent of that complainant.

6 Under the bill, the investigation of a discrimination or
7 harassment, including sexual harassment, complaint must be
8 completed and a final letter of determination must be issued as soon
9 as practicable, but no later than 60 days following the initial intake
10 of the complaint is completed. The bill requires the investigating
11 officer or the director of human resources of OLS, as appropriate, to
12 make a final determination and notify the respective parties and
13 presiding officer of the House or the executive director of OLS.
14 This bill also requires the presiding officer of the House or the
15 executive director of the OLS, a member of the Legislature, or a
16 supervisor to promptly carry out the appropriate disciplinary action
17 as recommended by the investigating officer or director of human
18 resources and confirm the action to the director, in writing, to
19 document these actions.

20 The bill also requires the presiding officer of the House or the
21 executive director to notify in writing any member, officer,
22 employee, or third parties who has signed or signs confidentiality
23 forms related to, or as a party to a contract or settlement agreement
24 which has the purpose or effect of concealing the details relating to
25 a claim of discrimination or harassment, including sexual
26 harassment, or retaliation that such forms, contracts, and
27 agreements are deemed to be against public policy and
28 unenforceable.