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The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha Hess.

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## CONFERENCE COMMITTEE REPORT DIGEST

SB 182

2019 Regular Session

Hewitt

### **Keyword and summary of the bill as proposed by the Conference Committee**

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

### **Report adopts House amendments to:**

1. Change the term "governmental entity" to "state government".
2. Define the term "state government".
3. Provides that the appropriate person in accordance with the public policy of the public servant's agency policy, not the agency head, may determine that a person has committed sexual harassment.
4. Provides for the Legislative Budgetary Control Council to prepare an annual notice to be distributed to each public servant in the legislative branch advising them of their potential liability if they are determined to have committed sexual harassment.
5. Provides for the chief justice of the Louisiana Supreme Court to prepare an annual notice to be distributed to each agency head in the judicial branch advising them of their potential liability if they are determined to have committed sexual harassment.
6. Provides for notice to be disseminated to any newly elected, appointed, or employed public servant in the legislative and judicial branches.
7. Removes the prohibition against non-disclosure agreements.
8. Modifies the effective date to provide that the policy section shall be effective on January 1, 2020, with the remainder of the bill effective upon signature of the governor.

### **Report amends the bill to:**

1. Require that agency policies include the possible disciplinary actions that may be taken against a complainant if it is determined that a claim of sexual harassment was intentionally false.

2. Technical amendments.

**Digest of the bill as proposed by the Conference Committee**

Present law prohibits sexual harassment in the workplace. Present law further provides for 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 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 reimburse all or a portion of the judgment or settlement.

Proposed law provides for the definitions of "agency", "agency head", "complainant", "elected official", "public employee", "public funds", "public servant", "sexual harassment", and "state government". Further provides that "state government" does not include any parish, municipality, or other unit of local government, including a mayor's courts, justice of the peace court, district attorney, sheriff, clerk of court, coroner, tax assessor, registrar of voters, or any other elected parochial or municipal officer.

Proposed law provides that in addition to the requirements of present law relative to the development and institution of the state's mandatory policy to prevent sexual harassment, each agency policy shall include provisions generally describing the investigation process, the possible disciplinary actions which may occur after the conclusion of the investigation including the possible disciplinary actions that may be taken against a complainant who filed an intentionally false claim of sexual harassment, and the right of the complainant to pursue a claim under state or federal law.

Proposed law provides that notwithstanding any law to the contrary, 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 claim is filed against the state due to a claim of sexual harassment which results in a final judgment or settlement 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 provides that the commissioner of administration shall prepare a notice to be furnished to each agency head in the executive branch of government for annual dissemination to each public servant advising them of their potential liability if they are determined by the appropriate person in accordance with the public servant's agency policy or by 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.

Proposed law provides for the Legislative Budgetary Control Council to prepare an annual notice to be distributed to each public servant in the legislative branch advising them of their potential liability if they are determined to have committed sexual harassment.

Proposed law provides for the chief justice of the Louisiana Supreme Court to prepare an annual notice to be distributed to each agency head in the judicial branch advising them of their potential liability if they are determined to have committed sexual harassment.

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.

Section 1 regarding agency policies effective January 1, 2020; remainder effective upon signature of the governor or lapse of time for gubernatorial action.

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