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July 12, 2018

Subcommittee Recommendation Form

Subcommittee Name: Women's Caucus Recommendations

Subcommittee Mission: Examine the sexual harassment policy recommendations made by the Women's Caucus in its February 2018 report not addressed by HB 1342 as passed by the General Assembly, and to provide suggestions as to how those recommendations might be effectively implemented. Additionally, examine and make recommendations regarding the coverage of registered lobbyists by HB 1342 as passed by the General Assembly.

Resources Used:

Interviews with Delegate Ariana Kelly and Patrick Murray, Chief of Staff to the President of the Senate (conducted by Susan Russell).

Meeting with Michael Lord, Executive Director, and Kate Thompson, Assistant General Counsel, State Ethics Commission

Meeting with Julia Worcester, Natasha Mehu and Ann Ciekot, Maryland Government Relations Association

California Legislature Joint Committee on Rules, Recommendations of the Subcommittee on Sexual Harassment Prevention and Response

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Top 3 Recommendations:

1. Eliminate the State Ethics Commission's responsibility for implementing and enforcing §5-508 of the Public Ethics Law

It is the opinion of the subcommittee that §5-508 has created a role for the Ethics Commission that the Commission is not able to adequately perform. The Ethics Commission lacks the investigative and human resources expertise required to thoroughly and fairly investigate claims of unlawful employment practices, including sexual harassment. The subcommittee recommends that the investigative functions of §5-508 be conducted by the Department of Legislative Services Human Resources Department, which would make recommendations to the Ethics Commission for imposing sanctions or penalties on regulated lobbyists found to have engaged in unlawful behavior. This recommendation would require legislative action in the upcoming session. In addition, the subcommittee is aware that this recommendation may raise a conflict by having legislative staff perform investigative functions for an independent, executive agency and has informally requested an opinion and advice letter from the Office of the Attorney General. In addition, the subcommittee recommends that legislation should be explored that would allow the Ethics Commission to impose other restorative remedies for victims of lobbyist harassment, such as required additional training and counseling, prior to imposing fines or revoking registration. Finally, the subcommittee recommends that the Ethics Commission conduct a climate survey of the 600+ registered lobbyists prior to the 2019 General Assembly session.

2. Ensure the independence and impartiality of investigators used to conduct workplace and sexual harassment claims

The subcommittee recommends that all investigators of workplace or sexual harassment claims, whether internal or external, remain independent and impartial in their investigations. The subcommittee believes that while leadership should know about ongoing investigations and investigators should be able to provide information to leadership, leadership should not be able to influence or communicate with investigators and that strict confidentiality must be maintained. Where outside investigators are used, the subcommittee recommends the rotating use of a list so that investigators do not become subject to institutional bias.

3. Expand or refine the definition of a lobbyist

Under current law, a lobbyist is someone who influences members of the legislature for compensation and is therefore required to register with the Ethics Commission if certain thresholds are met. Throughout our subcommittee discussions, questions arose over who is legally defined as a lobbyist (for example, local government, MACO and MML lobbyists are not required to register with the Ethics Commission); when that person is lobbying (at receptions, in bars, restaurants, at the community pool, kids' sporting events, etc.); and when does the lobbyist "hat" come off? (i.e. if registered, are you always a lobbyist?) The subcommittee does not have a concrete recommendation but feels that this issue should be further explored. In addition, the subcommittee recommends that General Assembly conduct a climate survey that includes lobbyists and that the Maryland General Relations Association help publicize the survey of its membership prior to the 2019 General Assembly session.