SENATE DOCKET, NO. 376 FILED ON: 1/13/2023

SENATE . . . . . No. 2061

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting equality and respect in the legislature.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*

SENATE DOCKET, NO. 376 FILED ON: 1/13/2023

SENATE . . . . . No. 2061

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 2061) of Rebecca L. Rausch for legislation to promote equality and respect in the legislature. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act promoting equality and respect in the legislature.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 23M the following chapter:-

CHAPTER 23N. COMMISSION ON WORKPLACE HARASSMENT AND SEXUAL ASSAULT IN THE LEGISLATURE.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Claim", a written statement submitted to the commission by a reporting individual alleging workplace harassment.

"Commission", the commission on workplace harassment and sexual assault in the legislature.

"Complaint", a written statement submitted to the commission by a complainant alleging workplace harassment.

"Complainant", any state house personnel who files a claim with the commission stating that the person experienced, observed, or has reasonable reason to know of workplace harassment by a state house personnel or another person the complainant reasonably believes could affect the job security or career opportunities of the complainant.

"Investigative report", a report compiled by the general counsel, duly appointed pursuant to Section 4 of this chapter, at the end of an investigation.

"Identity-based harassment", verbal or physical conduct designed to humiliate, threaten, intimidate, coerce, demean, or disparage an individual targeted because of the individual's race, color, religion, national origin, sex, gender expression, gender identity, sexual orientation, disability, age, genetic information, ancestry, or other aspect of a person's identity, which conduct negatively interferes with an individual's work performance or creates an intimidating, hostile, offensive, or otherwise untenable workplace environment.

"Reporting individual", a person who has experienced or witnessed incidents of workplace harassment and has reported those incidents to the commission.

"Respondent", an individual accused of workplace harassment by a reporting individual or complainant.

"Retaliatory action", the discharge, suspension, demotion or other adverse employment action taken against an individual, reporting individual, or complainant that provides information to the commission.

"Sexual harassment", unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for an employment decision, or (b) such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, humiliating or sexually offensive work environment.

"Sexual assault", any nonconsensual sexual act involving physical touching.

"State house personnel", any person whose essential job functions are substantially related to the operation of the general court. State house personnel shall include, but shall not be limited to, members of the Senate and House of Representatives, employees of the legislature, legislative interns, and employees of the executive branch whose principal place of business is the state house.

"Workplace harassment", an incident involving elements of identity-based harassment, sexual harassment or sexual assault as defined in this chapter.

Section 2. (a) There shall be within the executive office of administration and finance, but not under its control, a commission on workplace harassment and sexual assault in the legislature. The commission shall respond to claims and investigate and report on complaints of workplace harassment as provided in this chapter. The commission shall be an independent public entity not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth.

(b) The commission shall consist of 13 members:

(1) 1 of whom shall be appointed by the governor, provided however that the appointee shall not be a current employee of the executive branch;

(2) 1 of whom shall be appointed by the senate president, provided however that the appointee shall not be a current member of the Senate or the House of Representatives;

(3) 1 of whom shall be appointed by the senate minority leader, provided however that the appointee shall not be a current member of the Senate or the House of Representatives;

(4) 1 of whom shall be appointed by the speaker of the house of representatives, provided however that the appointee shall not be a current member of the Senate or the House of Representatives;

(5) 1 of whom shall be appointed by the house minority leader, provided however that the appointee shall not be a current member of the Senate or the House of Representatives;

(6) 1 of whom shall be appointed by the Women's Bar Association of Massachusetts, who shall be a licensed attorney with demonstrated experience in the field of workplace harassment;

(7) 1 of whom shall be appointed by the Massachusetts LGBTQ Bar Association, who shall be a licensed attorney with demonstrated experience in the field of workplace harassment;

(8) 1 of whom shall be appointed by the Massachusetts Caucus of Women Legislators;

(9) 1 of whom shall be appointed by the Massachusetts Black and Latino Legislative Caucus;

(10) 2 of whom shall be appointed by the attorney general, 1 of whom shall be a sexual assault counsellor, as that term is defined in section 20J of chapter 233, and 1 of whom shall be a licensed attorney with experience as a mediator or other presider over alternative dispute resolution; and

(11) 2 of whom shall be appointed by the auditor, 1 of whom shall be a licensed social worker with demonstrated expertise in sexual harassment outreach and 1 of whom shall be a human resources professional with demonstrated expertise in the field of workplace harassment training.

The commission shall annually elect 1 of its members to serve as chair and 1 of its members to serve as vice-chair. Each member shall be appointed for a term of 3 years and shall be eligible for reappointment; provided, however, that a person appointed to fill a vacancy shall serve only for the unexpired term. A member shall not hold other employment in the government of the commonwealth or any of its political subdivisions. Each member of the commission shall be a resident of the commonwealth.

(c) Seven members of the commission shall constitute a quorum and the affirmative vote of seven members of the commission shall be necessary and sufficient for any action taken by the commission. Members shall serve without pay but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. Meetings of the commission shall be subject to sections 18 to 25, inclusive, of chapter 30A and records pertaining to the administration of the commission shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the commission shall be considered to be public funds for purposes of chapter 12A.

The commission shall not be required to obtain the approval of any other officer or employee of any executive agency in connection with the collection or analysis of any information. The commission shall not be required, prior to publication, to obtain the approval of any other officer or employee of any executive agency with respect to the substance of reports, investigative or annual, that the general counsel has prepared under this chapter.

(d) The commission shall have all the powers necessary or convenient to carry out and effectuate its purposes. The powers shall include, but shall not be limited to:

(i) developing a plan of operation for the commission that shall include, but shall not be limited to, the implementation of procedures for operations of the commission and procedures for communications with the general counsel;

(ii) making, amending and repealing rules and regulations for the management of the commission’s affairs;

(iii) making contracts and executing all instruments that are necessary or convenient for the carrying on of the commission’s business;

(iv) acquiring, owning, holding, disposing of or encumbering personal property and leasing real property in the exercise of the commission’s powers and the performance of the commission’s duties;

(v) seeking and receiving grant funding from the federal government, departments or agencies of the commonwealth and private foundations;

(vi) entering into and executing instruments in connection with agreements or transactions with any federal, state or municipal agency or other public institution or with any

private individual, partnership, firm, corporation, association or other entity that may be necessary in the commission's judgment, and to fix the compensation of such an individual or entity;

(vii) enter into interdepartmental agreements with other state agencies that the commission considers necessary to implement this chapter;

(viii) adopt and alter an official seal;

(ix) sue and be sued in its own name, plead and be impleaded; and

(x) establish lines of credit and establish at least 1 cash and investment account to receive appropriations from the commonwealth and for all other business activity granted by this chapter.

Section 3. The commission shall: (i) ensure the objective and thorough investigation of all workplace harassment complaints within its jurisdiction; (ii) ensure the transparency of processes and reports related to investigations of workplace harassment within its jurisdiction; (iii) monitor and record claims of workplace harassment reported to the commission by frequency and claim type; (iv) provide workplace harassment resources to individuals upon request; (v) establish models for workplace harassment policy guidelines and training programs for the general court; and (vi) conduct an annual workplace harassment survey for general court employees.

Section 4. (a) The commission shall appoint a general counsel by a majority vote. The general counsel shall be lawfully admitted to practice as an attorney in the commonwealth and shall supervise the administrative affairs and general management and operations of the

commission. The general counsel shall receive a salary commensurate with the duties of the office. The general counsel may appoint other officers and employees of the commission necessary to the functioning of the commission. Sections 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not apply to the general counsel of the commission. Sections 45, 46 and 46C of chapter 30 shall not apply to any employee of the commission. The general counsel may establish personnel regulations for the officers and employees of the commission. The general counsel shall file an annual personnel report with the senate and house committees on ways and means containing the job classifications, duties and salary of each officer and employee of the commission together with personnel regulations applicable to the officers and employees.

(b) The general counsel shall, with the approval of the commission:

(i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the commission;

(ii) establish an intake procedure for the submission of claims by reporting individuals to the commission pursuant to section 5, including any necessary forms;

(iii) conduct investigations authorized by this chapter, including supervising summons and the collection of information relevant to authorized investigations; and

(iv) at the conclusion of each investigation and pursuant to the requirements of section 7, submit an investigative report on the findings of the investigation to the appropriate parties.

Section 5. (a) The commission shall receive and review claims of workplace harassment according to procedures established by the general counsel.

(b) A reporting individual shall submit a claim in the form of a written statement to the commission including, but not limited to: (i) the name, position, and the department, if applicable, of the reporting individual; (ii) the name, position and department, if applicable, of the respondent; (iii) a description of the incident, including the date, location and presence of witnesses; (iv) the effect of the incident on the ability of the reporting individual to perform the reporting individual's job, or on other terms or conditions of the reporting individual's employment; and (v) other information the reporting individual believes is relevant to the claim. The general counsel or a member of the commission staff may assist the reporting individual in completing the written statement. The general counsel may request additional information from the reporting individual in the form of a written statement or an in-person interview.

(c) The commission shall notify a reporting individual orally and in writing of any organization or government entity that has jurisdiction to address the specific incident of workplace harassment reported by the individual including, but not limited to: (i) the attorney general; (ii) a law enforcement official; (iii) the Massachusetts Commission Against Discrimination; and (iv) the federal Equal Employment Opportunity Commission. A notification under this subsection shall include an option for the claim to be sent to an organization or government entity at the discretion and with the consent of the reporting individual. Claims submitted to the commission shall be recorded and retained by the commission.

(d) The procedures and remedies available to a reporting individual under this chapter shall not preempt or supersede any legal procedures or remedies otherwise available to an individual under local, state or federal law.

Section 6. (a) The general counsel shall execute and supervise investigations under this chapter.

(b) If the commission determines that a reporting individual is a complainant as defined by this chapter, the general counsel shall open an investigation into the complaint reported by the complainant and notify the complainant and respondent in writing that an investigation has been opened.

(c) The commission shall issue rules and regulations to establish a process for a respondent to appeal the determination that a reporting individual is a complainant under this section. The process shall include notice and an opportunity for a hearing.

(d) The general counsel may request the production, on a voluntary basis, of testimony or documents from an individual, government agency or non-governmental entity. The general counsel may require by summons the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to a matter under investigation pursuant to this chapter. The summons shall be served in the same manner as a summons for the production of documents in civil cases issued on behalf of the commonwealth and the law relative to the summons shall apply to a summons issued pursuant to this chapter. A justice of the superior court department of the trial court of the commonwealth may, upon application by the general counsel, issue an order to compel the production of records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under investigation pursuant to this chapter. A failure to obey such an order may be punished by the court as contempt.

(e) A summons issued pursuant to this section shall not be made public by the general counsel or any officer or employee of the commission and any information provided pursuant to this section shall not be made public until such time as it is necessary for the general counsel to do so through the issuing of an investigative report. Disclosure of production, attendance or testimony may be made to the members of the staff of the commission as is deemed necessary by the general counsel.

(f) An investigation may be closed when the general counsel determines a sufficient amount of information has been collected to find that it is more likely than not that workplace harassment occurred or to determine that a finding could not be made. An investigation under this section shall be completed in not more than 6 months; provided, however, that the commission may, upon a request by the general counsel, approve an extension of not more than 6 months.

Section 7. (a) At the conclusion of an investigation, the general counsel shall compile and submit a report on the findings of the investigation.

(b) The report shall include, but shall not be limited to: (i) the position and department, if applicable, of the complainant; (ii) the name, position and department, if applicable, of the respondent; (iii) the time and location of the incident being investigated; (iv) a detailed description of the incident; (v) resources provided to the complainant by the commission or other governmental or non-governmental entities; and (vi) a finding that it is more likely than not that harassment occurred or a statement that a finding could not be made. If after an investigation a majority of the commission determines that it is more likely than not that harassment occurred, the commission shall include in the report a recommendation for disciplinary action, including

but not limited to: in the case of a legislator, reprimand, censure, temporary or permanent removal from committee chairmanship or other position of authority, suspension with or without pay, or expulsion; in the case of an officer or employee of the general court, reprimand, suspension or removal. Said report shall not prevent the senate or house of representatives from taking any other action as it shall deem advisable and appropriate.

(c) Prior to a report being released, the general counsel shall notify the complainant and the respondent that the investigation has been closed and issue a copy of the investigative report to the complainant and respondent for review. The commission shall issue rules and regulations to establish a process for a complainant or respondent to appeal the release of an investigative report before a report is released. The process shall include notice and an opportunity for a hearing.

(d) The general counsel shall submit a copy of the investigative report to all interested parties including, but not limited to: (i) the complainant; (ii) the respondent; (iii) each member of the commission; and (iv) the respondent's employer, provided, however, that if the respondent is a member of the legislature, the report will be sent to the committee on ethics in the chamber where the respondent is a member. A copy of the report may be submitted to the attorney general or the district attorney for the district in which the incident occurred with the complainant's written consent.

Section 8. (a) Except as otherwise provided in this section, the proceedings and records of the commission related to investigations shall be confidential and not subject to section 10 of chapter 66. The commission shall establish procedures, applicable to members of the

commission, general counsel, and staff that ensure compliance with the confidentiality requirements of this chapter.

(b) If the subject matter of an investigation becomes public through independent sources, the general counsel may issue a statement to confirm the pendency of the investigation or to clarify the procedural aspects of the investigation.

(c) Reports submitted to interested parties by the general counsel shall be confidential and not subject to section 10 of chapter 66, including reports sent to individuals, members of the commission and governmental and non-governmental entities. A party that receives a report from the general counsel shall notify staff, if any, that the report is confidential and take steps to ensure non-disclosure of the report.

(d) Nothing in this chapter shall preclude or limit the right of a complainant, respondent or witness to share personal information under federal, state or local law.

Section 9. A person shall not discharge or cause to be discharged or otherwise discipline or in any manner discriminate against or take any other retaliatory action against any employee, client or other person for providing information to the commission, the general counsel or commission staff, including filing a report or complaint with the commission or testifying in a commission proceeding. A person who willfully violates this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both. A person who takes such a prohibited action against an employee, client or other person may be liable to that employee, client or other person for treble damages, costs and attorney’s fees.

Section 10. The commission shall annually conduct a workplace harassment survey of all employees and interns of the general court. The survey shall be administered electronically and

the identity of the survey takers shall be anonymous. The survey shall include a definitions section that shall include but shall not be limited to the definitions of identity-based harassment, sexual harassment and sexual assault under this chapter. The survey shall include a demographic section that shall include the age, sex, gender identity, race, ethnicity, sexual orientation, religious affiliation, level of education and relationship status of the survey taker. The survey shall include a questions section that shall include, but shall not be limited to the following questions: (i) "Have you experienced or witnessed some form of workplace harassment or assault-related behaviors in the past 12 months?"; (ii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, what was the primary basis for the specific behavior or set of experiences?"; (iii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, when and where did the specific behavior or set of experiences occur?"; (iv) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, how often and for how long did the specific behavior or set of experiences persist?"; (v) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, who was involved in the specific behavior or set of experiences?"; (vi) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, what was the job title of the person or persons involved in the specific behavior or set of experiences?"; (vii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, did your work role require you to continue to interact with the person or persons involved?"; (viii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, did you discuss the specific behavior or set of experiences with anyone at work?"; (ix) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, did you make a

complaint or report in response to the specific behavior or set of experiences?"; (x) "If you have made a complaint or report, what happened as a result of it?"; (xi) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors and did not make a complaint or report, what were the reasons for not doing so?"; (xii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, what effect did the specific behavior or set of experiences have on your interpersonal relationships, physical or emotional well-being, job performance or willingness to remain a part of the legislature?"; (xiii) "If you have experienced or witnessed some form of workplace harassment or assault-related behaviors, what resources did you use to make a complaint or report or receive additional information about workplace harassment, if any?"; (xiv) "If you experience or witness workplace harassment or assault-related behaviors, will you make a complaint or report?"; and (xv) "If you would not make a complaint or report after experiencing or witnessing workplace harassment or assault behaviors, is it due to a fear of retaliatory action?".

Section 11. The commission shall annually compile a report that shall include, but shall not be limited to: (i) the number of incidents of workplace harassment and assault reported to the commission, classified and analyzed by the type of incident, the demographics of reporting individuals and the percentage of reports that led to investigations; (ii) the number of investigations opened by the general counsel, classified by respondent job title; (iii) the number of investigative reports issued by the commission, classified by the type of incident, the demographics of complainants and the demographics of respondents; (iv) the results of the workplace harassment survey conducted pursuant to section 10 as raw data and synthesized to identify and describe correlations and overarching trends; (vi) recommended changes to the model workplace harassment policies established by the commission, if any; and (vii) any other

information that may assist the legislature in preventing and effectively responding to incidents of workplace harassment. The commission shall file the annual report with the senate president, the speaker of the house of representatives, the clerks of the senate and house of representatives and the chairs of the joint committee on rules not later than September 15.

Section 12. The commission shall promulgate the rules and regulations and perform the functions that are necessary for the administration, implementation and enforcement of this chapter.

SECTION 2. Notwithstanding subsection (b) of section 2 of chapter 23N of the General Laws, the initial appointments to the commission on workplace harassment and sexual assault in the legislature made by the governor, senate president and senate minority leader shall serve for a term of 3 years, the initial appointments made by the speaker of the house of representatives and the house minority leader and 1 of the initial appointments made by the attorney general shall serve for a term of 2 years and the initial appointments made by the auditor and 1 of the initial appointments made by the attorney general shall serve for a term of 1 year.

SECTION 3. (a) The commission on workplace harassment and sexual assault in the legislature established by chapter 23N shall, in consultation with the Massachusetts Commission Against Discrimination, research and develop model workplace harassment policies for consideration and use by the senate and house of representatives. In developing the model policies, the commission may request and receive information and testimony from experts in relevant fields including, but not limited to, workplace harassment, sexual assault, personnel policies and human resources management. The model workplace harassment policies shall include, at a minimum: (i) a statement of the illegality of workplace harassment; (ii) a definition

of identity-based harassment, sexual harassment and sexual assault; (iii) descriptions of conduct constituting identity-based harassment, sexual harassment and sexual assault, including examples; (iv) resources available to reporting individuals including, but not limited to, contact information for the commission, the Massachusetts Commission Against Discrimination and the federal Equal Employment Opportunity Commission; and (v) protection against retaliatory action. The commission shall submit the model workplace harassment policies, including specific policy language, to the senate president, the speaker of the house of representatives, the clerks of the senate and house of representatives, and the chairs of the joint committee on rules. The senate and house of representatives may adopt the model policies submitted pursuant to this section in whole or in part.

(b) The commission shall research and develop a model workplace harassment training program for consideration and use by the senate and house of representatives. In developing the model training program, the commission may contract with third party vendors and request and receive information and testimony from experts in relevant fields such as identity-based harassment, sexual harassment, sexual assault, personnel policies and human resources management. The model training program shall include, at a minimum: (i) a definition of "effective interactive training"; (ii) a definition of "legislative employee"; (iii) a definition of "unlawful conduct", which shall include applicable federal and state statutory and case law references and principles; (iv) minimum trainer qualifications; (v) minimum training frequency and duration requirements; (vi) procedures for training completion documentation, including minimum record retention requirements and procedures for individual tracking; and (vii) training content requirements, including, but not limited to, types of conduct that constitute workplace harassment, remedies available to reporting individuals, strategies to prevent workplace

harassment, practical examples of workplace harassment and hypothetical situations, confidentiality of the reporting process and resources for reporting individuals.