

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board May 17, 2023

BRIESE: Thank you, Sally. We'll get the meeting started here. I'll call the meeting to order. I'm Tom Briese, Chair of the Executive Board. And I'd like to have our members self-introduce, starting on my far right.

CLEMENTS: Senator Rob Clements from Elmwood, I represent District 2.

BALLARD: Ballard, District 21.

BOSTAR: Eliot Bostar, District 29.

SLAMA: Julie Slama, District 1.

ARCH: John Arch, District 14.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

AGUILAR: Ray Aguilar, District 35.

VARGAS: Tony Vargas, District 7.

RIEPE: Merv Riepe, District 12.

BRIESE: Thank you. And we have Sally Schultz, committee clerk, on the corner over there. I think everyone has an agenda in front of them. Number one, proposed changes and workplace harassment policy. Trevor, do you want to lead that?

TREVOR FITZGERALD: Yes. And members should have received, in addition to the proposed changes, a memo summarizing those changes, from me. I will briefly discuss the, the changes and then if members have any questions, I'm happy to answer. So the, the question or the proposed changes that are in the policy generally come from four sources. There's a series of recommendations which were made from the investigator, from the February, 2022, workplace harassment complaint, more commonly known as the, the Tara Paulson report, in the memo. There is a pair of recommendations that were changes in the policy, recommended by the Select Interim Ethics Committee that was appointed in the interim of 2022. There's a proposed change, as suggested by the former counsel to the Executive Board, my predecessor, as well as the Clerk's Office. And then there's various technical and harmonizing changes. If you go through the draft policy, any new language is going to be in bold, any stricken language is going to be struck through. With the exception, I would note, that there is a portion, on page 10,

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at the end, that is currently bolded and underlined. That is not new language. That was bolded and underlined in the existing policy.

BRIESE: Thank you, Trevor. Ms. Paulson suggested what, four changes?

TREVOR FITZGERALD: Correct. And those--

BRIESE: And, and they're all--

TREVOR FITZGERALD: --those changes are individually identified in the memo. And I'd be happy to discuss each of those. With, with the Paulson changes, they are generally, be changes that are in the policy are not exactly word for word. There was some wordsmithing done at the recommendation of the Legislative Technology Office, based on their, their experience with, with prior complaints and [INAUDIBLE].

BRIESE: OK. Thank you. The interim committee, they recommended roughly 11 changes and we've incorporated or-- in this draft, you've incorporated two of those changes?

TREVOR FITZGERALD: And to be clear, the interim, the interim committee recommended 11 generalized ethics changes. Only two of those 11 recommendations actually dealt with this policy and we've included both of those recommendations.

BRIESE: OK. Very, very good. Any discussion or questions for Trevor or myself or any comments? Senator Slama.

SLAMA: I'll defer to the Speaker first.

BRIESE: Speaker Arch.

ARCH: I, I was just going to say, I, I Really appreciate the emphasis on this electronic devices. That was-- Senator Briese and I were part of that committee on the, on the harassment investigation. And, and that-- there was a lot of unknowns, because nothing was referenced. What, what do you have access to and what is, what is private and what isn't? And, and so, I-- that-- that's a, a very good clarification.

BRIESE: That was a Tara Paulson suggestion, I believe. Thank you.

ARCH: Yeah.

TREVOR FITZGERALD: And, and to your point, Mr. Speaker, Tara Paulson's report also recommended corresponding changes within our technology policy. Those changes have already been adopted by the prior Executive

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Board in December. So we're just catching everything up here, with, with these changes.

BRIESE: OK. Thank you, Trevor and Speaker Arch. Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you very much for your work on this. And thank you to Trevor and everybody who's been involved on this, from going through the investigation last spring to being on the Interim Ethics Committee, I know a lot of people have put in a lot of work to these revisions and I appreciate it. I think, especially under the rights of complainants, ensuring that complainants have the ability to go public and have the ability to get paid leave, those are great changes in the right direction and I'm glad they're being adopted. I'm going to be a yes on the adoption of the revision, but I do think, and I've had this discussion with the Chairman and a few other people, that it just-- for, for me, it gets back to my baseline complaint when it comes to misconduct among members. In that, at, at its core, whether they're going after their own employees or other members, that there are only three areas of repercussion, formal condemnation from the Executive Board, censure and expulsion. And I just don't feel as if there's a good bucket for, kind of, the harassment we see happening in Nebraska, what we see happening in other states, to best serve those who go through it, to ensure that it doesn't happen again. That's my main complaint. I understand that's a tough discussion. And we've ran into a lot of walls for a lot of very good reasons. But I do support the changes that are being made.

BRIESE: Thank you, Senator Slama. Any-- anyone else? Senator Clements.

CLEMENTS: On item 4, says a member or employee of the Legislature has no reasonable expectation of privacy. So the complainant has no expectation of privacy? I don't-- is that [INAUDIBLE]?

TREVOR FITZGERALD: I think, Senator Clements, you-- the, the language on reasonable expectation of privacy, it's regarding-- largely regarding electronic devices, the idea being that, you know, members and employees of the Legislature, if there is an accusation or complaint filed, that those devices can be searched. There-- there's not a, kind of, a privacy interest that can be invoked by, by either. So-- but there are provisions of the existing policy, regarding the complaint being kept private at certain points in the investigation and the identity of the complainant being held private.

CLEMENTS: OK. So this doesn't--

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TREVOR FITZGERALD: Right. That, that particular change is, is spec-- really specific to electronic devices.

CLEMENTS: --doesn't mean the identity of the parties involved, you know, so the identity of the parties involved still can be private.

TREVOR FITZGERALD: Correct.

CLEMENTS: This is more the electronic information.

TREVOR FITZGERALD: Correct. And, and that is a change that's made-- corresponding changes have already been made in our technology policy, regarding this issue. This just makes sure those two policies align.

CLEMENTS: All right. Thank you.

BRIESE: Thank you, Senator Clements and Trevor. Senator Vargas.

VARGAS: Thank you. I just wanted to acknowledge the work that's been done. I know that this wasn't done speedily and I know there's criticism of that. But at the same time, the changes that we're making are the right changes, especially in regards to the technology that's just been discussed. And I do echo Senator Slama's comments, also. I think that there is, there is, there is still a hole that exists, especially for staff, for being able to do that, not just among senators. But I just wanted that to be clear, that this is an iterative process and I appreciate the work that's been done.

BRIESE: Thank you, Senator Vargas. Anyone else? From my standpoint, I am more than willing to go farther than what has been suggested here, relative to the comments of the-- or the suggestions of the interim committee. I would be amenable to adopting probably more of those suggestions. And regarding the code of conduct, it has its own pitfalls and can be problematic in, in implementing it. But I, I think I agree with Senator Slama's comments that, you know, maybe we need to be looking at something like that to try to ensure that, you know, we-- our behavior is behavior that Nebraskans can be proud of and code of conduct of some sort can, maybe, help us down that path. But again, we have to be careful how we do that, how we interpret it, what the standards are, who enforces it, how we enforce it, things of that sort. Some questions to be answered there, it would seem. But-- and these suggestions that we have in the draft today and also, regarding the leave of absence, we don't have to vote on anything today. But I think I would certainly entertain motions, if people would like to get something adopted. But I think our work is not done in that regard. I think we've indicated that, [INAUDIBLE] ongoing efforts in the

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interim. And I, I would-- I'll certainly be part of those efforts and I would encourage probably further movement on some of these things, going forward.

SLAMA: I'll, I'll make the motion to adopt the revised policy.

VARGAS: Second.

ARCH: Second.

BRIESE: We have a motion by Senator Slama. I believe the second, by Speaker Arch.

ARCH: I think Senator Vargas beat me [INAUDIBLE].

BRIESE: A motion to adopt the proposed changes to the Legislature's Workplace Harassment Policy, as indicated in the copy that you have before you. Any other discussion? Seeing none, let's do a roll call vote.

SALLY SCHULTZ: Starting with Senator, Senator Slama.

SLAMA: Yes.

SALLY SCHULTZ: Senator Vargas.

VARGAS: Yes.

SALLY SCHULTZ: Senator Aguilar.

AGUILAR: Yes.

SALLY SCHULTZ: Speaker Arch.

ARCH: Yes.

SALLY SCHULTZ: Senator Ballard.

BALLARD: Yes.

SALLY SCHULTZ: Senator Bostar.

BOSTAR: Yes.

SALLY SCHULTZ: Senator Briese.

BRIESE: Yes.

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SALLY SCHULTZ: Senator Lowe. Senator Riepe.

RIEPE: Yes.

SALLY SCHULTZ: Motion carried.

BRIESE: OK. Next, next item on the agenda is the proposed changes to the leave of absence policy. Trevor--

TREVOR FITZGERALD: Yes.

BRIESE: --would you like to take that?

TREVOR FITZGERALD: And this is a corresponding policy to the changes we've just adopted in the workplace harassment policy. One of the recommendations in the Paulson memo was that, in the event a complainant requests a leave of absence, that that leave of absence be paid. That is actually what was done in, in 2022, but we actually don't have a policy for-- to provide for that. So what this proposed change is, it takes our existing leave of absence policy and clarifies that that existing policy is an unpaid leave of absence policy. That policy is generally used-- most commonly used in cases where, say, a legislative employee wants to take time off to go work on a campaign in the interim and so they'll take an unpaid leave of absence during that period. But there are other examples. What this proposed change does is makes that policy an unpaid leave of absence policy, just specifies that it's unpaid and creates a new policy for a paid leave of absence in the event of a complaint under the Workplace Harassment policy.

BRIESE: OK. Any-- thank you, Trevor. Any questions, comments? So I would-- go ahead, Senator Clements.

CLEMENTS: Thank you. Does there have to have been a determination that there was harassment before they get paid leave of absence or is it just at the discretion upon a complaint [INAUDIBLE]?

TREVOR FITZGERALD: The, the way it's written is that it's following a complaint or report. So at-- basically, at the beginning of the investigation process, that, that leave could be granted. And, and that-- well, I believe, was the case, in 2022, that leave was granted, basically as soon as the complaint was filed.

BRIESE: Thank you, Senator Clements. Thank you, Trevor. Speaker Arch.

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ARCH: Just a, just a question, because typically, if there is an employee that has a disciplinary issue, and I don't mean necessarily workplace underperformance, whatever it might be or if there's, there's something that needs to be investigated or egregious, can, can that be a cause for an unpaid leave of absence? Can you, can you suspend an employee, I guess, of the Legislature?

TREVOR FITZGERALD: I think so. But I immediately wish I had my policy manual with me.

ARCH: OK. Well, that's fine. I, I didn't know if, I didn't know if there was--

TREVOR FITZGERALD: There are proced-- disciplinary procedures in the--

ARCH: Right.

TREVOR FITZGERALD: --in the policy manual.

ARCH: If you need to leave the workplace, you know, and, and it was egregious enough that it's, that it's unpaid.

TREVOR FITZGERALD: Yeah. If you'll-- if I, if I have 30 more seconds, I think I can determine what the policy says.

ARCH: That-- that's fine. You can look it up, you can look it up later, too. That's fine.

BRIESE: Any other questions, comments?

BOSTAR: I'd move to adopt the amendments of the leave of absence policy.

AGUILAR: Second.

BRIESE: Motion by Senator Bostar, second by Senator Aguilar, to adopt the changes to the leave of absence policy. Any other discussion? Trevor, did you have a comment?

TREVOR FITZGERALD: Just to answer Senator Arch's question. The disciplinary procedures do not provide for an unpaid leave of absence, but they provide for a suspension without pay, which is--

ARCH: Oh.

TREVOR FITZGERALD: --of similar nature--

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ARCH: Same thing?

TREVOR FITZGERALD: --just different wording. Yep.

ARCH: OK.

TREVOR FITZGERALD: I was fairly certain, but I didn't want to say without checking.

BRIESE: Thank you, Trevor. Any-- anyone else? Seeing no other comments, let's do a roll call vote.

SALLY SCHULTZ: Starting with Senator Bostar.

BOSTAR: Yes.

SALLY SCHULTZ: Senator Briese.

BRIESE: Yes.

SALLY SCHULTZ: Senator Lowe. Senator Riepe.

RIEPE: Yes.

SALLY SCHULTZ: Senator Slama.

SLAMA: Yes.

SALLY SCHULTZ: Senator Vargas.

VARGAS: Yes.

SALLY SCHULTZ: Senator Aguilar.

AGUILAR: Yes.

SALLY SCHULTZ: Speaker Arch.

ARCH: Yes.

SALLY SCHULTZ: Senator Ballard.

BALLARD: Yes

SALLY SCHULTZ: Motion carried.

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BRIESE: OK. Going to number three on the agenda, an update on the legislative auditor vacancy. Trevor, would you like to fill us in on that?

TREVOR FITZGERALD: Yes. As members remem-- recall, our Legislative Auditor has announced that she will be retiring at the end of session. Senator Briese has been-- and our office has been working with Senator Dorn, as Chair of the Performance Audit Committee, to work on the process of finding a replacement. Most-- actually, not most, so division directors are, are generally appointed by the Executive Board, but there is an exception in statute for the Performance Audit Committee. The Performance Audit Committee is actually supposed to recommend the Legislative Auditor candidate to the Executive Board. And so, traditionally, when we have a division director is hired, there will be a subcommittee of the Executive Board put together, that will interview candidates and make a recommendation to the full board. In this case, we've, we've been working with Senator Dorn's office to, instead, have a subcommittee of the Performance Audit Committee conduct those interviews. And then they will make a recommendation to the full Performance Audit Committee, which will make that formal recommendation to the Executive Board. We did post the position for about two and a half weeks, both on the state jobs websites, as well it was, it was cross-posted at-- with the National Conference of State Legislatures, NCSL's job board, as well as-- there's kind of a listserv of performance audit agencies that NCSL runs. It was cross-posted there, as well. We received eight applicants. Those applications have been forwarded to the subcommittee of Performance Audit, with the hope that they would begin looking to conduct interviews over the next couple of weeks.

BRIESE: Thank you. Any questions? OK. Thank you for the update, Trevor.

TREVOR FITZGERALD: Uh-huh.

BRIESE: Well, that would complete that portion of today's meetings. And that meeting is adjourned, at this point. Sally, do you need to stop and restart?