

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
AB 1661 (McCarty and Gonzalez) – As Amended March 17, 2016

SUBJECT: Local government: sexual harassment training and education.

SUMMARY: Requires local agency officials to receive sexual harassment training and education. Specifically, **this bill:**

- 1) Requires, if a local agency provides any type of compensation, salary, or stipend to a local agency official of that agency, all local agency officials of that agency to receive sexual harassment training and education pursuant to this bill.
- 2) Allows a local agency to also require any of its employees to receive sexual harassment training and education pursuant to this bill.
- 3) Requires each local agency official, or employee who is so required, to receive at least two hours of sexual harassment training and education within the first six months of taking office or commencing employment, and every two years thereafter.
- 4) Requires the training and education required by this bill to include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against, and the prevention and correction of, sexual harassment and the remedies available to victims of sexual harassment in employment.
- 5) Requires the training and education to also include practical examples aimed at instructing the local agency official in the prevention of sexual harassment, discrimination, and retaliation, and to be presented by trainers or educators with knowledge and expertise in the prevention of sexual harassment, discrimination, and retaliation.
- 6) Allows a local agency or an association of local agencies to offer one or more training courses, or sets of self-study materials with tests, to meet the requirements of this bill. These courses may be taken at home, in person, or online.
- 7) Requires all providers of training courses to provide participants with proof of participation to meet the requirements of this bill.
- 8) Requires a local agency to provide information on training available to meet the requirements of this bill to its local agency officials and its employees at least once annually.
- 9) Requires a local agency that requires its local agency officials or employees to complete the sexual harassment training and education prescribed by this bill to maintain records indicating both of the following:
 - a) The dates that local agency officials or employees satisfied the requirements of this article; and,

- b) The entity that provided the training.
- 10) Requires, notwithstanding any other law, a local agency to maintain the records required by this bill for at least five years after local agency officials or employees receive the training. These records are public records subject to disclosure under the California Public Records Act, as specified.
- 11) Provides the following definitions:
- a) "Legislative body" means the governing body of a city, county, city and county, or special district;
 - b) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district; and,
 - c) "Local agency official" means any member of a local agency governing body and any elected local agency official.
- 12) Finds and declares that all employees should have the same opportunity to work in a safe and harassment free environment and therefore, sexual harassment training and education for all local agency officials is a matter of statewide concern and, not merely a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill shall apply to charter cities, charter counties, and charter cities and counties.

EXISTING LAW:

- 1) Requires all local agency officials to receive training in ethics, at specified intervals, if the local agency provides any type of compensation, salary, or stipend to those officials.
- 2) Requires an employer having 50 or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California within six months of their assumption of a supervisory position, and once every two years thereafter.
- 3) Defines, for purposes of 2), above, "employer" to mean any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

FISCAL EFFECT: None**COMMENTS:**

- 1) **Bill Summary.** This bill requires local agency officials to receive two hours of sexual harassment training and education within the first six months of taking office or commencing employment, and every two years thereafter. The requirements of the bill apply only if a local agency provides any type of compensation, salary, or stipend to its local agency officials. Pursuant to the definitions provided in the bill, its requirements would apply to any member of a governing body and any elected official of cities and counties (including charter cities and charter counties), and special districts.

The bill allows a local agency to also require any of its employees to receive sexual harassment training and education as outlined in the bill. This bill is sponsored by Equal Rights Advocates.

- 2) **Authors' Statement.** According to the authors, "In 2004, AB 1825 (Reyes) established requirements for sexual harassment prevention training in the workplace. Specifically, it required that employers of 50 or more employees must provide training of a (minimum) of two hours on sexual harassment prevention training to all supervisors and once every two years. Also, it stated that these trainings should be conducted with existing state resources. In addition, AB 1825 mandated that training needed to be renewed every two years in order to keep employers/employees updated and refreshed on how to report, prevent, and recognize sexual harassment.

"However, existing law does not explicitly require city or county elected officials to take (a) sexual harassment prevention training course. Some cities have interpreted AB 1825 to not apply to city council members, while some cities have found that it does apply. This loophole has caused significant confusion. The cost to cities to litigate and/or settle claims for sexual harassment suits is in the hundreds of thousands of dollars, which result in a significant loss of revenue (and) diverts funds from essential constituent services.

"This bill aims to eliminate confusion by requiring that all city, county, charter city, charter county, charter city and county, special district employees, and city elected officials receive sexual harassment prevention training and education within a six month period after assuming a new position."

- 3) **Background.** During the past few years, California has witnessed a number of high-profile cases in which elected local government officials were accused and/or found guilty of sexually harassing their staff or other employees. Most visible among them was the City of San Diego's scandal with its former mayor. A major issue in that case involved a dispute between the City and the former mayor over who was responsible for the mayor's sexual harassment training, which he didn't complete until after sexual harassment allegations were made public and after the required 6-month timeframe for training had elapsed.

The mayor's attorney argued that the City was responsible for defending the mayor in his legal battles, because the City failed to provide training to the mayor within the required 6-month timeline. The City contended that the mayor repeatedly refused to complete the on-line training course. The City of San Diego eventually settled several lawsuits against its former mayor, reporting in February that it expected total payouts when all suits were settled to reach \$1 million.

There have been additional news reports and op-eds on this issue in other parts of the state, including West Hollywood and Sacramento. At issue is whether elected officials are considered "supervisory employees" and, as such, subject to current law that requires employers to provide sexual harassment training to employees who are supervisors. Some jurisdictions have interpreted the law to include elected officials among supervisory employees, while others have not.

This bill is modeled after current law governing ethics training for local agency officials, in an attempt to clarify that local agency officials are, indeed, required to complete training and education in sexual harassment.

4) **Suggested Amendments.** The Committee may wish to consider the following amendments:

- a) **Prevent Duplicative Training.** Current law governing ethics training for local agency officials contains a provision to account for local agency officials who serve on more than one board. This provision states, "A local agency official who serves more than one local agency shall satisfy the requirements of this article once every two years without regard to the number of local agencies with which he or she serves." The Committee may wish to consider adding such a provision to this bill.
- b) **Ensure Sufficiency of Course Content.** Existing law requiring ethics training for local agency officials contains a provision that states, "If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula." The Committee may wish to include a similar provision in this bill.
- c) **Prevent Conflict With Existing Law.** Current law requires specified sexual harassment training for supervisory employees that is not identical to the provisions of this bill that apply to local agency employees. The Committee may wish to consider amending this bill to clarify that its provisions do not supersede existing law governing sexual harassment training for supervisory employees.
- d) **Technical Amendment.** The bill's definition of "local agency official" should be amended to refer to "legislative body" instead of "governing body" to maintain consistency with ethics training requirements.

5) **Previous Legislation.** AB 2053 (Gonzalez), Chapter 306, Statutes of 2014, expanded on existing law related to sexual harassment training for supervisory employees to also include training on the prevention of abusive conduct.

SB 1087 (Monning), Chapter 750, Statutes of 2014, prohibited a farm labor contractor (FLC) who engages in sexual harassment from being issued an FLC's license or renewing the license, as specified.

AB 1234 (Salinas), Chapter 700, Statutes of 2005, established provisions for ethics training for local government officials and designated employees.

AB 1825 (Reyes), Chapter 933, Statutes of 2004, required employers who have 50 or more employees to provide sexual harassment training and education to all supervisory employees.

6) **Arguments in Support.** The Sacramento Collective for Women's Rights, in support, writes, "Sexual harassment in the workplace continues to be a prevalent issue in the United States. Men and women alike can experience sexual harassment in the workplace; therefore, they

should be able to recognize, resist and report it when it happens...AB 1661...aims to create a universal mandate for all city and county elected officials to complete such training. It is time for a universal law that specifically requires city and county elected officials to take this training so that it eliminates any confusion as to what trainings and courses they must take.” The CSAC Excess Insurance Authority, also in support, adds, "As public entity members, we are often drawn into lengthy and costly employment-related lawsuits where claims of sexual harassment are brought forth. Oftentimes, we see that the lawsuits are directed at supervisory staff either for their direct actions or their inaction in addressing the alleged harassment...however, we also see that other employees who are aware of...potential harassment fail to bring the issue to light. We believe that expanding the existing law...will provide for greater education and awareness across all levels of employment in local government."

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Equal Rights Advocates [SPONSOR]
Association of California Water Agencies
California Association of Recreation and Park Districts
California Fire Chiefs Association
California Women's Law Center
CSAC Excess Insurance Authority
Fire Districts Association of California
Los Angeles County Professional Peace Officers Association
Organization of SMUD Employees
Sacramento Collective for Women's Rights
San Diego County Court Employees Association
San Luis Obispo County Employees Association

Opposition

None on file

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