

**TESTIMONY OF DANIEL W. LUCAS, INSPECTOR GENERAL  
BEFORE THE  
COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON PUBLIC WORKS AND OPERATIONS  
COMMITTEE ON EXECUTIVE ADMINISTRATION AND LABOR**

**JOINT PUBLIC HEARING ON  
B25-0351, THE “SEXUAL HARASSMENT INVESTIGATION INTEGRITY  
AMENDMENT ACT OF 2023”**

**December 6, 2023**

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Good morning, Chairperson Nadeau, Chairperson Bonds, and Members of the Committees. I am Daniel W. Lucas, Inspector General for the District of Columbia. Thank you for the opportunity to testify today on Bill 25-0351, the “Sexual Harassment Investigation Integrity Amendment Act of 2023.”

Our employees deserve a welcoming work environment—one that is free from harassment and discrimination. I agree with the sponsors of the proposed legislation that we must take allegations of discrimination and sexual harassment seriously and carry out resulting investigations objectively.

**I. The Office of the Inspector General**

Before I turn to the bill under consideration, allow me to provide you and members of the public with a brief overview of the Office of the Inspector General (OIG). By law, the purpose of the Office of the Inspector General is to independently:

- (1) Conduct and supervise audits, inspections, and investigations relating to the programs and operations of District government departments and agencies, including independent agencies;
- (2) Provide leadership and coordinate and recommend policies for activities designed to promote economy, efficiency, and effectiveness and to prevent and detect corruption, mismanagement, waste, fraud, and abuse in District government programs and operations; and
- (3) Provide a means for keeping the Mayor, Council, and District government department and agency heads fully and currently informed about problems and deficiencies relating to the administration of these programs and operations and the necessity for and progress of corrective actions.<sup>1</sup>

## **II. B25-0351, the “Sexual Harassment Integrity Amendment Act of 2023”**

Now, regarding today’s joint hearing, if enacted, Bill 25-0351 would amend the District of Columbia’s Human Rights Act of 1977.<sup>2</sup> Specifically, the proposed legislation would modify D.C. Code § 2-1403.03, which governs the “establishment of procedure for complaints filed against District government.” The proposed amendments would provide that, notwithstanding rules promulgated by the Mayor in responding to allegations of violations of the Human Rights Act by a District employee,<sup>3</sup> any formal or informal District employee complaint of harassment or other unlawful discriminatory practice against an agency director, mayoral appointee of a subordinate agency, board, or commission, or any employee directly reporting to the Mayor or

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<sup>1</sup> D.C. Code § 1-301.115a (a-1).

<sup>2</sup> D.C. Law 2-38 (eff. Dec. 13, 1977), DC Official Code § 2-1401.01 *et seq.* (2023).

<sup>3</sup> *See* D.C. Mun. Regs. Tit. 4 Chap. 1, “Complaints of Discrimination in the District of Columbia Government.”

City Administrator, be referred to the OIG for investigation by its independent counsel. The OIG's independent counsel would be required to produce a report of findings regarding the alleged violation. If any violations are found, independent counsel would also assess whether any District government resources were expended during the unlawful actions and whether workplace culture, management procedures, or other broader factors contributed to the unlawful discriminatory practice.

### **III. The Impact of the “Sexual Harassment Integrity Act of 2023.”**

Considering the Council's intent, the OIG mission, and the proposed requirements found in the bill, I would like to identify five specific matters requiring the Council's attention.

#### **1. Independent counsel can be expensive.**

As the Committees are aware, emergency and temporary legislation introduced on July 10, 2023,<sup>4</sup> requires the OIG to hire and direct independent counsel to review and investigate matters related to the former Deputy Mayor for Planning and Economic Development. Based on proposals received from three solicitations, we estimated that the cost to retain independent counsel for this one investigation could be up to \$600,000. If enacted, B25-0351 would require similar resources for each independent investigation. In addition to the costs of hiring and administering a contract with independent counsel, the OIG would need at least one full-time equivalent (FTE) to manage the process and administer the contract. The OIG does not have sufficient FTEs or funding to implement the bill.

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<sup>4</sup> D.C. Act A25-0202, the Sexual Harassment Investigation Review Emergency Act of 2023, and D.C. Law 25-0079, the Sexual Harassment Investigation Review Temporary Act of 2023.

**2. Required referrals would cover more than just sexual harassment complaints.**

The potential cost becomes compounded by the scope of the referral requirement. Under the bill, the OIG must hire independent counsel to investigate not only sexual harassment claims,<sup>5</sup> but it must also secure independent counsel for any alleged discriminatory practice in employment prohibited by the Human Rights Act.<sup>6</sup> Though the proposed legislation would require the OIG’s independent counsel to have “experience in confidentiality and sexual harassment law,” given the breadth of the coverage, independent counsel would require extensive experience in all aspects of employment discrimination. The Council should consider whether referrals to the OIG and subsequent investigation by its independent counsel should be more narrowly focused on sexual harassment allegations.

**3. The bill provides the OIG with no discretion; every complaint must be referred to independent counsel.**

The proposed legislation also provides that “[i]nvestigations of a formal or informal complaint of harassment...shall be referred to the Inspector General.” Thereafter, “[t]he Inspector General shall hire and retain independent counsel to conduct prompt investigations into any complaint referred” to OIG. What is unclear is who it is that determines whether an investigation is needed. At the very least, the OIG needs discretion to evaluate formal and informal complaints received before expending finite resources to engage the services of independent counsel.

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<sup>5</sup> D.C. Code §§ 2-1402.11 (c-2)(2)(A)-(B).

<sup>6</sup> D.C. Code § 2-1402.11 (a).

#### **4. The bill provides little opportunity for quick, informal resolutions.**

The Office of Human Rights (OHR), on behalf of the Mayor, has “establish[ed] rules of procedure for the investigation, conciliation, and hearing of administrative complaints filed against District government agencies, officials and employees alleging violations of [the District’s Human Rights Act]” pursuant to D.C. Code § 2–1403.03.<sup>7</sup> OHR’s rules concerning complaints of discrimination in the District government are found in Title 4 of the D.C. Municipal Regulations (DCMR) Chapter 4-1.

If enacted, the proposed amendments would insert the OIG’s independent counsel into the District’s current regulatory processes, specifically concerning the filing and presentation of complaints<sup>8</sup> and investigations,<sup>9</sup> by requiring the investigation of any formal or informal complaint against specific District employees. This would bypass any opportunity for these matters to be addressed through Pre-Complaint Processing (Equal Employment Opportunity counseling),<sup>10</sup> forgo the complainant’s decision to file and present a formal complaint or voluntarily withdraw a complaint,<sup>11</sup> exclude the OIG’s ability to evaluate the veracity of the complaint prior to initiating an investigation,<sup>12</sup> and bypass the District’s statutory requirement to mediate a complaint before investigating.<sup>13</sup>

The Council should consider whether an immediate investigation following a complaint

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<sup>7</sup> See D.C. Mun. Regs. tit 4 ch. 1.

<sup>8</sup> D.C. Mun. Regs. tit. 4 § 4-106.

<sup>9</sup> D.C. Mun. Regs. tit. 4 § 4-110.

<sup>10</sup> D.C. Mun. Regs. tit. 4 § 4-105.

<sup>11</sup> D.C. Mun. Regs. tit. 4 § 4-108.

<sup>12</sup> D.C. Mun. Regs. tit. 4 §§ 4-106 and 4-107.

<sup>13</sup> D.C. Code § 2-1403.04(c) mandates that “all complaints shall be mediated before [OHR] commences a full investigation.”

referral is the most prudent course of action, without considering other administrative remedies available to, and required of, complainants.

It is unclear how the bill will comport with current procedures governing the adjudication process for complaints of discrimination in the District government. For example, the DCMR specifies that upon completion of an investigation, OHR is responsible for reviewing the investigative findings and making a probable cause determination, no probable cause determination, or substitute determination.<sup>14</sup> Both the complainant and respondent are afforded the ability to request reconsiderations of OHR's determinations.<sup>15</sup> Further, any subsequent reconsideration by OHR<sup>16</sup> and hearing before an independent hearing examiner could require additional investigative work.<sup>17</sup> The bill's resulting bifurcation between complaint and investigative processes could inadvertently affect individuals' due process rights and trigger an increase in judicial reviews.<sup>18</sup>

##### **5. Overlap and duplication of current complaint processes.**

Finally, notwithstanding the regulatory processes previously discussed, D.C. Code § 2-1403.02 requires an agency's immediate and independent action regarding any alleged violation of the District's Human Rights Act that it receives. As the Council is aware, the recently updated Mayor's Order, *Updated District Government Sexual Harassment Policy, Guidance, and Procedures*, requires "allegations of sexual harassment against the

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<sup>14</sup> D.C. Mun. Regs. tit. 4 § 4-110.6.

<sup>15</sup> See D.C. Mun. Regs. Tit. 4-113.

<sup>16</sup> D.C. Mun. Regs. tit. 4 § 4-113.5

<sup>17</sup> D.C. Mun. Regs. tit. 4 § 4-116.6.

<sup>18</sup> D.C. Code § 2-510.

Mayor, City Administrator, Mayor’s Chief of Staff, Mayor’s Senior Advisor, Director of the MOLC, any Deputy Mayor, or any official who directly reports to the Mayor,” to be referred to the OIG.<sup>19</sup> Following referral, the OIG will determine if the allegation is credible and refer the matter for independent investigation.

Given the updated Mayor’s Order is non-exclusive in terms of remedies, there could be instances when the OIG’s independent counsel would be directed to investigate an alleged violation of the Mayor’s Order and subsequently required to investigate the same complaint in violation of the Human Rights Act. While evidentiary standards differ between an investigation conducted under the Mayor’s Order<sup>20</sup> and the Human Rights Act,<sup>21</sup> the potential for duplicative investigations would result in unnecessary expenditures of District resources.

#### **IV. Closing**

In closing, I again reiterate our shared goal to provide District employees a workplace that is free from sexual harassment and discrimination. I believe we can work together to further the goals of addressing sexual harassment and discrimination complaints made against high-ranking District officials and appointees, as contemplated by this legislation, while maintaining the independence

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<sup>19</sup> M.O. 2023-131 § V. C. 3. (Oct. 31, 2023), <https://mayor.dc.gov/page/mayor%E2%80%99s-order-2023-131> (last visited Nov. 20, 2023).

<sup>20</sup> Investigations conducted in accordance with the Mayor’s Order require a “preponderance of evidence” evidentiary threshold. *See* DCHR Issuance I-2019-21, “Sexual Harassment Reports and Investigations” (Dec. 31, 2019). Available at: <https://edpm.dc.gov/issuances/sexual-harassment-reports-and-investigations/> (last visited Nov. 20, 2023).

<sup>21</sup> Investigations conducted in accordance with the District’s Human Rights Act require a “probable cause” evidentiary threshold. *See* D.C. Code 2–1403.05 (b).

of the OIG.<sup>22</sup> Notwithstanding the issues I discussed today regarding the proposed legislation, I must remind the Council that D.C. Law 25-0079<sup>23</sup> requires the OIG’s independent counsel to “review and make recommendations on sexual harassment complaint and investigation procedures of the District government.” As such, I believe it is prudent to await these findings prior to the Committees’ markup of Bill 25-0351.

Thank you for the opportunity to discuss the bill, and I am available to answer your questions.

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<sup>22</sup> DC Code § 1-301.115a (b)(1) requires the OIG to comply with standards promulgated by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and U.S. Government Accountability Office (GAO). CIGIE’s *Quality Standards for Investigations*, General Standards Section B (Nov. 2011), prescribe that the OIG “must be free, in both fact and appearance, from impairments to independence.” GAO’s *Government Auditing Standards* expands on threats to independence. Germane to B25-0351, an “undue influence” threat would occur if the OIG outside counsel’s report were subject to overruling by OHR. Further, a “management participation” threat would occur if the OIG were to examine programs and operations related to the District’s Human Rights Act, while being involved in OHR’s processes governing complaints of discrimination in the District government.

<sup>23</sup> D.C. Act 25-0202 expired on Oct. 29, 2023. The corresponding temporary legislation, D.C. Law 25-0079, effective Nov. 28, 2023, will expire on July 10, 2024.