

## HCR 20 STAFF MEASURE SUMMARY

### Joint Committee On Capitol Culture

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**Prepared By:** Josh Nasbe, Counsel

**Meeting Dates:** 2/20

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#### **WHAT THE MEASURE DOES:**

Replaces Legislative Branch Personnel Rule 27. Applies to all persons present in State Capitol. Defines and prohibits “harassment,” “sexual harassment,” “hostile work environment” and “retaliation.” Creates three reporting options: 1) Confidential disclosure process; 2) Nonconfidential reporting process; and 3) Formal complaints. Mandates reporting by legislators and supervisory employees. Authorizes and establishes procedures for investigations and imposition of interim safety and remedial measures. Describes availability of records. Establishes Senate Committee on Conduct, House Committee on Conduct and Joint Committee on Conduct.

#### **ISSUES DISCUSSED:**

##### **EFFECT OF AMENDMENT:**

No amendment.

##### **BACKGROUND:**

Currently, Legislative Branch Personnel Rule 27 provides for an informal reporting option and a formal complaint process, that may be utilized by legislators and legislative employees within four years of the date of the alleged harassment. Upon receipt of a report or complaint, including a report or complaint involving a legislator, the rule requires Employee Services or Legislative Counsel to immediately take appropriate action to ensure that the reporting party has a safe and nonhostile work environment. In the absence of a report or complaint, the rule: 1) requires all legislators and supervisors to take appropriate action to "prevent, promptly correct and report" harassment; and 2) directs Employee Services, in consultation with Legislative Counsel, to investigate instances of severe or pervasive harassment or discrimination based on a protected class.

For informal reports, the current rule directs all members and employees involved in the investigation to cooperate and, except for individuals involved in the underlying incident, requires confidentiality, while at the same time recognizing that certain legislative branch records are subject to public records requests. If the party making the informal report wishes to remain anonymous or wishes that no action be taken, the Human Resources Director or the Legislative Counsel "shall determine appropriate action." While the rule is largely silent about the manner in which informal reports are resolved, it expressly requires notification to the person alleged to have engaged in harassment, as well as the person's supervisor, when the reporting party consents to this notification.

When a formal complaint is received, the rule requires that an investigator be appointed and, if the respondent is a legislator, prohibits the use of a legislative employee to conduct the investigation. The rule directs all members and employees involved in the investigation to cooperate with the investigation, but neither imposes a confidentiality requirement nor references public records law. Upon completion of the investigation, the rule contemplates review of the investigator's findings of facts by the parties, who may request that Human Resources or the Office of Legislative Counsel exercise discretion to modify the investigator's findings. If the person alleged to have engaged in harassment is a not a legislator, the appointing authority is required to act on the investigator's recommendations as soon as practicable. If the person alleged to have engaged in harassment is a legislator, the rule requires a hearing before the Conduct Committee, who may recommend one of only four options: 1) Reprimand; 2) Censure; 3) Expulsion; and 4) No further action. Following a review period, this

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recommendation is forwarded to the chamber who may impose a sanction pursuant to a two-thirds vote.

House Concurrent Resolution 20 (HCR 20) repeals and replaces Legislative Branch Personnel Rule 27. The resolution applies the new rule broadly, allowing any person to utilize one of three reporting mechanisms and expanding the exercise of jurisdiction to include lobbyists, non-legislative branch employees and members of the public who are present in the State Capitol. HCR 20 creates three reporting options: 1) A confidential disclosure process, that includes process counseling; 2) A nonconfidential reporting process that is available to any person and is mandatory for legislators and legislative supervisors; and 3) A formal complaint process that necessarily results in an investigation and requires that allegations be made under penalty of perjury.

In the course of making a confidential disclosure to the Legislative Equity Office described in 2019 Senate Bill 744, HCR 20 requires the Equity Office to inform the person making the disclosure of the range of options available to the person, including options external to the Legislative Assembly. In response to a confidential disclosure, the rule expressly contemplates the disclosure of nonpersonally identifiable information for purposes training or coaching, or to encourage persons making confidential disclosures to make a nonconfidential report or a formal complaint.

Much like the existing rule, HCR 20 imposes an obligation on all legislators and supervisors to make a nonconfidential report of harassment. The report is ultimately funneled to the Equity Office who determines whether a workplace harassment investigation is necessary. Conversely, HCR 20 requires an investigation when a formal complaint is made. If the formal complaint involves a legislator or specifically identified staff, the investigator must be appointed from a list maintained by the Joint Committee on Conduct.

Regardless of whether an investigation is begun as the result of a nonconfidential report or a formal complaint, HCR 20 authorizes the investigator to recommend interim safety measures to protect persons at risk of harassment. At the conclusion of the investigation, HCR 20 establishes distinct processes for legislators, partisan staff, nonpartisan staff and all other persons. For legislators, HCR 20 authorizes the respective Conduct Committees to impose an appropriate remedy directly, or to make specified recommendations to the Presiding Officer or the full body in which they serve. The Conduct Committees also plays a role in allegations involving partisan staff, while the Legislative Administrator does so for non-legislative branch personnel. HCR 20 takes effect on passage.