

House Concurrent Resolution 26

Sponsored by Representative NOBLE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes standards of conduct applicable to Legislative Branch and lobbyists. Requires reporting and investigation of allegations, reports and complaints asserting violation of standards of conduct. Requires, if investigation involves member of Legislative Assembly, report of findings to be given to committee on conduct and specified action by committee if report contains finding sustaining allegations. Establishes other procedures if investigation involves legislative or other employees or lobbyists. Establishes Senate and House Committees on Conduct.

CONCURRENT RESOLUTION

Be It Resolved by the Legislative Assembly of the State of Oregon:

That Legislative Branch Personnel Rule 27, as amended and in effect for the Eightieth Legislative Assembly, is repealed and the following Legislative Branch Personnel Rule 27 is adopted in lieu thereof as a rule of proceeding of the Senate and the House of Representatives and a joint rule of proceeding applicable to the Legislative Branch:

Legislative Branch Personnel Rule 27: Safe, Respectful and Inclusive Workplace.

(1) Policy.

(a) The Legislative Branch is committed to promoting a respectful and inclusive environment in the State Capitol and in any setting in which conduct has the ability to create a workplace environment that is intimidating, hostile or offensive.

(b) This rule is designed to provide options to those who are experiencing or observing harassing behavior, discriminatory behavior or other behavior prohibited by subsection (4) of this rule to seek information, report behaviors or file complaints to address and resolve concerns, while also facilitating choices for victims and witnesses who seek to remain anonymous.

(2) Duty to report and investigate.

(a) All members of the Legislative Assembly, Legislative Branch employees, legislative volunteers, interns, externs and lobbyists registered with, or required to register with, the Oregon Government Ethics Commission under ORS 171.740 shall report instances of physical harassment that they are aware of, in the manner required in section 2, chapter _____, Oregon Laws 2019 (Enrolled _____ Bill _____) (LC 4071), and to one or more persons designated to receive reports under paragraph (e) of this subsection.

(b) A person designated under paragraph (e) of this subsection shall investigate all allegations or complaints of workplace harassment, conduct that creates a hostile work environment, sexual harassment, physical sexual harassment or retaliation, including allegations involving a member of the Legislative Assembly, other elected official, Legislative Branch employee, other state employee, legislative volunteer, intern, extern or lobbyist reg-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 istered or required to be registered under ORS 171.740. Any individual may make an
2 allegation or complaint as prescribed in paragraphs (e), (f) and (g) of this subsection.

3 (c) Any appointing authority or supervisor who is aware of workplace harassment, con-
4 duct that creates a hostile work environment, sexual harassment, physical sexual
5 harassment or retaliation shall report as prescribed in paragraphs (e), (f) and (g) of this
6 subsection.

7 (d) If any allegation, report or complaint described in paragraph (b) or (c) of this sub-
8 section involves physical contact, the allegation, complaint or report shall also be made to
9 the Oregon State Police under sections 2 and 3, chapter _____, Oregon Laws 2019 (Enrolled
10 _____ Bill _____) (LC 4071). A noncriminal investigation under this rule may not interfere
11 with a criminal investigation undertaken under section 3, chapter _____, Oregon Laws 2019
12 (Enrolled _____ Bill _____) (LC 4071).

13 (e) Any allegation, complaint or report described in paragraph (b) or (c) of this subsection
14 shall be made to:

15 (A) The Legislative Equity Office established under section 1, chapter _____, Oregon
16 Laws 2019 (Enrolled Senate Bill 744); or

17 (B) The person or entity designated by the President of the Senate or the Speaker of the
18 House of Representatives to receive allegations, complaints or reports under this subsection.

19 (f) Any individual who makes an allegation, report or complaint that states that an in-
20 dividual is experiencing conduct prohibited by this rule shall also inform the person receiving
21 the allegation, report or complaint under paragraph (e) of this subsection whether the
22 allegation, report or complaint is being made anonymously. If anonymity is sought, the per-
23 son receiving the report shall:

24 (A) Redact identifying information and otherwise refrain from establishing records that
25 identify the reporter; and

26 (B) Explain to the reporter that anonymity may limit the responses available if a deter-
27 mination is made that conduct prohibited by this rule has occurred.

28 (g) The information contained in the allegation, report or complaint described in para-
29 graph (b) or (c) of this subsection must be sufficient to enable the person that receives the
30 allegation, report or complaint to begin an investigation described in subsection (3) of this
31 rule.

32 (3) Investigation procedures and outcomes.

33 (a) The person that receives an allegation, complaint or report under subsection (2)(e)
34 of this rule shall investigate the allegation, complaint or report or may contract with an in-
35 dependent investigator unaffiliated with the Legislative Branch to conduct the investigation.
36 The investigation shall be conducted promptly and shall be completed as soon as is practi-
37 cable. The investigator shall use best practices in conducting the investigation and shall
38 strive to maintain the anonymity of a reporter if the reporter requests anonymity.

39 (b) The investigator shall prepare written findings of fact. If the subject of an investi-
40 gation is a legislator, the investigator shall include in the report one of the following findings
41 summarizing the result of the investigation:

42 (A) Sustained, if the investigator determines that a preponderance of the evidence ob-
43 tained in the investigation establishes that the alleged conduct occurred and that the con-
44 duct is prohibited by this rule;

45 (B) Not sustained, if the investigator is unable to obtain sufficient evidence to prove or

1 **disprove that the alleged conduct occurred;**

2 **(C) Unfounded, if the investigator determines that a preponderance of the evidence ob-**
 3 **tained in the investigation establishes that the alleged conduct did not occur; or**

4 **(D) Exonerated, if the investigator determines that the alleged conduct occurred but did**
 5 **not constitute conduct prohibited under this rule.**

6 **(c)(A) If the subject of an investigation is a legislator, the investigator shall deliver the**
 7 **report to the appropriate committee on conduct established under subsection (9) of this rule,**
 8 **the legislator and the reporter that initiated the investigation. The committee shall promptly**
 9 **conduct a hearing and deliberate on the report. The legislator who is the subject of the in-**
 10 **vestigation shall be given notice of the hearing and shall have a right to appear before the**
 11 **committee.**

12 **(B) If the investigator found that the allegations were sustained, the committee shall**
 13 **make a recommendation to the legislative chamber in which the legislator serves within**
 14 **three business days of receiving the report. The legislative chamber to which the recom-**
 15 **mendation is made shall take up the recommendation within three session days, including**
 16 **executive appointment sessions, of receiving the recommendation.**

17 **(C) If the investigator did not find that the allegations were sustained, the committee**
 18 **may make a recommendation to the legislative chamber in which the legislator serves or**
 19 **may resolve the matter.**

20 **(d) If the subject of an investigation is:**

21 **(A) A Legislative Branch employee, the report shall be delivered to the employee's ap-**
 22 **pointing authority, who shall take appropriate action in response to the report.**

23 **(B) A state employee but not a Legislative Branch employee, the report shall be delivered**
 24 **to the employee's supervisor and to the employee's agency director.**

25 **(C) A registered lobbyist or lobbyist required to be registered under ORS 171.740, the re-**
 26 **port shall be delivered to the Oregon Government Ethics Commission for further proceeding**
 27 **under section 1, chapter _____, Oregon Laws 2019 (Enrolled House Bill 3127).**

28 **(4) Conduct prohibited under this rule. The following conduct is prohibited under this**
 29 **rule:**

30 **(a) Workplace harassment.**

31 **(b) Creating a hostile work environment.**

32 **(c) Sexual harassment.**

33 **(d) Physical sexual harassment.**

34 **(e) Retaliation.**

35 **(5) Workplace harassment and hostile work environment.**

36 **(a) An individual engages in workplace harassment by engaging in verbal or physical**
 37 **conduct, including making a visual display or causing a visual display to be shown, that**
 38 **denigrates or shows hostility toward a protected class or a member of a protected class.**
 39 **Examples of harassment include, but are not limited to:**

40 **(A) Name-calling, slurs or stereotyping;**

41 **(B) Threatening, intimidating or hostile acts that relate to a protected class;**

42 **(C) Belittling, demeaning or humiliating a person because of a protected class that is**
 43 **created or protected under applicable law; or**

44 **(D) Generating or displaying written or graphic material that denigrates or shows hos-**
 45 **tility or aversion toward an individual or group because of a protected class.**

1 (b) An individual creates a hostile work environment by engaging in behavior that is
2 unwelcome and is so severe or pervasive that it either affects a person's ability to function
3 in the workplace or denies someone the benefits of the workplace.

4 (6) Sexual harassment.

5 (a) An individual engages in sexual harassment when the individual engages in unwel-
6 come conduct of a sexual nature, including but not limited to sexual advances, requests for
7 sexual favors, sexual comment, unwanted or offensive touching or physical contact, un-
8 wanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual
9 joke, sexually charged language, intimate inquiry, persistent unwanted courting, sexist in-
10 sult, gender stereotype, or other verbal or physical conduct of a sexual nature, if:

11 (A) Submission to the conduct is made either explicitly or implicitly a term or condition
12 of a person's employment;

13 (B) A person expressly or by implication conveys that declining to submit to the conduct
14 will affect an individual's job, leave request, benefits, business before the Legislative As-
15 sembly, influence or opportunity to engage professionally with the Legislative Assembly, its
16 members or staff; or

17 (C) The unwelcome conduct has the purpose or effect of unreasonably interfering with a
18 person's job performance or creates a work environment that a reasonable person would find
19 intimidating, hostile or offensive. For purposes of this rule, "unwelcome conduct" means
20 conduct that an individual does not incite or solicit and that the individual regards as unde-
21 sirable or offensive. An individual may withdraw consent to conduct that was previously
22 welcomed, though a withdrawal of consent must be communicated to the person for whom
23 consent is being withdrawn.

24 (b) Sexual harassment includes but is not limited to:

25 (A) Unwanted sexual advances, flirtations or propositions.

26 (B) Demands for sexual favors in exchange for favorable treatment or continued em-
27 ployment.

28 (C) Sexual jokes.

29 (D) Verbal abuse of a sexual nature.

30 (E) Verbal commentary about the body, sexual prowess or sexual deficiency of an indi-
31 vidual.

32 (F) Leering, whistling, touching or physical assault.

33 (G) Using sexually suggestive, insulting or obscene comments or gestures.

34 (H) Displaying sexually suggestive objects or pictures.

35 (I) Sending or forwarding electronic mail or other communications of an offensive or
36 graphic sexual nature.

37 (J) Discriminatory treatment based on sex.

38 (c) Sexual harassment includes any conduct described in subsection (5) of this rule that
39 is based on sex.

40 (7) Physical sexual harassment.

41 (a) A person engages in physical sexual harassment by engaging in conduct described in
42 subsection (6) of this rule that is accompanied by physical contact, including but not limited
43 to a caress, grab, grope or kiss.

44 (b) A person with knowledge of physical sexual harassment shall report as described in
45 subsection (2) of this rule.

1 **(8) Retaliation.**

2 **(a) A person engages in retaliation if the person treats another individual less favorably**
3 **because the person exercised a legal right, made a good-faith complaint about conduct pro-**
4 **hibited by this rule or that is otherwise unlawful, or participated in an investigation about**
5 **conduct that is prohibited by this rule or that is otherwise unlawful.**

6 **(b) A person engages in retaliation if the person treats another individual less favorably**
7 **because that individual engaged in a process described in this rule or implemented one or**
8 **more provisions of this rule.**

9 **(9) Establishment of committees on conduct.**

10 **(a)(A) The Senate Committee on Conduct is established, consisting of two Senators ap-**
11 **pointed by the Senate Majority Leader and two Senators appointed by the Senate Minority**
12 **Leader. The President of the Senate may designate a majority party alternate and a minority**
13 **party alternate for the Senate Committee on Conduct.**

14 **(B) The Senate Committee on Conduct shall perform those functions assigned by this rule**
15 **to carry out the purposes of Article IV, section 15, of the Oregon Constitution, for the Sen-**
16 **ate.**

17 **(C) The appointing authorities shall appoint members of the Senate Committee on Con-**
18 **duct within 15 days after the date of the convening of an organizational session of the odd-**
19 **numbered year regular session of the Legislative Assembly.**

20 **(b)(A) The House Committee on Conduct is established, consisting of two Representatives**
21 **appointed by the House Majority Leader and two Representatives appointed by the House**
22 **Minority Leader. The Speaker of the House of Representatives may designate a majority**
23 **party alternate and a minority party alternate for the House Committee on Conduct.**

24 **(B) The House Committee on Conduct shall perform those functions assigned by this rule**
25 **to carry out the purposes of Article IV, section 15, of the Oregon Constitution, for the House**
26 **of Representatives.**

27 **(C) The appointing authorities shall appoint members of the House Committee on Con-**
28 **duct within 15 days after the date of the convening of an organizational session of the odd-**
29 **numbered year regular session of the Legislative Assembly.**

30 **(c) The members of the Senate Committee on Conduct and the members of the House**
31 **Committee on Conduct shall together comprise the Joint Committee on Conduct. The Joint**
32 **Committee on Conduct shall perform the duties assigned to the joint committee under**
33 **chapter _____, Oregon Laws 2019 (Enrolled Senate Bill 744).**

34 **(d) When a member of a committee on conduct is named as a respondent under this rule,**
35 **the member may not thereafter serve as a member of the committee or as a member of the**
36 **joint committee.**

37