

HCR 20-9
(LC 3758)
4/8/19 (DJ/ps)

Requested by Representative SPRENGER

**PROPOSED AMENDMENTS TO
HOUSE CONCURRENT RESOLUTION 20**

1 On page 1 of the printed bill, delete lines 3 through 6 and insert:

2 “That Legislative Branch Personnel Rule 27, as amended and in effect for
3 the Eightieth Legislative Assembly, is repealed and the following Legislative
4 Branch Personnel Rule 27 is adopted in lieu thereof as a rule of proceeding
5 of the Senate and the House of Representatives and a joint rule of proceeding
6 applicable to the Legislative Branch; and be it further

7 “Resolved, That a new Legislative Branch Personnel Rule 33 be adopted
8 as a rule of proceeding of the Senate and the House of Representatives and
9 a joint rule of proceeding applicable to the Legislative Branch, as follows:”.

10 Delete lines 8 through 28 and delete pages 2 through 13 and insert:

11

12 **“Legislative Branch Personnel Rule 27.**

13 **“(1) Policy.**

14 **“(a) The Legislative Branch is committed to providing a safe and**
15 **respectful workplace that is free of harassment. Members of the Leg-**
16 **islative Assembly and all Legislative Branch employees are expected**
17 **to conduct themselves in a manner that is free of harassment and to**
18 **discourage all harassment in the workplace and at professional**
19 **meetings, seminars or any events at which legislative business is**
20 **conducted.**

21 **“(b) This rule is designed to provide members and employees with**

1 options to correct harassing conduct before it rises to the level of se-
2 vere or pervasive harassment or discrimination. The Legislative
3 Branch encourages members and employees to address potentially
4 harassing conduct through reports to the harassment advisor or
5 through other avenues set forth in this rule.

6 “(c) The Legislative Branch is equally committed to protecting
7 freedom of speech and expression, as guaranteed to all persons
8 through the free expression protections of Article I, section 8, of the
9 Oregon Constitution, and through the First Amendment to the United
10 States Constitution, and the Legislative Branch recognizes that the
11 constitutional protections guaranteeing freedom of speech and ex-
12 pression must be taken into account in determining the rights afforded
13 to individuals in the State Capitol under this rule.

14 “(d) The Legislative Branch emphasizes the importance of fostering
15 an environment where all viewpoints are welcomed and respected, as
16 disagreement does not equal harassment.

17 “(e) This rule is designed to provide options to those who are expe-
18 riencing or observing harassing behavior, discriminatory behavior or
19 other behavior prohibited under this rule to seek information, report
20 behaviors or file complaints to address and resolve concerns, while
21 also:

22 “(A) Enhancing options available to victims who seek to remain
23 anonymous; and

24 “(B) Ensuring that fundamental freedoms of speech and expression
25 are protected as core values in the Legislative Branch.

26 “(2) Definitions.

27 “As used in this rule:

28 “(a) ‘Assault’ means offensive physical contact consisting of
29 touching another person’s sexual or intimate parts.

30 “(b) ‘Complainant’ means a person who has reported harassment

1 under subsection (4) of this rule and for whom the harassment advisor
2 has determined that the allegations being reported would, if true,
3 constitute harassment, sexual harassment, assault or retaliation.

4 “(c) ‘Employee Services’ means the division of Legislative Admin-
5 istration charged with employment and human resources adminis-
6 tration for the Legislative Branch.

7 “(d) ‘Employees’ includes legislative interns, externs and volunteers
8 performing services for the Legislative Branch.

9 “(e) ‘Harassment’ means assault, sexual harassment, workplace
10 harassment or retaliation. ‘Harassment’ may include conduct by a
11 nonemployee located in the workplace, such as a vendor or member
12 of the public.

13 “(f) ‘Harassment advisor’ or ‘advisor’ means an individual ap-
14 pointed to the position described in subsection (3) of this rule.

15 “(g) ‘Knowledge’ of harassing conduct includes conduct about which
16 an appointing authority or supervisor knows or, with the exercise of
17 reasonable care, should know.

18 “(h) ‘Protected class’ means a class of individuals defined by a
19 characteristic that may not be targeted for discrimination, including
20 age, race, sex, sexual orientation, gender, gender identification, na-
21 tional origin, disability and religion.

22 “(i) ‘Respondent’ means a person who is the subject of an investi-
23 gation under subsections (4) and (6) of this rule.

24 “(j) ‘Retaliation’ means action taken against an employee with re-
25 spect to a term or condition of employment for the reason that the
26 employee has opposed conduct that is prohibited under this rule.

27 “(k) ‘Sexual harassment’ means unwelcome conduct in the form of
28 a sexual advance, sexual comment, request for sexual favors, un-
29 wanted or offensive touching or physical contact of a sexual nature,
30 unwanted closeness, impeding or blocking movement, sexual gesture,

1 **sexual innuendo, sexual joke, sexually charged language, intimate in-**
2 **quiry, persistent unwanted courting, sexist insult, gender stereotype,**
3 **or other verbal or physical conduct of a sexual nature, if:**

4 **“(A) Submission to the conduct is made either explicitly or implic-**
5 **itly a term or condition of a person’s employment;**

6 **“(B) A person expressly or by implication conveys that declining to**
7 **submit to the conduct will affect a person’s job, leave request, benefits**
8 **or business before the Legislative Assembly; or**

9 **“(C) The unwelcome conduct has the purpose or effect of unrea-**
10 **sonably interfering with a person’s job performance, or creates a work**
11 **environment that a reasonable person would find intimidating, hostile**
12 **or offensive.**

13 **“(L) ‘Unwelcome conduct’ means conduct that an individual does**
14 **not incite or solicit and that the individual regards as undesirable or**
15 **offensive. An individual may withdraw consent to conduct that was**
16 **previously welcomed by the individual.**

17 **“(m) ‘Workplace harassment’ means unwelcome conduct in the**
18 **form of treatment or behavior that, to a reasonable person, creates**
19 **an intimidating, hostile or offensive work environment. ‘Workplace**
20 **harassment’ includes discrimination based on a person’s protected**
21 **class. ‘Workplace harassment’ also includes unwelcome conduct that**
22 **occurs outside of work during nonworking hours if the conduct creates**
23 **a work environment that a reasonable employee would find intimid-**
24 **ating, hostile or offensive. ‘Workplace harassment’ does not include**
25 **every minor annoyance or disappointment that an employee may en-**
26 **counter in the course of performing the employee’s job.**

27 **“(3) Harassment advisor.**

28 **“(a) The Chiefs of Staff of the majority party and minority party**
29 **caucuses in the Senate and the House of Representatives shall recruit**
30 **and select a qualified individual to fill a full-time position in Employee**

1 Services as a harassment advisor to assist the Legislative Branch,
2 members, staff and others who are present in the State Capitol in ad-
3 dressing instances of harassment, sexual harassment, assault or re-
4 tialiation in the State Capitol.

5 “(b) An individual shall be qualified for the position of harassment
6 advisor if the individual has training, education and experience in:

7 “(A) Counseling or advocacy on behalf of victims of sexual
8 harassment or sexual violence;

9 “(B) Employment and personnel relations for a complex organiza-
10 tion; and

11 “(C) Free speech and freedom of expression protections.

12 “(c) The advisor’s pay shall be determined by the Legislative Ad-
13 ministrator in compliance with applicable law and Legislative Branch
14 rules and policies.

15 “(4) Reporting conduct.

16 “(a) Any member of the Legislative Assembly, employee of the
17 Legislative Branch, lobbyist, employee of a contractor, executive or
18 judicial branch employee or other person who believes they have ex-
19 perience or observed harassment while being present in the State
20 Capitol may meet with the harassment advisor and discuss the situ-
21 ation.

22 “(b) Any discussion with the advisor and any records made by the
23 advisor as a result of the discussion shall be confidential and privileged
24 under sections 2 and 4, chapter _____, Oregon Laws 2019 (Enrolled
25 _____ Bill _____) (LC 4301-1).

26 “(c) The advisor may, at the request of the person meeting with the
27 advisor, discuss whether the reported incident rises to the level of
28 harassment, sexual harassment, assault or retaliation. The advisor
29 shall discuss options available to the reporter.

30 “(d) If the circumstances as described by the reporter constitute

1 assault, the advisor shall inform the reporter on how to contact ap-
2 propriate law enforcement and, if requested by the reporter, shall as-
3 sist the reporter in contacting law enforcement.

4 “(e) If, after or during the course of consultation with the advisor,
5 the reporter determines to proceed with a complaint and the advisor
6 determines that the described conduct would, if true, constitute
7 harassment, sexual harassment, assault or retaliation:

8 “(A) And the interaction that is the focus of the complaint does not
9 involve a member of the Legislative Assembly, the advisor shall
10 promptly:

11 “(i) Use best practices in conducting an investigation and deter-
12 mining facts;

13 “(ii) Prepare findings that document the outcome of the investi-
14 gation; and

15 “(iii) Consult with the respondent’s appointing authority and, in
16 conjunction with the appointing authority, determine and impose any
17 appropriate disciplinary action.

18 “(B) And the interaction that is the focus of the complaint involves
19 a member of the Legislative Assembly, the advisor shall obtain the
20 services of an outside investigator with experience conducting
21 workplace investigations and with no affiliation to the Legislative
22 Branch. The outside investigator shall:

23 “(i) Use best practices in conducting an investigation and deter-
24 mining facts, including but not limited to interviewing the
25 complainant, respondent and witnesses;

26 “(ii) Obtain nondisclosure agreements from the complainant and
27 the respondent, the duration of which run from the commencement
28 of the investigation until the conclusion of any committee on conduct
29 hearing and recommendation; and

30 “(iii) Report the investigator’s determination of facts to the com-

1 mittee on conduct of the chamber that the respondent member is a
2 member of, the complainant and the respondent. The committee on
3 conduct shall proceed as prescribed in subsection (6) of this rule.

4 “(f) In performing an investigation under paragraph (e)(B) of this
5 subsection, the outside investigator may consult with the advisor on
6 legislative process, procedure and custom, but otherwise is prohibited
7 from discussing the investigation with the advisor.

8 “(5) Establishment of committees on conduct.

9 “(a)(A) The Senate Committee on Conduct is established, consisting
10 of four Senators and two alternates. Two Senators and one alternate
11 must be from the majority party and two Senators and one alternate
12 must be from the minority party. Each Senator must be approved by
13 majority vote of the Senate to serve on the committee or to serve as
14 an alternate.

15 “(B) The Senate Committee on Conduct shall perform those func-
16 tions assigned by this rule to carry out the purposes of Article IV,
17 section 15, of the Oregon Constitution, for the Senate.

18 “(C) The Senate shall appoint members of the Senate Committee
19 on Conduct within 15 days after the date of the convening of an or-
20 ganizational session of the odd-numbered year regular session of the
21 Legislative Assembly, as soon as practicable after a vacancy occurs
22 or as soon as practicable after this rule takes effect.

23 “(b)(A) The House Committee on Conduct is established, consisting
24 of four Representatives and two alternates. Two Representatives and
25 one alternate must be from the majority party and two Represen-
26 tatives and one alternate must be from the minority party. Each
27 Representative must be appointed by majority vote of the House of
28 Representatives to serve on the committee or to serve as an alternate.

29 “(B) The House Committee on Conduct shall perform those func-
30 tions assigned by this rule to carry out the purposes of Article IV,

1 section 15, of the Oregon Constitution, for the House of Represen-
2 tatives.

3 “(C) The House of Representatives shall appoint members of the
4 House Committee on Conduct within 15 days after the date of the
5 convening of an organizational session of the odd-numbered year reg-
6 ular session of the Legislative Assembly, as soon as practicable after
7 a vacancy occurs or as soon as practicable after this rule takes effect.

8 “(c) When a member of a committee on conduct is named as a re-
9 spondent under this rule, the member may not serve as a member of
10 the committee until the matter is resolved.

11 “(6) Procedures or committess on conduct.

12 “If a complaint has been made under subsection (4) of this rule in
13 which a member of the Legislative Assembly is the respondent, the
14 appropriate committee on conduct shall:

15 “(a) Prior to receiving a report of findings from an outside investi-
16 gator under subsection (4) of this rule, the committee shall conduct
17 one or more information hearings in which experts offer guidance on
18 those aspects of harassment, sexual harassment, assault or retaliation
19 that are relevant to the investigation, and also guidance on free speech
20 and freedom of expression principles.

21 “(b) Receive the report on findings from the outside investigator
22 and schedule one or more hearings on the matter, at which:

23 “(A) The outside investigator shall present the findings of the in-
24 vestigator;

25 “(B) The committee may hear testimony from the complainant,
26 respondent and witnesses and may question witnesses; and

27 “(C) Physical evidence may be presented.

28 “(c) Deliberate on a recommended disciplinary action and make a
29 recommendation to the chamber for discipline as described in Article
30 IV, section 15, of the Oregon Constitution, or determine that discipline

1 is not warranted.

2 **“(7) Findings of investigation.**

3 **“(a) The written findings of the outside investigator and the testi-**
4 **mony of the investigator must, to the greatest extent practicable and**
5 **permitted under the Due Process Clause of the United States Consti-**
6 **tution, omit the names of all parties involved in the investigation.**

7 **“(b) If necessary, the committee may hold multiple hearings to**
8 **complete the investigation and its deliberations, and may ask the in-**
9 **vestigator to conduct additional investigation.**

10 **“(8) Interim measures.**

11 **“The committee may impose interim measures to ensure compli-**
12 **ance with the policies described in subsection (1) of this rule for peri-**
13 **ods in which the Legislative Assembly is not in session.**

14 **“(9) Legislative Administrator report.**

15 **“(a) If a committee on conduct has determined that member of the**
16 **Legislative Assembly has engaged in inappropriate conduct that con-**
17 **stitutes harassment, sexual harassment, assault or retaliation, the**
18 **Legislative Administrator shall publish a report on the Internet at a**
19 **location accessible by the public that includes:**

20 **“(A) The identity of the member of the Legislative Assembly de-**
21 **termined to have engaged in the inappropriate conduct;**

22 **“(B) A description of the inappropriate conduct that had been in-**
23 **vestigated and confirmed by the outside investigator to have taken**
24 **place;**

25 **“(C) Any sanctions that have been recommended or imposed on the**
26 **member;**

27 **“(D) The contents of any agreement that may have been entered**
28 **into between the member and any other person that pertains to the**
29 **improper conduct; and**

30 **“(E) Any remedial training required of the member.**

1 **“(b) The report may not include any personally identifiable infor-**
2 **mation or situationally identifiable information that might identify**
3 **the identity of a victim of the inappropriate conduct.**

4 **“(10) Diversity, equity and inclusion coordinator.**

5 **“The Legislative Administrator shall employ a diversity, equity and**
6 **inclusion coordinator. The diversity, equity and inclusion coordinator**
7 **shall:**

8 **“(a) Annually conduct a climate and culture survey of the Legisla-**
9 **tive Branch to ascertain the alignment between stated Legislative**
10 **Branch policies and goals relating to workplace culture and standards**
11 **of behavior, and actual beliefs and experiences of those who work in**
12 **the Legislative Branch or regularly interact with the Legislative**
13 **Branch;**

14 **“(b) Release the results of the survey to legislators and the public**
15 **at the start of each regular session of the Legislative Assembly; and**

16 **“(c) At the start of each regular session of the Legislative Assem-**
17 **bly, publish a report setting forth deidentified statistics of all com-**
18 **plaints made with Employee Services during the prior year and the**
19 **training that had been provided to the Legislative Branch during the**
20 **prior year.**

21 **“(11) Training.**

22 **“(a) The diversity, equity and inclusion coordinator and the**
23 **harassment advisor shall provide annual training on compliance with**
24 **the standards of conduct established in this rule or in law pertaining**
25 **to standards of workplace conduct, and on the processes in place under**
26 **this rule for reporting or making complaints about violations of those**
27 **standards and the investigations of those complaints.**

28 **“(b) The following must annually attend the training:**

29 **“(A) Members of the Legislative Assembly;**

30 **“(B) Employees of the Legislative Branch;**

1 “(C) Interns, externs and volunteers performing services in the
2 Legislative Branch; and

3 “(D) Lobbyists who are registered with the Oregon Government
4 Ethics Commission under ORS 171.740.

5 “(c) Employee Services shall cause the training described in this
6 subsection and shall provide the recording to persons who did not at-
7 tend the training or to persons newly associated with the Legislative
8 Branch after the annual training for one year and before the annual
9 training for the next year.

10

11 “Legislative Branch Personnel Rule 33: Operative date and transi-
12 tion.

13 “(1) Legislative Branch Personnel Rule 27, as set forth in this con-
14 current resolution, becomes operative on the date that the Legislative
15 Administrator notifies the presiding officers that the harassment ad-
16 visor has been appointed.

17 “(2) For periods after the adoption of this concurrent resolution and
18 before notice is given under subsection (1) of this section, the Legis-
19 lative Administrator and the Human Resources Director may impose
20 interim safety measures to protect any person present in the State
21 Capitol from harassment, sexual harassment, assault or retaliation.”.

22
