

HCR 221 STAFF MEASURE SUMMARY

Carrier: Rep. Fahey, Rep. Noble

Joint Committee On Policies for the Second Special Session

Action Date: 08/10/20

Action: Be Adopted.

House Vote

Yeas: 3 - Bynum, Fahey, Lewis

Senate Vote

Yeas: 2 - Manning Jr, Prozanski

Nays: 1 - Heard

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Jan Nordlund, LPRO Analyst

Meeting Dates: 8/10

WHAT THE MEASURE DOES:

Revises Legislative Branch Personnel Rule 27 (Safe, Respectful and Inclusive Workplace) to address prohibited conduct, conduct reports, conduct complaints, investigations, remedies, and process. Makes amendments to Rule 27 apply to conduct reports and conduct complaints made on or after the date the concurrent resolution is adopted, and to investigations of those reports and complaints.

Prohibited Conduct

- Expands meaning of harassment by removing requirement that conduct be directed toward a protected class.
- Modifies definition of "unwelcome conduct" in the context of sexual harassment.

Conduct Reports

- Provides that an individual is not required to make a conduct report if they would be the subject of the report.
- Shifts responsibility for facial review of all conduct reports from independent investigator to Legislative Equity Officer (LEO). Allows LEO to ask independent investigator to perform facial review of conduct report.
- Requires LEO to confer with impacted party when investigation of conduct report is warranted and allows impacted party to stop investigation from proceeding. If impacted party opts out of proceeding with investigation, requires LEO to maintain confidential records of the report to be used for determining if there is a pattern of conduct that violates Rule 27 or respectful workplace policies.
- Requires all conduct reports made to independent investigator, Employee Services, or HR Director to be forwarded to LEO.

Conduct Complaints

- Shifts responsibility for reviewing completeness of submitted conduct complaint from independent investigator to LEO. Requires LEO to perform facial review of conduct complaint. Allows LEO to ask independent investigator to perform facial review of conduct complaint.
- Requires investigation be undertaken if, following a facial review, LEO determines an investigation is warranted. When investigation is not warranted, authorizes LEO to engage in coaching, confer, and make recommendations with appropriate parties regarding training or guidance, or take other actions warranted to achieve policies established in Rule 27.
- Shifts all responsibility for counseling complainant to LEO.
- Requires independent investigator who directly receives conduct complaint to deliver copy of complaint to LEO.

Investigations

- Clarifies that conduct committee must make recommendation for remedial measures to be imposed when a partisan staff person is the respondent only when the investigator determines that a Rule 27 violation has

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occurred.

- Requires independent investigator to consider and report whether conduct constitutes discrimination toward a protected class.
- Directs independent investigator to not reveal in written report the protected class of the complainant/impacted party.
- Clarifies that investigator's final report regarding investigation of partisan staff person is sent to Conduct Committee only if investigator determined that Rule 27 was violated.
- Requires independent investigator to deliver final report to LEO.

Remedies

- Allows conduct committee to impose remedy that includes removal of member from committee on conduct and Joint Committee on Conduct.
- Requires those charged with imposing a remedial measure to consider and weigh presence or absence of discrimination toward a protected class. Provides that enhanced severity of remedy is justified when discrimination was present.

Conduct Committees

- Extends from 14 to 21 the number of days in which conduct committee must conduct a hearing after receiving final report when legislator is the respondent.
- Extends from 7 to 14 the number of days in which conduct committee must meet after receiving final report in which investigator determined partisan staff person violated Rule 27.
- Recuses conduct committee member from participating in a matter in which they are either the complainant or impacted party.
- Increases number of alternates appointed to a conduct committee to three per party. Requires alternates to be selected to participate in conduct committee business in the order in which they were appointed and so as to preserve balance of committee membership between majority and minority parties.
- Clarifies that conduct committee member shall be recused from service on conduct committee and Joint Committee on Conduct when named as a respondent, until matter is resolved.

Other

- Directs LEO to engage in final process counseling with impacted party after final determination is made that no violation occurred or after remedies are imposed.
- Defines "impacted party" and "complainant."

ISSUES DISCUSSED:

- Proposal developed for 2020 session
- Work Group membership and process to develop proposed revisions
- Whether there are penalties for someone who makes a false accusation
- Ability of parties to discuss issues with the media
- Applicability to new complaints
- Actions LEO can take when no violation has occurred
- Reason for not revealing in written report the protected class membership of complainant

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In 2019, the Legislative Assembly adopted House Concurrent Resolution 20 to make numerous changes to Legislative Branch Personnel Rule 27 (Safe, Respectful and Inclusive Workplace). A work group comprised of the four co-chairs of the Joint Committee on Conduct, partisan staff, and nonpartisan staff met throughout the 2020 session and during this summer to propose revisions to Rule 27.