

**HR 3 STAFF MEASURE SUMMARY**

**Carrier:** Rep. Holvey

**House Special Committee On December 21, 2020**

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**Action Date:** 06/10/21

**Action:** Be Adopted.

**Vote:** 6-0-0-0

**Yeas:** 6 - Bonham, Drazan, Holvey, Salinas, Smith Warner, Stark

**Fiscal:** No fiscal impact

**Revenue:** No revenue impact

**Prepared By:** Jan Nordlund, LPRO Analyst

**Meeting Dates:** 6/10

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**WHAT THE MEASURE DOES:**

Finds that Representative Mike Nearman engaged in disorderly behavior within the meaning of Article IV, section 15, of the Oregon Constitution. Resolves that, with the concurrence of two-thirds of the members of the House of Representatives, Representative Nearman be expelled from the House of Representatives and that Representative Nearman's seat be considered vacant.

**ISSUES DISCUSSED:**

- Number of COVID-19 cases being reported in late December
- Legislation that was being considered December 21, 2020, in response to COVID-19 pandemic
- People inside the Capitol put at risk by letting demonstrators into the building
- Evidence showing a coordinated, intentional attack on the Capitol
- Desire to see protesters in Portland similarly charged

**EFFECT OF AMENDMENT:**

No amendment.

**BACKGROUND:**

Section 11, Article IV of the Constitution of the State of Oregon directs the House of Representatives to determine its own rules of proceeding. Section 15 provides that the House of Representatives "may punish its members for disorderly behavior, and may with the concurrence of two thirds, expel a member; but not a second time for the same cause."

Due to the COVID-19 pandemic, President Courtney and Speaker Kotek closed the Capitol to the public and all non-essential personnel effective March 18, 2020. This was announced in a memo dated March 17, 2020, sent by Legislative Administration to legislators and employees in the legislative branch. The Capitol has remained closed to the public, including during interim Legislative Days, three special sessions during 2020, and throughout the 2021 regular session.

Rules of the Oregon House for the three special sessions convened in 2020 included a provision stating that the Capitol shall be physically closed to the public for the duration of the special session.

On December 21, 2020, while the House of Representatives was in the process of adopting its rules for the 2020 Third Special Session, Rep. Mike Nearman exited the locked Capitol, and before the door swung shut, protesters entered the building. Law enforcement officers struggled with the demonstrators and eventually pushed them out of the Capitol while demonstrators allegedly dispersed chemical irritants. These actions were recorded by a Capitol security camera.

On May 8, 2021, Rep. Nearman was arraigned for two misdemeanors for his conduct on December 21, 2020. Specifically, he is charged with official misconduct in the first degree (Class A misdemeanor) and criminal trespass

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in the second degree (Class C misdemeanor). A circuit court hearing is scheduled for June 29, 2021.

On June 4, 2021, Oregon Public Broadcasting reported that Rep. Nearman was featured in a video describing how he could assist demonstrators in obtaining access to the locked Capitol.

In January, a legislative branch employee filed a Rule 27 conduct complaint against Rep. Nearman for his conduct on December 21. Rule 27 is the legislative branch personnel rule governing a safe, respectful, and inclusive workplace. The rule prohibits conduct that constitutes harassment and creates a hostile work environment. If a facial review determines that the reported conduct could be prohibited by Rule 27, an internal investigator is assigned to investigate and report to the appropriate conduct committee. Rule 27 provides that if the legislator irrevocably resigns at any time after the conduct complaint is made, the investigation and conduct hearing must still take place.

The independent investigator hired by the Legislative Equity Office to investigate the conduct complaint against Rep. Nearman has submitted a final report to the House Committee on Conduct. The investigator concluded that it is more likely than not that Rep. Nearman intentionally aided demonstrators in breaching Capitol security and entering the building on December 21 when it was closed to the public. Furthermore, the investigator concluded that it is more likely than not that Rep. Nearman's conduct led to a chain of events that impeded the complainant's and others' ability to function in the workplace and denied them the benefits of the workplace.

House Resolution 3 finds that Rep. Nearman engaged in disorderly behavior and resolves that Rep. Nearman be expelled from the House of Representatives.