

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN J. BOQUIST,
Plaintiff-Appellant,

v.

PETER COURTNEY, Oregon State Senate President, in his official capacity; FLOYD PROZANSKI, Senator, in his official capacity as Chairman of the Senate Special Committee on Conduct; JAMES MANNING, Senator, in his official capacity as member of the Special Senate Conduct Committee; DEXTER JOHNSON, in his official capacity as Legislative Counsel; JESSICA KNIELING, in her official capacity as interim Human Resources Director; BRENDA KAY BAUMGART, in her official capacity as contract investigators to the Oregon State Senate; DARON HILL, in his official Legislative Administration capacity; MELISSA J. HEALY, in her official capacity as contract investigators to the Oregon State Senate, and all in their official

No. 20-35080

D.C. No.
6:19-cv-01163-MC

OPINION

capacities in the Legislative
Branch of the State of Oregon,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted October 6, 2021*
Portland, Oregon

Filed April 21, 2022

Before: William A. Fletcher, Sandra S. Ikuta, and
Daniel A. Bress, Circuit Judges.

Opinion by Judge Ikuta

* We previously granted appellant's motion to submit this case on the
briefs without oral argument. *See* Fed. R. App. P. 34(a)(2).

NOV 15 2022

IN THE SUPREME COURT OF THE STATE OF OREGON

SUPREME COURT
COURT OF APPEALS

BRIAN J. BOQUIST, *an elected State Senator in official capacity, pro se,*

Plaintiff-Relator,

v.

State Senator Peter Courtney, personally, and officially by position as presiding officer of the Oregon State Senate, co-chair of the Legislative Administration Committee and Legislative Counsel Committee; Dexter Johnson, personally and officially as Chief Legislative Counsel and Administrator of the Legislative Counsel Committee; Brett Hanes officially as Legislative Administrator of the Legislative Administration Committee, and employees of the defendants and committees,

Defendants-Adverse

Parties.

Supreme Court No. S

MANDAMUS PROCEEDING

(Or Const, Art III, § 1 & State v. Babson 2014)

Petition for preemptory or alternative writ of mandamus to enforce separation of powers as ruled upon by the Oregon Supreme Court in State v. Babson (2014) upon the existing legislature and future session commencing January 2023

Vance D. Day, OSB #912487
vance.day@teamvanceday.org
Law Offices of Vance D. Day, PC
PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
beth@montoyahisellaw.com
Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

THIRD AMENDED COMPLAINT

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATORY FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

42 U.S.C. §1983 - FIRST AMENDMENT
VIOLATIONS

Defendants.

INTRODUCTION

1. Plaintiff Oregon State Senator Brian J. Boquist assumed office in 2009 and continues serving as an elected state senator in 2022. Defendants are elected members of the

ELLEN F. ROSENBLUM
Attorney General
MARC ABRAMS #890149
Assistant Attorney-in-Charge
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: marc.abrams@doj.state.or.us

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIAN J. BOQUIST,
Plaintiff,

v.

PETER COURTNEY, Oregon State Senate
President, in his official capacity, FLOYD
PROZANSKI, Senator, in his official capacity
of Chairman of the Senate Special Committee
on Conduct, JAMES MANNING, Senator, in
his official capacity as member of the Special
Senate Conduct Committee,

Defendants.

Case No. 6:19-cv-01163-MC

NOTICE OF DEPOSITION OF BRIAN
BOQUIST

TO: Brian Boquist, by and through his attorney, Vance Day

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30, counsel
for Defendants will take the deposition of Brian Boquist.

DATE: November 9, 2022

TIME: 9:00 a.m.

Vance D. Day, OSB #912487
Vance.day@teamvanceday.org
Law Offices of Vance D. Day, PC
PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

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901 Capitol St. NE
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Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF DEPOSITION
(Senator Floyd Prozanski)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Senator Floyd Prozanski,
by and through his attorneys Marc Abrams & Tracy Ickes White
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201

PLEASE TAKE NOTICE that plaintiff, by and through his attorney, Vance Day, will take the deposition of defendant Senator Floyd Prozanski, on Monday, November 14, 2022,

Vance D. Day, OSB #912487
Vance.Day@teamvanceday.org
Law Offices of Vance D. Day, PC
PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
beth@montoyahisellaw.com
Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF DEPOSITION &
PERPETUATION OF TESTIMONY
(Senator Peter Courtney)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Senator Peter Courtney, by and through his attorneys Marc Abrams & Tracy Ickes White
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201

PLEASE TAKE NOTICE that plaintiff, by and through his attorney, Vance D. Day,
pursuant to Federal Rule of Civil Procedure 30, will take the deposition of defendant Senator Peter
Courtney on Friday, November 4, 2022, commencing at 9:00 a.m. at the Trial Division

Vance D. Day, OSB #912487
vddpc@aol.com
Law Offices of Vance D. Day, PC
PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
beth@montoyahisellaw.com
Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF DEPOSITION
(Senator Floyd Prozanski)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Senator Floyd Prozanski,
by and through his attorneys Marc Abrams & Tracy Ickes White
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201

PLEASE TAKE NOTICE that plaintiff, by and through his attorney, Elizabeth A. Jones,
will take the deposition of defendant Senator Floyd Prozanski, on Thursday, September 15, 2022,

Vance D. Day, OSB #912487
vddpc@aol.com
Law Offices of Vance D. Day, PC
PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
beth@montoyahisellaw.com
Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF DEPOSITION
(Jessica Knieling)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Jessica Knieling, by and through her attorneys Marc Abrams & Tracy Ickes White
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201

PLEASE TAKE NOTICE that plaintiff, by and through his attorney, Elizabeth A. Jones,
will take the deposition of Jessica Knieling on Friday, October 28, 2022, commencing at 1:00 p.m.
at the Oregon Department of Justice Commerce Trial Building, 158 12th St. NE, Salem, OR 97301.

Vance D. Day, OSB #912487
vddpc@aol.com
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PO Box 220
Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
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Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
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Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF DEPOSITION
(Lori Brocker)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Lori Brocker, by and through her attorneys Marc Abrams & Tracy Ickes White
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201

PLEASE TAKE NOTICE that plaintiff, by and through his attorney, Vance Day, will
take the deposition of Lori Brocker on Tuesday, November 15, 2022, commencing at 1:30 p.m. at
Oregon Department of Justice Commerce Trial Building, 158 12th St. NE, Salem, OR 97301.

Vance D. Day, OSB #912487
vddpc@aol.com
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Powell Butte, OR 97753
Telephone: (503) 409-5562

Elizabeth A. Jones, OSB #201184
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Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7250
Fax: (503) 779-2716
Attorneys for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**SUBPOENA FOR DEPOSITION
(Brenda Baumgart)**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his official capacity;
SENATOR FLOYD PROZANSKI, in his
official capacity as Chairman of the Senate
Special Committee on Conduct, SENATOR
JAMES MANNING, in his official capacity as
member of the Special Senate Conduct
Committee,

Defendants.

TO: Brenda Baumgart
Stoel Rives LLP
760 SW Ninth Ave. Ste. 3000
Portland, OR 97205

YOU ARE HEREBY REQUIRED to appear for the taking of your deposition in-person regarding the above-captioned matter on Wednesday, November 30, at 1:00 p.m. at Stoel Rives

LII > U.S. Code > Title 42 > CHAPTER 21 > SUBCHAPTER I > § 1983

Quick search by citation:

Title **Section**

42 U.S. Code § 1983 - Civil action for deprivation of rights

U.S. Code Notes

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

U.S. Code Toolbox

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Ex parte Young, 209 U.S. 123 (1908)

Justia Opinion Summary and Annotations

Annotation

Primary Holding

If government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation.

Facts

Minnesota imposed harsh penalties on railroads that violated state limits on what they could charge within the state. Northern Pacific Railway shareholders asserted that the laws violated the Fourteenth Amendment and the Dormant Commerce Clause, that the railroads should be released from the need to comply with the law, and that state Attorney General Edward T. Young should be enjoined from enforcing the law. The federal court granted the request for an injunction, since it was unpersuaded by Young that the Eleventh Amendment removed its jurisdiction over a case in which a state was sued by a citizen of another state (in this case, the shareholders).

Having lost the case in federal court, Young brought an action in state court that would have required the railroads to comply with the law. His claim was based on the same argument that had failed in federal court, so Young was held in contempt and taken into custody by a U.S. Marshal. He filed for a writ of habeas corpus for his release.

Opinions

Majority

- Rufus Wheeler Peckham (Author)
- David Josiah Brewer
- Melville Weston Fuller
- Edward Douglass White
- Joseph McKenna
- Oliver Wendell Holmes, Jr.
- William Rufus Day
- William Henry Moody

The majority was forced to reconcile the Eleventh Amendment's ban on individuals suing states with the Fourteenth Amendment's requirement that states respect the due process rights of individuals. Although Peckham easily found that the Minnesota laws were unconstitutional, he still needed to resolve whether the state could be prevented from enforcing them. He found that the prohibition on suing a state itself did not need to be extended to a prohibition against an injunction requiring a state official to act or not act in a certain way on the state's behalf. Peckham also was sympathetic to parties facing harsh penalties under a law that was likely

Staff:

Melissa Leoni, LPRO Analyst
Michael Lantz, LPRO Analyst
Samantha Koopman, Committee Assistant



Members:

Sen. Bill Hansell, Co-Chair
Sen. Floyd Prozanski, Co-Chair
Sen. Dick Anderson
Sen. Kathleen Taylor
Sen. Lynn Findley, Alternate
Sen. Lew Frederick, Alternate
Sen. Fred Girod, Alternate
Sen. Kayse Jama, Alternate
Sen. Tim Knopp, Alternate
Sen. Kate Lieber, Alternate

SENATE COMMITTEE ON CONDUCT

Oregon State Capitol
900 Court Street NE, Room 333, Salem, Oregon 97301
Phone: 503-986-1286

AGENDA

Posted: NOV 21 02:29 PM

MONDAY

Date: November 28, 2022
Time: 8:00 A.M.
Room: H-170

Co-Chair Hansell will be presiding

Work Session

Rescinding Interim Safety Measures recommended and supported by the Senate Special Committee on Conduct on July 8, 2019 related to Sen. Boquist

Please note:

- This meeting is being held remotely.
- To view a live stream of the meeting go to:
<https://olis.oregonlegislature.gov/liz/202111/Committees/SCOND/Overview>
- A viewing station is available at the Capitol Building.

Language Access Services (interpreter, translation, CART):

- Go to: https://www.oregonlegislature.gov/citizen_engagement/Pages/language-access.aspx
- Request services at least 3 days prior to the scheduled meeting date.
- Closed captioning is available for live and recorded meetings.

SENATE COMMITTEE ON CONDUCT

November 28, 2022
08:00 AM

Hearing Room H-170

MEMBERS PRESENT: Sen. Bill Hansell, Co-Chair
Sen. Floyd Prozanski, Co-Chair
Sen. Dick Anderson
Sen. Kathleen Taylor

STAFF PRESENT: Melissa Leoni, LPRO Analyst
Michael Lantz, LPRO Analyst
Danielle Ross, Committee Assistant

EXHIBITS: Exhibits from this meeting are available [here](#)

MEASURES/ISSUES: Rescinding Interim Safety Measures recommended and supported by the Senate Special Committee on Conduct on July 8, 2019 related to Sen. Boquist – Work Session

This meeting was held virtually with remote participation only

00:00:01 Meeting Called to Order
00:00:02 Co-Chair Hansell
00:00:28 ROLL CALL

00:01:28 Rescinding Interim Safety Measures recommended and supported by the Senate Special Committee on Conduct on July 8, 2019 related to Sen. Boquist - Work Session
00:01:29 Co-Chair Hansell
00:01:43 Sen. Brian Boquist, Senate District 12
00:06:40 MOTION: CO-CHAIR PROZANSKI MOVES TO RESCIND THE RECOMMENDATION THAT WAS UNANIMOUSLY SUPPORTED ON JULY 8TH, 2019 THAT REQUIRED SEN. BOQUIST TO GIVE AT LEAST 12 HOURS ADVANCE NOTICE IN WRITING TO THE SECRETARY OF THE SENATE IF HE INTENDED TO BE IN THE CAPITOL AND WHILE SEN. BOQUIST WAS AT THE CAPITOL THERE WOULD BE AN INCREASED OREGON STATE POLICE PRESENCE

00:08:18 Co-Chair Prozanski
00:10:12 Sen. Taylor
00:17:10 Sen. Anderson
00:18:31 VOTE: 3-1-0
AYE: TAYLOR, PROZANSKI, HANSELL
NAY: ANDERSON

00:19:08 Meeting Adjourned

Sen Boquist

From: Leoni Melissa
Sent: Wednesday, November 23, 2022 9:34 AM
To: Sen Boquist
Cc: Lantz Michael; Sarah.Ryan@jacksonlewis.com; Brocker Lori L; Sen Prozanski; Sen Hansell
Subject: RE: Length of Time - RE: Senate Conduct on 11/28

Follow Up Flag: Follow up
Flag Status: Completed

Sen. Boquist:

Thank you for your questions; staff responses are below following your questions from this morning's emails.

Please confirm by name whom are the Co-Chairs you are referencing below?

The co-chairs of Senate Conduct are Sen. Hansell and Sen. Prozanski.

Please provide me a copy of the prepared motion, or motions, pursuant to Or Const Art IV Sec 14.

The proposed motion is: I move to rescind the recommendation that was unanimously supported on July 8, 2019 that required Senator Boquist to give at least 12 hours advance notice in writing to the Secretary of the Senate if he intended to be at the Capitol, and, while Senator Boquist was at the Capitol, there would be an increased Oregon State Police presence

What version of LBPR 27 is the committee operating in regards to the below agenda and committee process given it is three sessions and sets of rules later?

HCR 20 (2019), HCR 221 (2020), and HCR 28 (2021) all contain substantially similar interim safety measure provisions and committee authority (Section 13). HCR 20, which was effective on June 29, 2019, contained a provision (Rule 33) for interim safety measures to be implemented prior to the appointment of a Legislative Equity Officer.

Does Or. Const. Art IV Sec 14 regarding open deliberations of committees apply to the below proposed committee actions?

The committee is meeting virtually, and the meeting will be streamed on OLIS.

Is the hearing open to the public on Monday November 28, 2022 at 0800?

The committee meeting is open to the public to view through OLIS.

Does ORS 173.900 apply to the proposed committee actions?

This statute pertains to Joint Conduct and the Legislative Equity Officer.

Whom approved the committee agenda and its posting under Senate Rule 8.15 (3) (4)? The President himself? Or whom on the President's staff?

The Co-Chairs approved the agenda for posting per adopted committee rules.

If the committee takes action, meaning a motion which is a committee report, then when will the report be sent to the Floor of the Senate pursuant to Senate Rule 8.50 and Or. Const. Art IV Sec 15 for a vote?

Senate Rule 8.50 pertains to committees reporting out measures. There is no requirement in Rule 27 for reporting on interim safety measures to the full chamber. There is a reporting requirement in Rule 27 to the full chamber when a conduct committee recommends expulsion as a remedial measure.

I have cc'd the Co-Chairs and Secretary of the Senate in this response. I will be out the rest of today and unable to answer more questions.

Best,
Melissa

MELISSA LEONI | Analyst
Legislative Policy and Research Office
503-986-1286

House Interim Committee on Rules
Joint, Senate, and House Conduct Committees
Task Force Addressing Racial Disparities in Home Ownership

From: Sen Boquist Sen.BrianBoquist@oregonlegislature.gov
Sent: Wednesday, November 23, 2022 8:01 AM
To: Leoni Melissa Melissa.Leoni@oregonlegislature.gov
Cc: Sarah.Ryan@jacksonlewis.com; Lantz Michael Michael.Lantz@oregonlegislature.gov
Subject: Rules Questions - FW: Agenda Senate Committee On Conduct - 2022-11-28-08-00

Ma'am:

Since 2005, I have never seen a committee work session process done in this manner thus have a couple of legal process questions.

What version of LBPR 27 is the committee operating in regards to the below agenda and committee process given it is three sessions and sets of rules later?

HCR 11 January 2019?
HCR 20 June 2010?
HCR 221 August 2020?

Does Or. Const. Art IV Sec 14 regarding open deliberations of committees apply to the below proposed committee actions?

Is the hearing open to the public on Monday November 28, 2022 at 0800?

Does ORS 173.900 apply to the proposed committee actions?

Whom approved the committee agenda and its posting under Senate Rule 8.15 (3) (4)? The President himself? Or whom on the President's staff?

If the committee takes action, meaning a motion which is a committee report, then when will the report be sent to the Floor of the Senate pursuant to Senate Rule 8.50 and Or. Const. Art IV Sec 15 for a vote?

Again, I have copied the acting Legislative Equity Officer whom I am told is the outside legal counsel to the committee given the prohibitions of the committee using Legislative Counsel.

Sincerely requested,

Brian Boquist
State Senator
SD 12 IPO

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Wednesday, November 23, 2022 7:20 AM
To: Leoni Melissa <Melissa.Leoni@oregonlegislature.gov>
Cc: Lantz Michael <Michael.Lantz@oregonlegislature.gov>; Sarah.Ryan@jacksonlewis.com
Subject: Length of Time - RE: Senate Conduct on 11/28

Ma'am:

Thank you for the email.

Please confirm by name whom are the Co-Chairs you are referencing below?

You may expect several emails with legal questions based on the answer below today.

Please provide me a copy of the prepared motion, or motions, pursuant to Or Const Art IV Sec 14.

FYI, staff prepared three draft motions in the original hearing on July 8, 2019 for which members of the committee, and committee of the whole, and public, were denied access. A violation of the rules and constitution.

The length of my comments will depend upon the motion being proposed.

This has been copied to the acting Legislative Equity Officer since Legislative Counsel is prohibited from involvement pursuant to the BOLI Conciliatory Agreement along with other rules and statutes.

Sincerely requested,

Brian Boquist
State Senator

From: Leoni Melissa <Melissa.Leoni@oregonlegislature.gov>
Sent: Tuesday, November 22, 2022 4:42 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Cc: Lantz Michael <Michael.Lantz@oregonlegislature.gov>
Subject: RE: Senate Conduct on 11/28

Sen. Boquist,

The Co-Chairs have agreed to allow you to make a statement on Monday as long as it is germane to committee's agenda and is very brief. The committee has scheduled only a work session to take action to rescind the 2019 interim safety measures and is time-constrained to ensure members can participate in other scheduled meetings that morning.

How much time do you anticipate needing for your statement?

Melissa

MELISSA LEONI | Analyst
Legislative Policy and Research Office
503-986-1286

House Interim Committee on Rules
Joint, Senate, and House Conduct Committees
Task Force Addressing Racial Disparities in Home Ownership

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Tuesday, November 22, 2022 11:38 AM
To: Leoni Melissa <Melissa.Leoni@oregonlegislature.gov>
Cc: Lantz Michael <Michael.Lantz@oregonlegislature.gov>
Subject: RE: Senate Conduct on 11/28

Ma'am:

Sorry but forgot to ask.

Given ORS 173.900 and LBPR 27 who will be the four members of the Senate Conduct Committee at the hearing and possible work session on Monday, November 28, 2022?

Thank you,

Brian J. Boquist
Oregon State Senator

From: Sen Boquist
Sent: Tuesday, November 22, 2022 10:49 AM
To: Leoni Melissa <Melissa.Leoni@oregonlegislature.gov>
Cc: Lantz Michael <Michael.Lantz@oregonlegislature.gov>
Subject: RE: Senate Conduct on 11/28

Ma'am:

Thank you for the email.

Yes, I would like to attend the Senate Conduct Committee hearing and work session linked below.

Yes, I would like to make a brief statement to the committee. Will this be allowed?

And given Rule 27 will the Legislative Equity Officer and/or LEO's independent investigator be addressing the committee as well?

Sincerely,

Brian Boquist
State Senator

From: Leoni Melissa <Melissa.Leoni@oregonlegislature.gov>
Sent: Monday, November 21, 2022 2:33 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Cc: Lantz Michael <Michael.Lantz@oregonlegislature.gov>
Subject: Senate Conduct on 11/28

Sen. Boquist,

The Co-Chairs of the Senate Committee on Conduct have asked me to notify you that the committee will be meeting virtually on Monday, November 28 at 8 am for the purpose of rescinding the July 8, 2019 interim safety measures. The agenda is now posted on OLIS:
<https://olis.oregonlegislature.gov/liz/202111/Committees/SCOND/2022-11-28-08-00/Agenda>.

Please let me know if you would like to attend the meeting or if you have any questions.

Best,
Melissa

MELISSA LEONI | Analyst
Legislative Policy and Research Office
503-986-1286

House Interim Committee on Rules
Joint, Senate, and House Conduct Committees
Task Force Addressing Racial Disparities in Home Ownership

HCR 28 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Rules

Action Date: 06/22/21
Action: Do adopt the A-Eng measure.
Vote: 3-2-1-0
Yeas: 3 - Burdick, President Courtney, Wagner
Nays: 2 - Girod, Thatcher
Exc: 1 - Manning Jr
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Melissa Leoni
Meeting Dates: 6/22

WHAT THE MEASURE DOES:

Amends Legislative Branch Personnel Rule 27. Makes changes to conform with ORS 659A.375 (prevention of discrimination and sexual assault). Adds definitions for nondisclosure agreement, nondisparagement agreement, and sexual assault, and clarifies that sexual harassment includes any conduct that constitutes sexual assault. Advises appointing authority, member, or employee to document certain incidents involving prohibited conduct. Prohibits requiring or coercing employee to enter into nondisclosure or nondisparagement agreement. Allows Legislative Equity Officer (LEO) to hire an investigator as employee of Legislative Equity Office. Adds definition of investigator to mean either independent investigator or one employed by Legislative Assembly. Clarifies certain responsibilities for LEO, independent investigator, and investigator. Allows interim safety measures to be applied to respondent, complainant, or impacted party within certain limits. Sets requirements for approval and revocation of voluntary interim safety measures. Requires Senate and House to determine co-chairpersons from majority and minority party when selecting committee membership. Specifies that if co-chairperson is unable to serve, then other member from the same party is acting co-chairperson. Clarifies that conduct inconsistent with a safe, respectful, and inclusive workplace that does not rise to the level of creating a hostile work environment under rule may be addressed under respectful workplace policy. Makes other corrections.

ISSUES DISCUSSED:

- Relationship between Legislative Branch Personnel Rule 27 and Respectful Workplace Policy
- Voluntary agreements under Rule 27
- Provision that prohibits person from requiring or coercing an employee to enter into a nondisclosure or nondisparagement agreement
- Legislative Assembly role in nondisclosure or nondisparagement agreements
- Role and membership of Joint Committee on Conduct

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In 2019, the Legislative Assembly adopted House Concurrent Resolution (HCR) 20 to make numerous changes to Legislative Branch Personnel Rule 27 (Safe, Respectful and Inclusive Workplace). Following discussions of a work group comprised of the four co-chairs of the Joint Committee on Conduct, partisan staff, and nonpartisan staff, the Legislative Assembly adopted HCR 221 during the 2020 Second Special Session, which revised LBPR 27 to address prohibited conduct, conduct reports, conduct complaints, investigations, remedies, and process. Changes to LBPR 27 by HCR 221 applied to conduct reports and conduct complaints, and the investigations of those reports and complaints, made on or after August 10, 2020.

This summary has not been adopted or officially endorsed by action of the committee.

HCR 28 A STAFF MEASURE SUMMARY

Senate Bill 726 was enacted in the 2019 session (codified in ORS 659A.375) to require all Oregon employers to adopt written policies to reduce and prevent unlawful employment practices related to discrimination, including sexual harassment. The law generally prohibits a public employer from requiring employees to enter into nondisclosure agreements having the effect of prohibiting them from disclosing workplace harassment or sexual assault and extends the statute of limitations for actions based on prohibited conduct from one to five years.

House Concurrent Resolution 28 A updates Legislative Branch Personnel Rule 27 to conform with ORS 659A.375; allows the Legislative Equity Officer to hire an investigator as an employee of the Legislative Equity Office; allows voluntary interim safety measures; and clarifies co-chairperson appointment and replacement procedures.

HCR 20 A STAFF MEASURE SUMMARY
Joint Committee On Capitol Culture

Carrier: Sen. Burdick, Sen. Knopp

Action Date: 05/01/19
Action: Do adopt the A-Eng measure.
Senate Vote
Yeas: 5 - Baertschiger Jr, Burdick, Fagan, Knopp, Prozanski
Exc: 1 - Thatcher
House Vote
Yeas: 5 - Boles, Fahey, Sanchez, Williamson, Wilson
Exc: 1 - Sprenger
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Josh Nasbe, Counsel
Meeting Dates: 2/20, 3/13, 3/20, 3/27, 4/3, 4/10, 4/24, 5/1

WHAT THE MEASURE DOES:

Amends Legislative Branch Rules to adopt harassment, discrimination, and retaliation policy. Authorizes any person who experiences or observes behavior prohibited by rule to utilize policy and applies policy to legislators, legislative staff, lobbyists, and any other person present in State Capitol. Defines "harassment," "sexual harassment," "hostile work environment," "retaliation," and "protected class." Prohibits harassment or sexual harassment that constitutes a hostile work environment, discrimination in place of public accommodation, and retaliation. Creates confidential process counseling and three reporting avenues: 1) Confidential disclosures; 2) Conduct reports; and 3) Conduct complaints.

Authorizes Legislative Equity Officer and offsite process counselor to provide confidential process counseling and receive confidential disclosures. Provides person receiving counseling from, or making disclosure to, offsite process counselor with evidentiary privilege held by person. Allows Equity Officer and offsite process counselor to disclose nonpersonally identifiable information, including to persons who have previously made confidential disclosure for purpose of encouraging person to make conduct report or complaint. Requires Equity Officer and offsite process counselor to explain level of protections afforded to communications, advise person of internal and external options to address report, and inquire whether person needs safety measures.

Requires legislators, appointing authorities, and nonpartisan staff supervisors to make conduct report when person has knowledge of behavior they reasonably believe may be prohibited by rule. Authorizes any person who experiences or observes behavior to make conduct report. Establishes five-year filing period and requires investigation when report alleges behavior prohibited by rule. Allows mandatory reporters to make confidential disclosure if reporter is experiencing prohibited behavior. Authorizes Equity Officer to take steps when reported conduct does not violate rule, including referring matter to Human Resources, conducting coaching, or recommending training.

Authorizes any person who experiences or observes prohibited behavior to make conduct complaint. Establishes five-year reporting period and requirement that complaint be submitted under penalty of perjury. Mandates investigation and provides that complaint is immediately subject to public disclosure.

Authorizes investigator, Equity Officer, and offsite process counselor to recommend interim safety measures following receipt of disclosure, report, or complaint. Provides that investigatory records relating to legislator are subject to disclosure at conclusion of investigation and investigatory records relating to all other persons are subject to disclosure when discipline or other remedial measures are imposed. Establishes mechanisms for

HCR 20 A STAFF MEASURE SUMMARY

imposing remedial measures on all classes of respondents. Allows Conduct Committee to impose remedial measures on legislators, while reserving ability to modify committee assignments to presiding officer and ability to expel legislator to chamber in which legislator serves. Provides non-legislators with limited appeal.

Provides mechanism for nominating and electing legislators to House and Senate Conduct Committees, consisting of equal members from each party. Directs Joint Committee on Conduct to adopt respectful workplace policy. Requires Joint Committee to review need for in-house investigator and make recommendation to presiding officers on or before January 1, 2021. Requires Human Resources to act as repository for contact information for all employees, interns, externs, and volunteers and requires Equity Office to provide training as soon as practicable after start date. Requires Equity Officer to conduct exit interviews upon separation from service. Provisions of rule become operative on date Joint Committee notifies presiding officers that Equity Officer has been appointed.

ISSUES DISCUSSED:

- Improving Capitol culture
- Preventing harassment, discrimination, and retaliation
- Protecting free expression and due process

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In 2018, responding to then-unfolding events in the State Capitol, the President of the Senate and the Speaker of the House requested that the Oregon Law Commission assist with legislative efforts to make the State Capitol a model workplace where employees, legislators, lobbyists, and visitors alike can feel safe and participate in the democratic process, without fear of harassment, discrimination, or retaliation. The Commission was requested to advise the Legislative Assembly on how best to revise its laws and policies related to workplace harassment. The Commission appointed 14 members to the Oregon State Capitol Workplace Harassment Work Group, including employment lawyers representing employees and management, former legislators and legislative staff, registered lobbyists, a retired Oregon Supreme Court justice, an academic in the field of implicit bias, and several professionals with extensive experience preventing and responding to harassment in professional and educational settings. After several months of public hearings and soliciting public input, both with attribution and anonymously, the Work Group's final report and recommendations were submitted to the Presiding Officers in December of 2018 and made available to the public on the Oregon Law Commission website.

HB 3377 A STAFF MEASURE SUMMARY

Joint Committee On Capitol Culture

Action Date: 05/01/19

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

House Vote

Yeas: 5 - Boles, Fahey, Sanchez, Williamson, Wilson

Exc: 1 - Sprenger

Senate Vote

Yeas: 5 - Baertschiger Jr, Burdick, Fagan, Knopp, Prozanski

Exc: 1 - Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Josh Nasbe, Counsel

Meeting Dates: 3/20, 3/27, 4/3, 4/10, 4/24, 5/1

WHAT THE MEASURE DOES:

Creates Joint Committee on Conduct as standing legislative committee, comprised of House Committee on Conduct and Senate Committee on Conduct. Permits all Joint Committee members to attend hearings of chamber-specific Conduct Committees, while reserving ability to vote on disciplinary matters for members who serve in relevant chamber. Directs Joint Committee to adopt respectful workplace policy for conduct that is not implicated by Legislative Assembly's harassment, discrimination, and retaliation policy.

Creates Legislative Equity Office and requires Joint Committee to provide policy direction and oversight to Office. Requires Legislative Assembly to select Legislative Equity Officer by concurrent resolution. Provides Officer with four-year term, subject to removal for cause by Joint Committee. Authorizes Joint Committee to appoint acting Officer. Requires Officer to contract with independent investigator to receive complaints violating Legislative Assembly's harassment, discrimination, and retaliation policy, conduct investigations, and make interim safety recommendations. Provides that investigatory records relating to legislator are subject to disclosure at conclusion of investigation and investigatory records relating to all other persons are subject to disclosure when discipline or other remedial measures are imposed.

Directs Officer to provide, and to contract with offsite process counselor to provide, confidential process counseling. Creates evidentiary privilege for communications made to offsite process counselor. Requires Officer to provide annual report to Joint Committee, regularly conduct climate and culture surveys, and establish Capitol Leadership Team. Requires Joint Committee to consult with Leadership Team in conduct of oversight of Equity Office.

Requires Officer to conduct annual training on harassment, retaliation, and discrimination policy and free speech. Requires legislators, legislative staff, and beginning in January 2021, registered lobbyists to attend training. Requires Oregon Government Ethics Commission to track lobbyist certification of training attendance and submit annual report to Legislative Assembly. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Improving Capitol culture
- Preventing harassment, discrimination, and retaliation
- Protecting free expression and due process

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

In 2018, responding to then-unfolding events in the State Capitol, the President of the Senate and the Speaker of the House requested that the Oregon Law Commission assist with legislative efforts to make the State Capitol a model workplace where employees, legislators, lobbyists, and visitors alike can feel safe and participate in the democratic process, without fear of harassment, discrimination, or retaliation. The Commission was requested to advise the Legislative Assembly on how best to revise its laws and policies related to workplace harassment. The Commission appointed 14 members to the Oregon State Capitol Workplace Harassment Work Group, including employment lawyers representing employees and management, former legislators and legislative staff, registered lobbyists, a retired Oregon Supreme Court justice, an academic in the field of implicit bias, and several professionals with extensive experience preventing and responding to harassment in professional and educational settings. After several months of public hearings and soliciting public input, both with attribution and anonymously, the Work Group's final report and recommendations were submitted to the Presiding Officers in December of 2018 and made available to the public on the Oregon Law Commission website.

Legislative Service Agencies

ORS 173.900

Joint Committee on Conduct established

- **Legislative Equity Office established**
- **Legislative Equity Officer**

- (1) The Joint Committee on Conduct is established as a joint committee of the Legislative Assembly.
- (2) The Legislative Equity Office is established as a nonpartisan office of the Legislative Assembly that is independent of any other nonpartisan office.
- (3) By concurrent resolution, the Legislative Assembly shall select a Legislative Equity Officer, to serve as the executive officer of the Legislative Equity Office.
- (4) The committee may recruit, conduct interviews and make recommendations for the appointment of the Legislative Equity Officer by the Legislative Assembly. The committee shall consult with the Capitol Leadership Team established under ORS 173.927 (Establishing and maintaining Capitol Leadership Team) in the performance of the committee's duties under this section.
- (5) Subject to the limitations otherwise provided by law for expenses of state officers, the Legislative Equity Officer shall be reimbursed for actual and necessary expenses incurred or paid by the officer in the performance of duties of the officer.
- (6) The Legislative Equity Officer serves for a four-year term and is eligible for reappointment to succeeding terms. An officer may be removed for cause by the committee upon a finding by the committee that supports a for-cause removal of the officer.
- (7) The committee shall:
 - (a) Receive from the Legislative Equity Officer annual reports described in ORS 173.909 (Duties and powers of Legislative Equity Officer) and any other reports the committee or officer determines are warranted;
 - (b) Provide office facilities for the officer that are sufficiently independent to ensure that the officer operates independently of any other legislative branch organization, including but not limited to authorizing the officer to maintain facilities that are located near but outside of the State Capitol;
 - (c) Ensure that the officer possesses all possible indicia of independence from the other parts of the legislative branch;

\$2,599.99

\$999

\$19.99

- (e) Develop and maintain a respectful workplace policy to be administered by the Legislative Administrator and that is designed to address conduct that is inconsistent with a respectful workplace in the State Capitol and that does not rise to the level of creating a hostile work environment or violating public accommodation law;
 - (f) Provide policy direction and oversight to the officer; and
 - (g) Perform other duties as assigned by joint rules of the Legislative Assembly.
- (8) The Joint Committee on Conduct shall be composed of those members of the Senate Committee on Conduct formed to perform delegated and assigned functions described in Article IV, section 15, of the Oregon Constitution, for the Senate and the House Committee on Conduct formed to perform delegated and assigned functions described in Article IV, section 15, of the Oregon Constitution, for the House of Representatives.
- (9) In any hearing to perform a function described in Article IV, section 15, of the Oregon Constitution, Joint Committee on Conduct members of the other legislative chamber may attend and be seated at the dais as nonvoting observers.
- (10) Notwithstanding subsection (8) of this section, a member of the Joint Committee on Conduct shall be recused from service on a committee on conduct performing functions under Article IV, section 15, of the Oregon Constitution, if the facts and circumstances at issue could impair the member's ability to act impartially and without bias. In the event of a recusal, the appointing authority shall appoint an acting member until the functions performed under Article IV, section 15, of the Oregon Constitution, have been resolved. [2019 c.604 §1]

Location: https://oregon.public.law/statutes/ors_173.900

Original Source: Section 173.900 — Joint Committee on Conduct established; Legislative Equity Office established; Legislative Equity Officer, https://www.oregonlegislature.gov/bills_laws/ors/ors173.html (last accessed Jun. 26, 2021).

A PUBLIC OFFICIAL

Are you a public official?

“Public official” is defined in ORS 244.020 as the First Partner and any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- The First Partner, defined as the spouse, domestic partner or an individual who primarily has a personal relationship with the Governor.
- Elected or appointed to an office or position with a state, county, regional, or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county, city, intergovernmental agency or special district.
- An unpaid volunteer for a state, county, regional, city, intergovernmental agency, or special district.
- An agent of the State of Oregon or any of its political subdivisions.

The Commission has adopted, by rule, additional language used to clarify the use of “agent” in the definition of “public official.” The following clarification is in OAR 199-005-0035(7):

As defined in ORS 244.020(15), a public official includes the First Person and anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).

CONFLICTS OF INTEREST

How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(13). In brief, a public official is met with a conflict of interest when participating in official action which would or could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.



The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “**would**” and “**could**.” A public official is met with an **actual** conflict of interest when the public official participates in an official action, decision, or recommendation that **would** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. A public official is met with a **potential** conflict of interest when the public official participates in an official action, decision, or recommendation that **could** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest and what is not a conflict of interest:

- **POTENTIAL CONFLICT OF INTEREST:** A school district has decided to construct a new elementary school and the school board is at the stage of developing criteria for the construction bid process. A recently elected school board member’s son owns a construction company in town. The school board member would be met with a potential conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her son’s construction company, a business with which her relative is associated.
- **ACTUAL CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. The bid deadline was last week and the district Superintendent has notified the school board that there are four qualified bids and the school board will be awarding the bid to one of the four bidders at their upcoming meeting. One of the qualified bids was submitted by the construction company owned by a school board member’s son. The school board member would be met with an actual conflict of interest when awarding this bid because the effect of her decision **would** have a financial impact (either positive or negative) on her son’s construction company, a business with which her relative is associated.

- **NO CONFLICT OF INTEREST:** A school district is soliciting bids for the construction of a new elementary school. One of the qualified bids was submitted by a construction company owned by a board member's best friend but neither the board member nor any relative are associated with the construction company. The school board member would **not** be met with a conflict of interest when awarding this bid because the effect of her official decision **would not or could not** have a financial impact on herself, a relative, or a business with which she or her relative is associated.

What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120. [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

Public Employees:

Public officials who are hired as public employees, agents, or who volunteer with their public bodies must provide **written notice** to the person who appointed or employed them (their "appointing authority"). The notice must describe the nature of the conflict of interest with which they are met and request that their appointing authority dispose of the conflict. This written disclosure to the appointing authority satisfies the requirements of ORS 244.120 for the employee. The appointing authority must then designate an alternate person to handle the matter or direct the public official in how to dispose of the matter. [ORS 244.120(1)(c)]

Example of Disclosure and Disposal: A County employee's job includes issuing building permits. An application concerns property owned by the employee's stepfather. The employee would be met with a conflict of interest and would need to make a written disclosure of his conflict to his appointing authority, in this case his department supervisor, and ask that the supervisor dispose of the conflict. Once the employee makes the written disclosure, he has complied with the conflict of interest statute. Upon receipt of a written disclosure from an employee, the supervisor must respond by either delegating an alternative person to handle the matter or directing the public official in how to dispose of the matter. **Note:** If the supervisor directs the public official to dispose of the conflict by handling his

increase the number of members required to provide a quorum. This provision does not apply to the Senate Committee on Conduct.

8.10 Committee Quorum; Rules.

- (1) A majority of the members appointed to a committee shall constitute a quorum for the transaction of business before the committee.
- (2) Final action on a measure in committee shall be taken only on the affirmative vote of a majority of the membership. Voting in committee by electronic means shall include an audible and, if possible, video record of affirmative or negative voting by each member present.
- (3) All committees shall be governed by committee rules adopted by a majority of committee members, the Senate Rules and *Mason's Manual of Legislative Procedure* and statute.
- (4) An affirmative vote of a majority of the Senate members appointed to joint committees is required for final action.

8.15 Committee Meetings.

- (1) All committees shall meet at the call of the committee chair. The chair shall cause notice of the meeting to be given to the public, and notice of all committee meetings shall be made available electronically to all members. The chair may designate a time certain for an agenda item. The chair shall begin a time certain agenda item at the appointed time and accommodate witnesses wishing to testify to the extent practicable.
 - (a) During the Long Session, written notice is to be posted outside the Senate Chamber, if possible, and electronically through the Oregon Legislative Information System, and in any other place reasonably designed to give notice to the public at least 48 hours in advance of the meeting, except during the first week of session when notice for informational meetings is to be posted at least 24 hours in advance of the meeting only.
 - (b) During the Short Session, any special session, and interim periods, written notice is to be posted outside the Senate Chamber, if possible, and electronically through the Oregon Legislative Information System, and in any other place

reasonably designed to give notice to the public at least 24 hours in advance of the meeting and, whenever possible, such meetings shall be announced on the floor while the Senate is in session.

(2) In the event that the committee does not complete the scheduled agenda, the items may be carried over to the next scheduled meeting with the following guidelines:

- (a) The measure must have been initially scheduled with the notice required under SR 8.15(1) (a) or (b).
- (b) The measure must be carried over for the same type of meeting.
- (c) The chair announces in committee the chair's intent to schedule the measure at the next meeting.
- (d) A revised agenda listing the measures that originally received the notice required under SR 8.15(1) (a) or (b) shall be posted as soon as possible following adjournment of the committee meeting.

(3) No committee shall meet during the time the Senate is in session without approval of the President.

(4) Committee meetings held at a time or place not provided for in the Joint Legislative Schedule require the advance approval of the President.

(5) Approval of the President must be obtained if the location of a meeting will require the expenditure of state monies for travel.

(6) Any meeting of a Senate committee held through the use of telephonic or other electronic communication shall be conducted in accordance with SR 8.15.

or on the agenda may be distributed on the floor except materials prepared for, or by, a member of the Senate.

- (2) No anonymous material shall be distributed to members on the floor at any time. A copy of any material distributed to members' desks must be filed with the Secretary of the Senate prior to distribution.
- (3) Nothing in the rule prohibits a member from requesting and receiving specific material delivered by legislative staff.
- (4) The Secretary of the Senate shall enforce this rule.
- (5) Distribution of materials to the floor may be limited to electronic distribution during a public health emergency.

17.05 Lounge Privileges.

The lounge is for the convenience of senators. Supervision, operation and use of the Senate Lounge shall be directed through agreement of the caucus leaders and implemented by the Secretary of the Senate.

PERSONNEL AND CONTRACTING RULES

18.01 Legislative Branch Personnel and Contracting Rules.

- (1) The Legislative Branch Personnel Rules, as amended and in effect on November 22, 2021, and January 26, 2022, are incorporated into the Senate Rules by this reference as rules of proceeding of the Senate. The Respectful Workplace Policy, as adopted by the Joint Committee on Conduct on December 22, 2020, is incorporated into the Senate Rules by this reference as rules of proceeding of the Senate.
- (2) The Legislative Branch Contracting Rules, as adopted by the Legislative Administration Committee on January 15, 2016, are incorporated into the Senate Rules by this reference as rules of proceeding of the Senate.
- (3) Building Policy XV – Capitol Security, as adopted by the Legislative Administration Committee on January 26, 2022, is incorporated into the Senate Rules by this reference as rules of proceeding of the Senate.

soon as possible following reading or distribution of the list of appointments during the Short Session.

(2) The motion to recommend a list of multiple boards and commissions to the full Senate is in order. Individuals whose appearance before the committee has been waived under SR 19.20, may be considered *en bloc* upon recommendation of the committee.

(3) Any member may require a separate vote by requesting that an appointee be considered separately. The request shall be submitted in writing to the Secretary of the Senate one hour before the session on the day that the confirmation is on the calendar. The request will be announced at the appropriate time and the appointee considered separately from the *en bloc* vote.

Appendix A

INTERIM RULES OF THE SENATE 81st LEGISLATIVE ASSEMBLY

202.01 Use of *Mason's Manual of Legislative Procedure*.

Mason's Manual of Legislative Procedure shall apply to cases not provided for by the Oregon Constitution, the Senate Rules, custom of the Senate or statute.

203.05 Session Hour; Deliberations Open.

(1) The Senate shall meet at the call of the President, or when requested by a constitutional majority (16) of the members.

(2) All deliberations of the Senate and its committees shall be open to the public. However, nothing in this provision limits the procedures used for a call of the Senate. This provision does not prohibit clearing the gallery in the event of a disturbance, during which time the Senate shall be in recess.

203.11 Interim Meetings.



SENATE COMMITTEE ON CONDUCT

Committee Rules 81st Legislative Assembly 2021 – 2022 Interim

The committee will operate in accordance with the Oregon Constitution; Senate Rules; custom, usage and precedents; Mason's Manual of Legislative Procedure; and applicable statutory provisions.

1. **Quorum.** A majority of the members appointed to the committee shall constitute a quorum for the transaction of business. In the absence of a quorum, the co-chairs may assign fewer members to receive testimony.
2. **Meetings.** The co-chairs shall call meetings, set agendas and cause notice of the time and place of the meeting. The notice shall specify the type of meeting and, if applicable, whether testimony will be taken. A meeting called to deliberate on interim safety measures may be held with one-hour notice, in accordance with Legislative Branch Rule 27. Meetings shall be open to the public. Meetings shall be recessed or adjourned either by the co-chairs or by an affirmative vote of a majority of those members present. The co-chairs shall allow members of the public to testify by telephone or other electronic means.
3. **Recording.** A recording log of all meetings of the committee shall be produced to reference the recording of each meeting. Meetings will be video recorded when practicable. The recording log shall be available to the public within a reasonable time and shall include the following:
 - a. Attendance of members and staff;
 - b. Names of witnesses;
 - c. All motions and their disposition;
 - d. The recorded vote on official action; and
 - e. Any announcements of conflicts of interest.
4. **Committee Action and Recommendations.** The affirmative vote of a majority of the members of the committee is required to approve recommendations or introduce a measure for pre-session filing. Based upon the investigator's final report, testimony, presentation of documents and any other evidence presented, the committee shall report a recommendation to the chamber in compliance with Senate Rules and Legislative Branch Rule 27. The Secretary of the Senate shall accept the report on behalf of the chamber, forward the committee's report to each member of the body and shall schedule any required proceedings according to chamber rules.
5. **Subcommittees.** Subcommittees may be appointed by the chair with specific instructions on matters to be investigated by the subcommittees. However, only the full committee is authorized to take final action on recommendations affecting any matter before the committee.

6. **Field trips.** A written summary of the committee's activities may be prepared in lieu of a recording of a meeting when the committee conducts a tour, inspection, or other similar activity outside the Capitol; provided, however, that a recording of the meeting and recording log must be made if any public hearing or work session is held. If a written summary is prepared, it shall be made available to the public within a reasonable time after the meeting.
7. **Attribution.** If permitted by applicable rule, measures introduced by the committee at the request of any organization or person other than a member of the committee shall indicate the person or organization interested in the measure by stating that the measure is introduced by the committee "at the request of *[person or organization]*."
8. **Rules Amendments.** Committee rules may be amended by the affirmative vote of the majority of the committee, but at least one day's notice shall be given in writing to each committee member and the Secretary of the Senate.

ADOPTED: May 11, 2022

Government Ethics

ORS 244.040

Prohibited use of official position or office

- exceptions
- other prohibited actions

- (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.
- (2) Subsection (1) of this section does not apply to:
- (a) Any part of an official compensation package as determined by the public body that the public official serves.
 - (b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042 (Honoraria).
 - (c) Reimbursement of expenses.
 - (d) An unsolicited award for professional achievement.
 - (e) Gifts that do not exceed the limits specified in ORS 244.025 (Gift limit) received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.
 - (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.
 - (g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020 (Definitions).
 - (h) Contributions made to a legal expense trust fund established under ORS 244.209 (Application to establish fund) for the benefit of the public official.
- (3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be

Walstead Mertsching, PS

your side. Free consultation. No fee until you are compensated for your loss
Walstead Mertsching, PS

position as a public official or activities of the public official.

- (5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.
- (6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.
- (7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120 (Methods of handling conflicts). [1974 c.72 §3; 1975 c.543 §2; 1987 c.566 §9; 1989 c.340 §3; 1991 c.146 §1; 1991 c.770 §6; 1991 c.911 §4; 1993 c.743 §9; 2007 c.877 §17; 2009 c.68 §4]

Location: https://oregon.public.law/statutes/ors_244.040

Original Source: Section 244.040 — Prohibited use of official position or office; exceptions; other prohibited actions, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).



Walstead Mertsching, PS

your side. Free consultation. No fee until you are compensated for your loss
Walstead Mertsching, PS

DEMOCRATS BACKTRACK ON RETALIATION. SEN. BOQUIST SCORES WIN.

By News Update In: Uncategorized Wednesday November 30, 2022



By NW Spotlight,

On Monday the Senate Committee on Conduct [voted](#) 3-1 to rescind the measure it had imposed on a Senator Brian Boquist (I-Dallas) after statements made on the Senate Floor during the 2019 session. Since July 2019, Sen. Boquist has been required to give 12 hours' notice before coming to the Oregon State Capitol, to give the state police time to improve [security](#) after alleged threatening statements.

At the time, Gov. Kate Brown and Senate President Peter Courtney, both Democrats, sought to [use](#) the Oregon State Police to compel the Republicans to return to the Capitol. The supermajority Democrats were infuriated that Senate Republicans had denied quorum and prevented the passage of cap and trade, a bill that put Portland's carbon emissions problem on the backs of rural Oregonians, and retaliated against Sen. Boquist for free speech-protected comments made on the Senate Floor.

On June 19, 2019, Boquist stood on the Senate floor and told Courtney: "Mr. President, if you send the state police to get me, hell's coming to visit you personally." Later that day Boquist [told](#) a reporter that the state police should "send bachelors and come heavily armed" as he would not be a prisoner in the state of Oregon, in a now-infamous comment. Boquist has maintained in a lawsuit that his right to free speech was violated and was retaliated against. In a ruling last April, the 9th U.S. Circuit Court of Appeals [agreed](#).

As KGW [reports](#): "*Boquist has sued Courtney, Manning, committee co-chair Sen. Floyd Prozanski and several legislative officials, alleging that his free speech rights were violated. A federal judge in 2020 threw out the lawsuit, ruling that Boquist's remarks amounted to threats. The federal appeals court issued a 32-page opinion in April that said Boquist had a valid point, and sent the case back to the U.S. District Court in Eugene, Oregon.*

"Boquist's rhetorical response to the majority's threat to use state police to arrest the departing senators and return them to the Capitol therefore fits easily within the wide latitude given to elected officials 'to express their views,'" Appeals Court Judge Sandra Ikuta wrote.

With the 9th circuit court agreeing with Sen. Boquist, it's obvious the Democratic legislators are covering their tracks by rescinding the requirement for Boquist to provide multiple hours' notice upon arrival to the Capitol.

Co-Chair:
Sen. Floyd Prozanski
Sen. Bill Hansell

Staff:
Melissa Leoni, LPRO Analyst
Michael Lantz, LPRO Analyst
Samantha Koopman, Sr. Committee Assistant

Members:
Sen. Kathleen Taylor
Sen. Dick Anderson
Sen. Lynn Findley (Alternate)
Sen. Lew Frederick (Alternate)
Sen. Fred Girod (Alternate)
Sen. Kate Lieber (Alternate)
Sen. Kayse Jama (Alternate)
Sen. Tim Knopp (Alternate)



81st LEGISLATIVE ASSEMBLY
SENATE COMMITTEE ON CONDUCT
State Capitol
900 Court St. NE, Rm. 333
Salem, OR 97301
503-986-1286

December 2, 2022

Lori Brocker
Secretary of the Senate
Oregon State Capitol
900 Court Street NE, Room 233
Salem, OR 97301

Dear Secretary Brocker,

The following is submitted as the report from the Senate Committee on Conduct:

On November 28, 2022, the committee met and voted (3 ayes, 1 nay) to rescind the recommendation that was unanimously supported on July 8, 2019 that required Senator Boquist to give at least 12 hours advance notice in writing to the Secretary of the Senate if he intended to be at the Capitol, and, while Senator Boquist was at the Capitol, there would be an increased Oregon State Police presence.

Respectfully Submitted,

Handwritten signature of Senator Floyd Prozanski in black ink.

Senator Floyd Prozanski
Co-Chair
Senate Committee on Conduct

Handwritten signature of Senator Bill Hansell in black ink.

Senator Bill Hansell
Co-Chair
Senate Committee on Conduct

cc: Terri Davie, Superintendent, Oregon State Police

Sen Boquist

From: Kennedy, Kyle E <Kyle.Kennedy@osp.oregon.gov>
Sent: Monday, December 5, 2022 4:18 PM
To: Sen Boquist
Subject: RE: Committee Report

Senator,

I misunderstood your request. Melissa Leoni was the sender of the information.

Respectfully,



Kyle Kennedy
Captain (WOC) | Government and Media Relations
Oregon State Police
3565 Trelstad Ave SE
Salem, Oregon 97317-9614
Email: OSPPIO@osp.oregon.gov

"To provide premier public safety services."

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From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Monday, December 5, 2022 4:06 PM
To: Kennedy, Kyle E <Kyle.Kennedy@osp.oregon.gov>
Subject: RE: Committee Report

CAUTION: This email originated from outside of OSP. Do not click links or open attachments unless you know the content is safe.

Captain:

Not really the question but thanks. Whom provided it to OSP from the Oregon State Senate?

Thank you,

Sen Boquist

From: Kennedy, Kyle E <Kyle.Kennedy@osp.oregon.gov>
Sent: Monday, December 5, 2022 2:18 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Subject: RE: Committee Report

Senator Boquist,

Currently, Superintendent Davie, Capitol Mall Area Commander Lt Josh Moyers, and myself have reviewed these documents.

Respectfully,



Kyle Kennedy
Captain (WOC) | Government and Media Relations
Oregon State Police
3565 Trelstad Ave SE
Salem, Oregon 97317-9614
Email: OSPPIO@osp.oregon.gov

"To provide premier public safety services."

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From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Monday, December 5, 2022 1:39 PM
To: Kennedy, Kyle E <Kyle.Kennedy@osp.oregon.gov>
Subject: FW: Committee Report

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Captain Kennedy:

Not a trick question. Simply trying to figure out who 3 years later is being told something at OSP.

Someone at OSP was supposedly given this letter Friday or today.

Senator Boquist

From: Moyes, Joshua J <Joshua.Moyes@osp.oregon.gov>
Sent: Monday, December 5, 2022 1:34 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Subject: RE: Committee Report

CAUTION: This email originated from outside the Legislature. Use caution clicking any links or attachments.

Sir,

I don't believe I get those reports. They probably go to our Legislative Liaison.
JM

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Monday, December 5, 2022 8:26 AM
To: Moyes, Joshua J <Joshua.Moyes@osp.oregon.gov>
Subject: FW: Committee Report

CAUTION: This email originated from outside of OSP. Do not click links or open attachments unless you know the content is safe.

Lt Moyer:

Was this sent to you as it stated below?

Thank you,

Senator Boquist

From: Leoni Melissa <Melissa.Leonis@oregonlegislature.gov>
Sent: Monday, December 5, 2022 7:46 AM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Cc: Freeman Misty <Misty.Freeman@oregonlegislature.gov>
Subject: RE: Committee Report

Sen. Boquist,

Attached is the committee's letter that was sent to the Secretary of the Senate and OSP this morning.

Best,
Melissa

MELISSA LEONI | Analyst
Legislative Policy and Research Office
503-986-1286

House Interim Committee on Rules
Joint, Senate, and House Conduct Committees
Task Force Addressing Racial Disparities in Home Ownership

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Thursday, December 1, 2022 7:25 AM
To: Leoni Melissa <Melissa.Leonis@oregonlegislature.gov>
Cc: Freeman Misty <Misty.Freeman@oregonlegislature.gov>
Subject: Committee Report

Ma'am:

Would you please send me a copy of the committee report sent to the Secretary of the Senate or the President's Office from Monday's work session in Senate Conduct Committee.

Thank you in advance,

Brian Boquist
State Senator