

IN THE HOUSE OF REPRESENTATIVES

HOUSE RESOLUTION NO. 2

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

A HOUSE RESOLUTION

1 STATING FINDINGS OF THE HOUSE OF REPRESENTATIVES AND REPEALING RULE 76 OF THE  
2 RULES OF THE HOUSE OF REPRESENTATIVES; AND STATING FINDINGS OF THE HOUSE  
3 OF REPRESENTATIVES AND PROVIDING FOR THE ADDITION OF A NEW RULE 76 TO THE  
4 RULES OF THE HOUSE OF REPRESENTATIVES.  
5

6 Be It Resolved by the House of Representatives of the State of Idaho:

7 WHEREAS, the House of Representatives deems it necessary and desirable  
8 to repeal Rule 76 of the Rules of the House of Representatives.

9 NOW, THEREFORE, BE IT RESOLVED by the members of the House of Represen-  
10 tatives, assembled in the First Regular Session of the Sixty-fifth Idaho  
11 Legislature, that Rule 76 of the Rules of the House of Representatives, be,  
12 and the same is hereby repealed.

13 WHEREAS, the House of Representatives deems it necessary and desirable  
14 to add a new Rule 76 to the Rules of the House of Representatives.

15 NOW, THEREFORE, BE IT RESOLVED by the members of the House of Represen-  
16 tatives, assembled in the First Regular Session of the Sixty-fifth Idaho  
17 Legislature, that the Rules of the House of Representatives shall be amended  
18 by the addition thereto of a new Rule 76 to read as follows:

19 RULE 76

20 Committee on Ethics. -- (1) Committee Established.

21 (a) Before the end of the twelfth day of the first regular session of  
22 each Legislature, an Ethics Committee shall be organized, and its mem-  
23 bership shall be determined. The Ethics Committee shall consist of five  
24 members of the House, three of whom shall be members of the majority  
25 party and two of whom shall be members of the minority party. House  
26 members holding leadership positions shall not serve on the Ethics Com-  
27 mittee. Committee Chairmen may serve on the Ethics Committee. Ethics  
28 Committee members shall not have been previously sanctioned by the  
29 House for an ethics violation pursuant to any House ethics rule.

30 (b) The Caucus Chairman of each party shall conduct the election of  
31 Ethics Committee members as follows:

32 (i) Phase I: At a designated caucus meeting, each Caucus Chairman  
33 shall receive from members of their respective caucus a silent  
34 ballot nominating for membership on the Ethics Committee up to  
35 three members who have previously served at least one full term.  
36 Each Caucus Chairman and the two elected at-large Legislative  
37 Council members for the caucus shall prepare a ballot of nominees  
38 consisting respectively of the five nominees by the majority party  
39 and the four nominees by the minority party receiving the most nom-  
40 inating votes.

1 (ii) Phase II: By silent ballot, each member of the majority party  
 2 shall vote for three nominees, and of the minority party for two  
 3 nominees, on their respective ballots. The Caucus Chairman and  
 4 the two elected at-large Legislative Council members for the cau-  
 5 cus shall count the votes and prioritize the members from greatest  
 6 to least number of votes received. The three members of the major-  
 7 ity party and the two members of the minority party receiving the  
 8 highest number of votes shall be the members of the Ethics Commit-  
 9 tee for the term of the Legislature. Others receiving votes shall  
 10 serve in order of priority as Committee alternates for their re-  
 11 spective party.

12 (c) Committee members may be reelected to a subsequent Committee. A  
 13 vacancy on the Committee shall be filled with the highest priority al-  
 14 ternate available to the party entitled to fill the vacancy. When no  
 15 elected alternates are available to fill a vacancy, such vacancy shall  
 16 be filled by majority vote of the House members of the party entitled  
 17 to fill the vacancy. Except as otherwise provided in subsection (6) of  
 18 this rule, a member filling a vacancy shall serve for the remainder of  
 19 the unexpired term.

20 (d) The Speaker of the House shall appoint one of the members of the Com-  
 21 mittee as Chairman of the Committee.

22 (2) Powers and Duties of Committee. The Committee shall have the power  
 23 and duty to:

24 (a) Determine its own rules of procedure that provide for the orderly  
 25 conduct of Committee meetings, investigations, and hearings. Such  
 26 rules shall be consistent with this rule and other applicable rules and  
 27 statutes.

28 (b) Function without regard to recess periods or adjournments.

29 (c) Retain such counsel and investigators as it deems necessary for the  
 30 performance of its duties under this rule.

31 (d) Take testimony under oath.

32 (e) Incur expenditures. All expenditures incurred by the Commit-  
 33 tee shall be approved by the Speaker and shall be paid by vouchers and  
 34 warrants drawn as provided by law from appropriations made to the Leg-  
 35 islative Account.

36 (f) Issue subpoenas and subpoenas duces tecum.

37 (g) Discover evidence relevant to an allegation. Formal rules of evi-  
 38 dence are not applicable; however, evidence shall be weighed according  
 39 to its reliability.

40 (h) Consult with the Office of the Idaho Attorney General for guidance  
 41 as needed.

42 (i) Enlist a staff person to perform needed administrative tasks.

43 (j) Maintain a record of all complaints and corresponding Committee in-  
 44 vestigations, hearings, letters, and other actions until the case has  
 45 been closed, terminated, or settled, or the member has left legisla-  
 46 tive service, unless the Committee determines otherwise. The records  
 47 shall remain in the sole possession of the Committee and shall be kept in  
 48 a confidential file within the Chief Clerk's office, until destroyed.  
 49 Records shall include:

50 (i) Date complaint was received by the Ethics Committee;

- 1 (ii) Name and contact information of complainant;
- 2 (iii) Name of accused member;
- 3 (iv) Summary of the allegation(s);
- 4 (v) Any evidence gathered and reviewed by the Committee;
- 5 (vi) All records of Committee action; and
- 6 (vii) Final disposition of all complaint(s).

7 (k) Initiate its own complaint on an affirmative vote of four-fifths  
8 of the Ethics Committee. Committee complaints may be initiated only by  
9 the Committee as a result of a Committee investigation or as a result  
10 of receipt of any complaint or other information that does not meet the  
11 requirements of this rule regarding the form of a complaint, but which  
12 contains allegations that would form the basis of a valid complaint.

13 (3) Confidentiality of Proceedings. Except as provided in this rule,  
14 all proceedings before the Committee shall constitute extraordinary circum-  
15 stances, shall be held in Executive Session, and shall be exempt from public  
16 disclosure pursuant to House Rule 57, and Sections 74-207 and 74-106(1),  
17 Idaho Code. The complainant, the subject, and all Committee members and  
18 staff involved in a complaint shall maintain strict confidentiality unless  
19 otherwise provided in this rule. Any breach may be grounds for its own ethics  
20 investigation.

21 (4) Complaints, Form and Filing of. All complaints shall:

22 (a) Be in writing;

23 (b) State the name and contact information of the member submitting the  
24 complaint;

25 (c) State the name of the member or members alleged to be in violation of  
26 law, rule, or written legislative policy that has been provided to the  
27 member;

28 (d) Set forth the date or time frame of the violation;

29 (e) Describe the allegation(s) outlining the behavior that, if true,  
30 would be a violation of state law, House rule, or written legislative  
31 policy that has been provided to the member;

32 (f) Identify the factual data in the complainant's possession at the  
33 time of submission supporting the allegation. Opinions are not facts.  
34 Evidence is not to include hearsay that would be inadmissible in a court  
35 proceeding; any evidence of this type will be dismissed; and

36 (g) Be signed under oath by the complainant stating the allegations  
37 in the complaint are true and correct to the best of the complainant's  
38 knowledge and belief.

39 (5) Complaints, Who May File. The Chairman of the Committee shall re-  
40 ceive complaints from any member of the House. Also:

41 (a) Referrals and/or investigations from the Respectful Workplace Com-  
42 mittee.

43 (b) Ethics Committee-initiated complaints.

44 (6) Complaints Against Committee Members. If a Committee member is  
45 the subject of a written and signed complaint, that Committee member is  
46 disqualified and shall not serve on the Committee for any purpose relating  
47 to the complaint. Under such circumstances, the vacancy shall be filled by  
48 an alternate, in accordance with the provisions of subsection (1) (b) (ii) of  
49 this rule, which vacancy shall be filled only for purposes relating to such  
50 complaint.

1 (7) Complaints, Initial Intake. The Committee Chairman and the rank-  
2 ing minority member shall review each complaint and supporting information  
3 to ensure that it meets the requirements as to form. Deficient complaints  
4 may be returned to the complainant with a description of the deficiency to be  
5 corrected. After intake of the completed complaint, it shall be forwarded to  
6 the full Committee for review. At this time, the Speaker of the House shall  
7 be notified of the receipt of a complaint; provided, however, if the Speaker  
8 is the subject of the complaint, the Majority and Minority Leaders shall be  
9 notified instead. Upon notification by the Committee, any person in lead-  
10 ership notified is held to the standard of confidentiality stated in subsec-  
11 tion (3) of this rule.

12 (8) Complaints, Committee Review. Complaints found to meet the stan-  
13 dard of form will be forwarded to the full Committee for review. The Com-  
14 mittee shall review each claim to determine if there is a valid allegation  
15 and will determine if probable cause exists that an ethics violation may have  
16 taken place. By way of example, an allegation of an ethics violation may take  
17 the form of, but is not limited to, one or more of the following:

18 (a) Use of public office for private pecuniary gain;

19 (b) Violation of a rule of the House or written legislative policy that  
20 has been provided to the member;

21 (c) Disclosure of information that is confidential;

22 (d) Acts that the Committee finds may constitute a felony under state or  
23 federal law;

24 (e) Violation of the Respectful Workplace policy; and

25 (f) Conduct constituting a betrayal of the public trust.

26 (9) Complaints, Notifications. Upon receipt, review, and acceptance  
27 of a valid complaint, the Committee shall notify the member who is the sub-  
28 ject of the complaint. The member shall be provided with a copy of the com-  
29 plaint and any evidence provided in support of the complaint.

30 (10) Complaints, Dismissal. At any time, a complaint found by a major-  
31 ity vote of the Committee to be baseless, frivolous, retaliatory in nature,  
32 or without merit shall be dismissed without further consideration. A com-  
33 plaint of conduct that occurred prior to the time the subject took office may  
34 be dismissed by the Committee, in its discretion. Upon dismissal by the Com-  
35 mittee, the Chairman shall provide a letter of dismissal to the following:

36 (a) The complainant;

37 (b) The subject of the complaint; and

38 (c) The Speaker of the House; except, however, if the Speaker is the  
39 subject of the complaint, then to the Majority and Minority Leaders in-  
40 stead.

41 (11) Complaints, Response to the Complaint by the Subject. Upon re-  
42 view and determination by the Ethics Committee that there is probable cause  
43 to believe a violation of the ethics rule may have taken place, the Committee  
44 shall allow the subject of the complaint to provide a written response and  
45 corresponding evidence to support their position to the Committee. The mem-  
46 ber may provide a written answer with supporting documentation to the Chair-  
47 man of the Committee no later than 14 days from receipt of the copy of the com-  
48 plaint.

49 (12) Investigatory Phase. Any complaint not dismissed by the Commit-  
50 tee, and notwithstanding the receipt of a response from the accused within

1 the provided 14 days, shall undergo a full and thorough investigation using  
2 the prescribed powers and duties of the Committee.

3 (a) The investigation period shall be timely in fashion, with an ini-  
4 tial 30-day deadline. The Committee may, upon a majority vote of the en-  
5 tire Committee, extend the period for an additional 30 days should it be  
6 deemed necessary. If the Committee is unable to complete the investiga-  
7 tion within the 60-day period allowed, it may at its discretion extend  
8 the deadline additionally, again by a majority vote of the full Commit-  
9 tee. Documentation outlining the cause for the extension shall be pro-  
10 vided in the permanent record.

11 (b) Investigations done by or on behalf of the Respectful Workplace  
12 Committee and transmitted to the Ethics Committee may be used in whole  
13 or in part by the Ethics Committee to complete its investigation of the  
14 complaint.

15 (c) The Committee may issue confidential updates to House majority and  
16 minority leadership as to the progress of an investigation.

17 (d) If the pendency of a proceeding before the Committee is generally  
18 known to the public, through independent sources, and the subject mat-  
19 ter thereof is of public interest or speculation, and public confidence  
20 in the administration of the ethics guidelines may be threatened be-  
21 cause of lack of information concerning the status of the proceeding and  
22 the requirements of due process, the Committee may, on an affirmative  
23 vote of four-fifths of the Committee, issue brief statements as it deems  
24 appropriate in order to confirm the existence of an investigation, to  
25 clarify the procedural aspects of a proceeding, and to explain that all  
26 members are entitled to fair and equal treatment under this rule.

27 (13) Investigatory Phase, Conclusion. At the conclusion of its inves-  
28 tigation, the Committee shall make a determination whether a violation has  
29 occurred, based on a preponderance of evidence.

30 (a) If an allegation is determined to be baseless, without merit,  
31 frivolous, or retaliatory in nature, the allegation shall be dismissed.  
32 Upon dismissal, a written statement of the dismissal shall be forwarded  
33 to the complainant, the subject of the complaint, and the Speaker; pro-  
34 vided, however, if the Speaker is the subject of the complaint, then to  
35 the Majority and Minority Leaders instead.

36 (b) If the Committee determines by an affirmative vote of four-fifths  
37 of the Committee that a preponderance of the evidence shows that miscon-  
38 duct has occurred, the Committee shall notify in writing both parties  
39 and the full House membership of its intention to hold a public hearing.

40 (14) Public Hearings by the Ethics Committee. Any public hearing con-  
41 ducted under this rule shall be done so in a timely manner after written no-  
42 tice is provided to the full House. The Committee may hold public hearings at  
43 any time, including legislative interim periods.

44 (a) The complainant, or an authorized agent of the complainant, shall  
45 first present the complaint, supporting evidence, and testimony to the  
46 Committee. The Committee may designate another member or a third party  
47 to present the complaint, supporting evidence, and testimony to the  
48 Committee, or to assist the complainant in doing so.

49 (b) The member complained against shall be entitled to appear, present  
50 evidence, cross-examine witnesses, be represented by counsel, and

1 raise objection to any evidence presented. The accused may defer pre-  
2 sentation of any defense until all the evidence has been presented in  
3 support of the complaint. The accused shall have a full and fair op-  
4 portunity to obtain and review all of the evidence in support of the  
5 complaint.

6 (15) Public Hearing, Conclusion of and Committee Report. If, after in-  
7 vestigation and hearings held pursuant to this rule, the Committee finds by  
8 clear and convincing evidence that a violation of the standards contained in  
9 this rule occurred, the Committee shall make an appropriate recommendation  
10 to the House of Representatives. The Committee shall issue its recommenda-  
11 tion within 30 days of conclusion of the public hearing. If the Committee  
12 does not issue a recommendation within 30 days of conclusion of the public  
13 hearing, the charges shall be deemed dismissed. By four-fifths vote of the  
14 Committee, the Committee shall recommend one of the following:

15 (a) Dismissal of the charges;

16 (b) Written reprimand;

17 (c) Censure, with or without conditions or restrictions placed upon the  
18 member; or

19 (d) Expulsion from the House of Representatives for good cause (Section  
20 11 of Article III, Idaho Constitution).

21 (16) Committee Report to House. The House of Representatives shall  
22 vote on the recommendation of the Ethics Committee during the regular or  
23 extraordinary session in which the Committee reports.

24 (a) If the Committee meets and reports during the interim when the Leg-  
25 islature is not in session, then the House of Representatives shall vote  
26 on the Committee recommendation during the next regular or extraordi-  
27 nary session.

28 (b) Committee recommendations shall be presented to the full House in  
29 the form of a House Resolution which, once introduced, shall be referred  
30 directly to the second reading calendar. The Resolution shall not be  
31 referred further to any Committee and shall not be amendable in any man-  
32 ner after its introduction.

33 (c) A Resolution of dismissal, reprimand, or censure of a member re-  
34 quires a majority vote of members present for passage.

35 (d) Expulsion of a member shall require the affirmative vote of two-  
36 thirds of all members for passage (Section 11 of Article III, Idaho Con-  
37 stitution).

38 (17) Final Action. Action taken by the Ethics Committee and the House  
39 pursuant to this rule is final and not subject to judicial review.

40 BE IT FURTHER RESOLVED that, notwithstanding the repeal and reenactment  
41 of House Rule 76 pursuant to the passage of this Resolution, the members of  
42 the Ethics Committee as determined prior to passage of this Resolution are  
43 hereby confirmed and shall continue to serve as members of the Ethics Commit-  
44 tee for the Sixty-fifth Legislature.