

Rulemaking Procedure for  
State University Boards of Trustees  
March 2005

A. Background.

In November 2002, Florida voters passed an amendment to article IX of the Florida Constitution establishing a system of governance for state universities. Under the amendment, “a board of trustees shall administer each public university and a board of governors shall govern the state university system.” A component of such governance is state university board of trustee rulemaking procedures that provide for appropriate input and are suitable for the state university setting. Since there is a system-wide benefit to having uniform procedures that are clearly laid out for university rulemaking, the Board of Governors therefore establishes this procedure for rulemaking by the state university boards of trustees.

B. General Principles.

This procedure is based on the following general principles:

- Rule development should provide opportunity for appropriate input from the state university system community and the public;
- Proposed rules and rule changes as well as adopted rules should be easily accessible to the state university system community and the public; and
- Proposed rules and rule changes should be consistent with the Board of Governors’ strategic plan and priorities.
- To ensure conformity with the Board of Governor’s policies, proposed university rules should expeditiously be reviewed prior to final adoption

C. Definitions.

1. Rules. Rules are policy statements of general applicability adopted by the university boards of trustees that implement its powers and duties. Rules do not include the following:

- Internal management memoranda, which are defined as statements that do not affect the private interests of any person and which have no application outside the state university system;
- Legal memoranda, opinions and guidelines;
- Preparation of the state university system or a state university's budget;
- Negotiated contractual provisions, including those reached as a result of collective bargaining; and
- Curriculum and other academic requirements.

2. Notice. Notice of a proposed rule, amendment, or repeal shall include publication on a clearly marked area of the university internet website of the following:

- Summary of the proposed rule, amendment, or rule to be repealed;
- The full text of the proposed rule, amendment or rule to be repealed or instructions on where to view it;
- Reference to the authority for the rule;
- The contact person(s) familiar with the rule and a street and electronic address and telephone number for the contact person(s); and
- The procedure for commenting on the proposed rule, amendment or repeal of rule.

3. Internet website. Internet website shall mean a website that permits the public to do at least the following:

- Search notices by type, publication date, or rule number;
- Search a permanent database that archives all notices published on the website;
- Subscribe to an automated e-mail notification of selected notice types.

4. Filing. When a rule, amendment, or notice of repeal is filed, certification of compliance with this procedure must be included, along with the rulemaking record including all notices, written comments, written summaries of hearings, and responses submitted pursuant to this procedure.

5. Substantially Affected Person. A substantially affected person shall be any natural person with an interest within the zone of interest protected or regulated who suffers a real and sufficiently immediate injury in fact as a result of the application of a rule. A substantially affected person shall also mean any association with a majority of natural persons as members satisfying the first sentence of this sub-section, as long as the subject matter of the rule is within the association's general scope of interest and activity and the relief requested is of the type appropriate for a trade association to receive on behalf of its members.

D. Rulemaking Procedures for University Boards of Trustees.

1. Notice

Prior to the adoption, amendment or repeal of any rule, except an emergency rule, the university boards of trustees or designee shall give notice of its intended action. This notice shall be given at least 30 days prior to any proposed board of trustees' action.

2. Comments

Any person may submit written comments concerning a proposed rule, amendment, or notice of repeal to the rule contact person within 14 days after the date of publication on the internet website. In response, the university board of trustees or designee may, entirely at its discretion, solicit additional written comments, schedule a public hearing,

withdraw or modify the rule or amendment in whole or in part after notice, or proceed with rulemaking.

3. Adoption

Once the university board of trustees has voted to adopt a rule, and has provided a copy of the rule and the resolution approving the same to the Board of Governors or its designee, the rule shall become final 30 days after being provided to the Board of Governors, unless within the 30 days the rule has been referred by staff to the executive committee of the Board of Governors for consideration of whether the rule contravenes the policies of the Board of Governors. If referred to the Executive Committee of the Board of Governors, the rule shall become final upon consideration of the executive committee of the Board of Governors if not revoked or referred to the entire Board of Governors for further consideration.

4. Filing

When adopted, the rule, amendment, or notice of repeal shall be filed in the office of the state university president or designee and posted on the internet website. The rule, amendment or notice of repeal shall become effective on the date of filing unless the effective date is stated otherwise therein.

E. Rule Challenges.

1. Challenges to Existing Rules

A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time after the adoption of the rule. The petition seeking an administrative determination must state with particularity objections to a rule or the provisions alleged to be an invalid exercise of authority with sufficient explanation



of the facts or grounds for the objection or alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it. A university rule may only be alleged to be invalid if:

- The state university materially failed to follow the rulemaking procedures set forth herein;
- The rule does not comply with the law or contravenes the Board of Governors' authority as specified in resolution, rule, or strategic plan.
- The rule is vague or vests unbridled discretion in the state university; or
- The rule is arbitrary or capricious.

(a) A petition challenging a state university rule shall be filed with the university board of trustees or designee. If the filed petition is not of sufficient specificity or does not as a matter of law state sufficient grounds to challenge a rule, the petition may be dismissed, with or without leave given to amend. If the petition is of sufficient specificity, within 15 days after receiving the petition, if there are any disputed issues of material facts, the university board of trustees or designee, shall assign a hearing officer who shall conduct a hearing within 60 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties for good cause shown. If there are no disputed issues of material fact, the matter shall be referred to the Board of Trustees for resolution.

(b) The failure of a state university to follow the rulemaking procedures set forth in this procedure shall be presumed to be material; however, the state university may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(c) Hearings shall be *de novo* in nature and shall be conducted pursuant to Division of Administrative Hearings Rules, Chapter 28-106, except if there is any conflict, the instant policy controls. The petitioner must demonstrate by clear and convincing evidence that a rule is invalid. The petitioner shall be adverse to the state university. Other substantially affected persons may join the proceedings as interveners on appropriate terms which shall not unduly delay the proceedings.

(d) Within 30 days after the hearing, the hearing officer shall issue a recommended order directed to university board of trustees, which shall timely issue a final decision whether all or part of a rule is invalid. If a state university rule is declared invalid in whole or in part it shall give notice of the decision on its internet website.

## 2. Challenges to Unpromulgated State University Rules

(a) Any substantially affected person may seek a determination that a non-rule statement of a state university is not in accord with this procedure by filing a petition with the state university board of trustees or designee. The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule as defined in this procedure and that the state university has not adopted the statement by these rulemaking procedures.

(b) Within 15 days after receipt of the petition, the university board of trustees or designee shall assign a hearing officer who shall conduct a hearing in compliance with paragraph E1(c) within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties for good cause shown. If a hearing is held and the petitioner proves the allegations of the petition, the state

university shall have the burden of proving that rulemaking is not feasible. Rulemaking shall be presumed feasible unless:

- The state university has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
- Related matters are not sufficiently resolved to enable the state university to address a statement by rulemaking.

(c) Within 30 days after the hearing, the hearing officer shall issue a recommended order directed to the university board of trustees, which may determine that all or part of a statement should have been promulgated as a rule under this procedure. The decision shall be published on the university internet website and all reliance on the statement or any substantially similar statement as a basis for action shall be discontinued.

(d) If, prior to a recommended order of a hearing officer, the university board of trustees begins rulemaking under this procedure to address the statement, a presumption is created that the board of trustees is acting expeditiously and in good faith to adopt rule(s) that address the statement, and reliance upon the statement or any substantially similar statement as a basis for action shall be permitted.

(e) If the state university board of trustees fails to approve rules that address the statement within 180 days after publishing notice of proposed rule(s) under paragraph D1, for the purposes of the rule challenge proceeding, a presumption is created that the state university is not acting expeditiously and in good faith to adopt rules, and the case should proceed to a final hearing.

F. Emergency Rules.

1. Adoption

An emergency rule may be adopted if there is an immediate danger to the public health, safety, or welfare under a procedure which is fair under the circumstances. The action taken must be only that necessary to protect the public interest in the emergency. At the time of, or prior to or state university's action, it must publish on its internet website the specific facts and reasons for concluding that the procedure is fair under the circumstances. An emergency rule shall not be effective for a period longer than 90 days or less as directed by the Board of Governors and shall not be renewable. However, the state university may take identical action under the regular rulemaking procedure set forth herein.

## 2. Challenges

Within 7 days after receiving a petition from a substantially affected person challenging an emergency rule, if the petition complies with the requirements of paragraph E1(a), the university board of trustees shall assign a hearing officer. The hearing officer shall conduct a hearing in compliance with paragraph E1(c) within 20 days, unless the petition is withdrawn. Within 10 days of the hearing, the hearing officer shall issue a recommended order directed to the university board of trustees, which shall timely issue a final decision.

## G. Appeal.

An appeal of any final order of a university board of trustees may be filed with the Board of Governors within 30 days of the rendition of the final order. The appeal shall be no more than ten pages and shall clearly and concisely explain the error alleged. The university shall have 20 days to respond with a written brief of no more than 10 pages, at which point it is within the Board of Governors' discretion to grant or deny review of the



appeal. If the Board of Governor's chooses to deny any review, or to grant review and either affirm or deny the requested relief, such decision shall be provided to the parties and posted on the Board of Governors' internet website.

H. Court of Law.

Final decisions of the university boards of trustees may be challenged in a court of law pursuant to certiorari review under Florida Rule of Appellate Procedure 9.030(b)(2) only after exhausting the available administrative remedies under this procedure.