

Board of Governors Rule

Governance
Adoption, Repeal, or Amendment of Rules
Responsible Units: Office of the President and
Office of General Counsel
Adopted: September 8, 2017
Effective: September 28, 2017
Revision History: Prior BOG Policy 45
(September 8, 2006)
Review Date: April 2023

BOG GOVERNANCE RULE 1.1 ADOPTION, AMENDMENT, OR REPEAL OF RULES

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to provide a fair process that encourages and facilitates engagement by the University community, the public, and other interested parties regarding the adoption, amendment, or repeal of West Virginia University Board of Governors Rules.
- 1.2 This Rule outlines the guiding principles for the adoption, amendment, or repeal for all Board of Governors Rules. It also outlines the appropriate procedures for University community engagement, public comment, and publication of all Rules.
- 1.3 Unless specifically stated to the contrary within a Rule, all Rules of the Board of Governors apply to all institutions under the Board's control and authority, including West Virginia University, West Virginia University Institute of Technology, and West Virginia University Potomac State College.

SECTION 2: RULE DEVELOPMENT.

- 2.1 Should either the Board of Governors or the President determine that a new Rule is needed or a current Rule should be amended or repealed, an appropriate University unit(s) will be assigned by the President to evaluate and then draft new or amended Rule language.
- 2.2 The assigned University unit(s) is encouraged to consult with interested University community groups before finalizing a draft Rule that will be presented to the Board of Governors.
 - 2.2.1 In accordance with W. Va. Code §§ 18B-7-3 and 18B-9B-1, the University must consult with and provide 30 calendar days written notice to the University's Staff Council on any proposed Board of Governors Rule regarding a reduction in force or the University's classification and compensation system.

- 2.2.2 In accordance with W. Va. Code §18B-8-7, the University must consult with and provide 30 calendar days written notice to the University's Faculty Senate on any proposed Board of Governors Rule regarding full-time faculty salaries.
 - 2.2.3 Each of the 30 calendar days written notice periods referenced in Sections 2.2.1 and 2.2.2 may run concurrently with the 30 calendar days public comment period discussed in Section 3.2.
 - 2.3 A draft Rule must be approved by President in consultation with senior management leaders before it is presented to the Board of Governors.
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SECTION 3: BOARD OF GOVERNORS REVIEW, PUBLIC COMMENT, AND APPROVAL PROCESS.

3.1 *Notice of Proposed Rulemaking.*

- 3.1.1 After a draft Rule is approved by the President, the Board of Governors shall review the draft Rule and may proceed to issue a Notice of Proposed Rulemaking.
- 3.1.2 The Notice of Proposed Rulemaking must include:
 - 3.1.2.1 A copy of the proposed Rule if adoption or amendment is proposed, or a copy of the current Rule if repeal is proposed;
 - 3.1.2.2 A brief description of the subject matter of the Rule;
 - 3.1.2.3 How public comments will be received by the University; and
 - 3.1.2.4 The time frame during which public comments will be received.
- 3.1.3 The Notice of Proposed Rulemaking must be posted on the University's designated policy website. Additionally, the University shall inform faculty, staff, and students of the Notice of Proposed Rulemaking through email, University announcements, or as otherwise deemed appropriate by the President.

3.2 *Public Comment Period.*

- 3.2.1 A Notice of Proposed Rulemaking must provide for a public comment period of at least 30 calendar days during which written comments will be received.

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3.2.2 If written comments are received during the public comment period, the University shall summarize the comments received and/or post these comments on the University's designated policy website for 10 calendar days before final Board of Governors action is taken.

3.3 *Approval of the Rule.*

3.3.1 If public comments are received during the public comment period, all proposals for the adoption, amendment, or repeal of a Rule require final Board action before the Rule will be effective. In those instances, the adoption, amendment, or repeal of the Rule will be effective 15 business days after the Board approves the Rule, or on such a later date that the Board may designate as the effective date of the Rule.

3.3.2 The Board of Governors or the President may amend a proposed Rule as a result of the comments received. If a proposed Rule is amended as a result of comments received, the Board may approve the proposed Rule as final without an additional notice or public comment period.

3.3.3 If no comments are received during the public comment period, Board of Governors action is not necessary for the adoption, amendment, or repeal of a Rule to be effective. But only if the Board, at the time of approving the Notice of Proposed Rulemaking, explicitly authorized such action without further Board approval. In those instances, the adoption, amendment, or repeal of the Rule will be effective on the 1 business day following the end of the 30 days comment period.

SECTION 4: EMERGENCY RULEMAKING.

4.1 The Board of Governors may adopt a new Rule, or amend or repeal a current Rule, as an Emergency Rule without first following the formal rulemaking procedures set forth in Sections 2 and 3.

4.2 An Emergency Rule may be adopted when such action is necessary:

4.2.1 to immediately preserve public peace, health, safety, or welfare at the University;

4.2.2 to comply with a time limitation established by state or federal law or regulation;

4.2.3 to prevent substantial harm to the public interest;

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- 4.2.4 to address a financial exigency; or
 - 4.2.5 to immediately preserve critical University operations and functions.
 - 4.3 Any Emergency Rule approved by the Board shall be immediately posted on the University's policy website. Additionally, appropriate notice of the Emergency Rule shall be given to University faculty, staff, and students.
 - 4.4 Any Emergency Rule shall remain in effect no longer than 90 calendar days.
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SECTION 5: ORGANIZATION AND PUBLICATION OF RULES.

- 5.1 All approved Board of Governors Rules shall be assigned a topic category and provided an identifying number within that topic category.
 - 5.1.1 Board of Governors approval, through the formal rulemaking procedures set forth in Sections 2 and 3, is not required if a Rule is being re-numbered or moved into a different topic category. However, changes to the text of any Rule must go through the formal rulemaking procedures.
 - 5.2 All proposed and approved Board of Governor Rules shall be published on the University's designated policy website for easy access to the University community and to the public.
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SECTION 6: REPORTING REQUIREMENTS TO THE HIGHER EDUCATION POLICY COMMISSION

- 6.1 Within 15 business days of the adoption, amendment, or repeal of any Rule, and before the change is implemented, the Board of Governors must provide a copy of the Rule to the Higher Education Policy Commission (HEPC) for its review.
- 6.2 No later than October 1 of each year, the Board of Governors shall file with HEPC a list of all Rules that were in effect for the University on July 1 of that year, including the most recent date on which each Rule was considered and adopted, amended, or repealed by the Board of Governors.
 - 6.2.1 The Board of Governors' submission to HEPC shall include a statement by the Chair of the Board certifying that the Board has complied with W.Va. Code § 18B-1-6 when each listed Rule was promulgated and adopted.

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SECTION 7: DEFINITIONS.

- 7.1 “Internal policies and procedures” means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application that does not constitute a Rule, as defined below, and thus does not require Board of Governors approval.
- 7.2 “President” means the President of West Virginia University or his or her designee.
- 7.3 “Rule” means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application which has institution-wide effect or which affects the rights, privileges, or interest of employees, students, or citizens of West Virginia. However, regulations, guidelines, or policies established for individual units, divisions, departments, or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department, or school or with academic curricular policies that do not constitute a mission change for the institution are excluded from the definition of a Rule.

SECTION 8: DELEGATION.

- 8.1 The Board of Governors delegates to the President the authority to adopt additional internal policies and procedures to effectuate the implementation of any Board of Governors Rule or in furtherance of any other authority that the Board of Governors has specifically delegated to the President.

SECTION 9: AUTHORITY.

- 9.1 W. Va. Code §18B-1-6, §18B-2A-4.

SECTION 10: SUPERSEDING PROVISIONS.

- 10.1 This Rule supersedes and replaces Higher Education Policy Commission (HEPC) Series 4 (W. Va. Code R. §§ 133-4-1 to -8), which was approved April 19, 2013 and any other Rule of HEPC which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces West Virginia University Board of Governors Policy 45, which was approved September 8, 2006 and any internal policy or procedure which relates to the subject matter contained within this Rule.

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