

## **Florida Polytechnic University Board of Trustees**

### **Removal of Members of the Board of Trustees Policy**

**Preamble:** Section 7 of Article IX of the Florida Constitution creates the Boards of Trustees. Each Trustee is a state officer and is governed by Section 7 of Article IV of the Florida Constitution which provides for the suspension of state officers by the Governor and final removal from office by the Florida Senate.

Each Trustee is also subject to the Florida Statutes adopted by the Florida Legislature which implement that Constitutional section. The Statutes make specific provisions for suspension and removal of state officers from office. The Statutes provide for suspension from office of a state officer by the Governor for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.

**Nature and Scope:** To identify the governing procedures and law for the removal of members of the Florida Polytechnic University Board of Trustees.

**Policy Statement:** Removal of members of the Florida Polytechnic University Board of Trustees is governed exclusively by the provisions of Section 7 of Article IV of the Florida Constitution entitled "Suspensions; filling office during suspensions", and Part V of Chapter 112 of the Florida Statutes entitled "Suspension, Removal, or Retirement of Public Officers".

In accordance with these governing authorities, any person with credible information of commission of any acts by a member of the Florida Polytechnic University Board of Trustees constituting grounds for suspension from office by the Governor of the State of Florida on the basis of "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony" should report such information to the Office of the Governor or the Florida Commission on Ethics.

Suspension or removal from the board may occur by an order of the Governor of the State of Florida, the Ethics Commission, or the Florida Board of Governors. Further, a finding of a violation of the Code of Ethics can result in fines and other numerous penalties, including removal or suspension from the board as set forth in section 112.317 of the Florida Statutes.

Subsection 1.001(2)(b) of the Regulations of the Florida Board of Governors provides that the chair of the board of trustees shall notify the Board of Governors or the Governor, as applicable, in writing whenever a board member has three consecutive unexcused absences from regular board meetings in any fiscal year. Said absences may be grounds for removal.

**Outline of the Suspension and Removal Process:**

Article IV, section 7 of the Florida Constitution provides:

- (a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to

impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

- (b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.
- (c) By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.

Article IV, section 7 of the Florida Constitution is implemented in Part V of Chapter 112, Florida Statutes (Sections 112.40-112.52).

The suspension and removal process is initiated when a public officer receives notice of a suspension as set forth in Section 112.40, Florida Statutes. This section requires that an order of suspension issued by the Governor be delivered to the Department of State, which in turn must “forthwith deliver copies by registered mail, or otherwise as it may be advised, to the officer suspended, the Secretary of the Senate, and the Attorney General.”

Subsection 112.41(1), Florida Statutes, provides that the Governor’s order of suspension must specify facts sufficient to advise both the officer and the Senate of the charges forming the basis of the suspension. As further set forth in Section 112.40, Florida Statutes, the suspension of a public officer is effective upon its filing with the Department of State and no further communication by the Governor with the Senate is necessary to permit the Senate to act.

Subsection 112.41(2), Florida Statutes, directs the Senate to conduct a hearing in the manner prescribed by Rules of the Senate. Rule Twelve of the Rules of the Senate addresses the procedure to be followed when the Senate has received an executive order of suspension issued by the Governor. Senate Rule Twelve sets forth the following procedure:

*Notice of Hearing*

- Within three months after the Secretary of the Senate receives the suspension order, unless suspension proceedings are held in abeyance, the committee, subcommittee, or special master shall issue a notice of hearing for a prehearing conference or a hearing on the merits. The Governor and the suspended official shall be given reasonable notice in writing of any hearing or prehearing conference before the committee, subcommittee, or special master. [Sec. 12.9(1), Senate Rules].
- An executive suspension of a public official who has pending against him or her criminal charges, or an executive suspension of a public official that is challenged in a court shall be referred to the Ethics and Elections Committee, other appropriate committee, or special master; however, all inquiry or investigation or hearings thereon shall be held in abeyance and the matter shall not be considered by the Senate, committee, subcommittee, or special

master until the pending charges have been dismissed, or until final determination of the criminal charges at the trial court level, or until the final determination of a court challenge, if any, and the exhaustion of all appellate remedies for any of the above. The committee, subcommittee, or special master shall institute action within three months after the conclusion of any pending proceedings. [Sec. 12.9(2), Senate Rules].

- In a suspension case in which the criminal charge is a misdemeanor, the committee, subcommittee, or special master and the Senate may proceed if the written consent of counsel for the Governor and of the suspended official is obtained. [Sec. 12.9(2), Senate Rules].

#### *Prehearing Conference*

- The committee, subcommittee, or special master may provide for a prehearing conference with counsel for the Governor and the suspended official to narrow the issues involved in the suspension. At such conference, both the Governor and the suspended official shall set forth the names and addresses of all the witnesses they intend to call, the nature of their testimony, photocopies of all documentary evidence, and a description of all physical evidence that will be relied on by the parties at the hearing. Each shall state briefly what each expects to prove by such testimony and evidence. [Sec. 12.9(3), Senate Rules].

#### *Defenses of the Suspended Official*

- The suspended official may file with the Secretary of the Senate, no later than ten days prior to the first prehearing conference, or no later than the date set by the committee, subcommittee, or special master if no prehearing conference is held, all written defenses or matters in avoidance of the charges contained in the suspension order. [Sec. 12.9(3), Senate Rules].

#### *Bill of Particulars*

- The committee, subcommittee, or special master may request that the Governor file a bill of particulars containing a statement of further facts and circumstances supporting the suspension order. [Sec. 12.9(4), Senate Rules].
- Within twenty days after receipt of the Governor's bill of particulars, the suspended officer shall file a response with the committee, subcommittee, or special master. Such response shall specifically admit or deny the facts or circumstances set forth in the Governor's bill of particulars, and may further make such representation of fact and circumstances or assert such further defenses as are responsive to the bill of particulars or as may bear on the matter of the suspension. [Sec. 12.9(4), Senate Rules].

#### *Action by the Senate*

- The committee, subcommittee, and special master have the authority to request the issuance of subpoenas, subpoenas duces tecum, and other necessary processes authorized by the Senate Rules. [Sec. 12.13, Senate Rules].
- The committee chair, subcommittee chair, and special master may each administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear to testify on matters pending before the committee, subcommittee, or special master. [Sec. 12.13, Senate Rules].

- The Senate may act on the recommendations of the committee, subcommittee, or special master at any time it is sitting but no later than the end of the next regular session of the Legislature. [Sec. 12.9(5), Senate Rules].

*Conflict Between the Statutes and Senate Rules*

- In the event there is a direct conflict between the provisions of Rule Twelve and Part V of chapter 112 of the Florida Statutes, Rule Twelve, derived from Article III, Section 4(a) of the State Constitution takes precedence. [Sec. 12.14, Senate Rules].

In the event an officer who has been suspended by the Governor is not removed by the Senate, Section 112.44, Florida Statutes, provides that that the officer shall be reinstated.

*Adopted by the Board of Trustees on June 2, 2016.*

Chair's Signature: \_\_\_\_\_  
