

Bill No. HB 1001, 1st Eng.

Barcode 675996

CHAMBER ACTION

Senate

House

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The Committee on Education (Lynn) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Responsibility for the State University System under Section 7, Article IX of the State Constitution; legislative finding and intent.--

(1) LEGISLATIVE FINDINGS.--

(a) Definitions.--For purposes of this act, the term:

1. "Board of Governors" as it relates to the State University System and as used in Section 7, Article IX of the State Constitution and Title XLVIII and other sections of the Florida Statutes is the Board of Governors of the State University System which belongs to and is part of the executive branch of state government.

2. "Institutions of higher learning" as used in the

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1 State Constitution and the Florida Statutes includes publicly
2 funded state universities.

3 3. "Public officer" as used in the Florida Statutes
4 includes members of the Board of Governors.

5 4. "State university" or "state universities" as used
6 in the State Constitution and the Florida Statutes are
7 agencies of the state which belong to and are part of the
8 executive branch of state government. This definition of state
9 universities as state agencies is only for the purposes of the
10 delineation of constitutional lines of authority. Statutory
11 exemptions for state universities from statutory provisions
12 relating to state agencies that are in effect on the effective
13 date of this act remain in effect and are not repealed by
14 virtue of this definition of state universities.

15 (b) Constitutional duties of the Board of Governors of
16 the State University System.--In accordance with Section 7,
17 Article IX of the State Constitution, the Board of Governors
18 of the State University System has the duty to operate,
19 regulate, control, and be fully responsible for the management
20 of the whole publicly funded State University System and the
21 board, or the board's designee, has responsibility for:

22 1. Defining the distinctive mission of each
23 constituent university.

24 2. Defining the articulation of each constituent
25 university in conjunction with the Legislature's authority
26 over the public schools and community colleges.

27 3. Ensuring the well-planned coordination and
28 operation of the State University System.

29 4. Avoiding wasteful duplication of facilities or
30 programs within the State University System.

31 5. Accounting for expenditure of funds appropriated by

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1 the Legislature for the State University System as provided by
2 law.

3 6. Submitting a budget request for legislative
4 appropriations for the institutions under the supervision of
5 the board as provided by law.

6 7. Adopting strategic plans for the State University
7 System and each constituent university.

8 8. Approving, reviewing, and terminating degree
9 programs of the State University System.

10 9. Governing admissions to the state universities.

11 10. Serving as the public employer to all public
12 employees of state universities for collective bargaining
13 purposes.

14 11. Establishing a personnel system for all state
15 university employees; however, the Department of Management
16 Services shall retain authority over state university
17 employees for programs established in sections 110.123,
18 110.1232, 110.1234, 110.1238, and 110.161, Florida Statutes,
19 and in chapters 121, 122, and 238, Florida Statutes.

20 12. Complying with, and enforcing for institutions
21 under the board's jurisdiction, all applicable local, state,
22 and federal laws.

23 (c) Constitutional duties of the Legislature.--In
24 accordance with Section 3, Article II of the State
25 Constitution, which establishes the separation of powers of
26 three branches of government; Section 1, Article III of the
27 State Constitution, which vests the legislative power of the
28 state in the Legislature; Section 8, Article III of the State
29 Constitution, which provides the exclusive executive veto
30 power of the Governor and the exclusive veto override power of
31 the Legislature; Section 19, Article III of the State

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1 Constitution, which requires the Legislature to enact state
2 planning and budget processes and requirements for budget
3 requests by general law; Section 1, Article VII of the State
4 Constitution, which requires that the authority to expend
5 state funds be by general law enacted by the Legislature; and
6 Section 1, Article IX of the State Constitution, which
7 requires the Legislature to make adequate provision by law for
8 the "establishment, maintenance, and operation of institutions
9 of higher learning," the Legislature has the following
10 responsibilities:

11 1. Making provision by law for the establishment,
12 maintenance, and operation of institutions of higher learning
13 and other public education programs that the needs of the
14 people may require.

15 2. Appropriating all state funds through the General
16 Appropriations Act or other law.

17 3. Establishing tuition and fees.

18 4. Establishing policies relating to merit and
19 need-based student financial aid.

20 5. Establishing policies relating to expenditure of,
21 accountability for, and management of funds appropriated by
22 the Legislature or revenues authorized by the Legislature.

23 This includes, but is not limited to, policies relating to:
24 budgeting, deposit of funds; investments; accounting;
25 purchasing, procurement, and contracting; insurance; audits;
26 maintenance and construction of facilities; property; bond
27 financing; leasing; and information reporting.

28 6. Maintaining the actuarial and fiscal soundness of
29 centrally administered state systems by requiring state
30 universities to continue to participate in programs such as
31 the Florida Retirement System, the state group health

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1 insurance programs, the state telecommunications and data
2 network (SUNCOM), and the state casualty insurance program.

3 7. Establishing and regulating the use of state powers
4 and protections, including, but not limited to, eminent
5 domain, certified law enforcement, and sovereign immunity.

6 8. Establishing policies relating to the health,
7 safety, and welfare of students, employees, and the public
8 while present on the campuses of institutions of higher
9 learning.

10 (2) LEGISLATIVE INTENT.--It is the intent of the
11 Legislature to reenact laws relating to the Board of Governors
12 of the State University System, the university boards of
13 trustees, the State Board of Education, and the postsecondary
14 education system in accordance with the findings of this act.

15 Section 2. Subsection (17) is added to section
16 112.313, Florida Statutes, to read:

17 112.313 Standards of conduct for public officers,
18 employees of agencies, and local government attorneys.--

19 (17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.--No
20 citizen member of the Board of Governors of the State
21 University System, nor any citizen member of a board of
22 trustees of a local constituent university, shall have or hold
23 any employment or contractual relationship as a legislative
24 lobbyist requiring annual registration and reporting pursuant
25 to s. 11.045.

26 Section 3. This act shall take effect upon becoming a
27 law.

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30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

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3 and insert:

4 A bill to be entitled

5 An act relating to postsecondary education;

6 providing definitions; specifying the

7 constitutional duties of the Board of Governors

8 of the State University System under s. 7, Art.

9 IX of the State Constitution; specifying the

10 constitutional duties of the Legislature;

11 providing legislative intent; amending s.

12 112.313, F.S.; prohibiting citizen members of

13 the Board of Governors of the State University

14 System and citizen members of a board of

15 trustees of a local constituent university from

16 representing principals before the Legislature;

17 providing an effective date.

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19 WHEREAS, in 2000, the Florida Legislature enacted

20 chapter 2000-321, Laws of Florida, the Florida Education

21 Governance Reorganization Act of 2000, which restructured the

22 state's public education system to create a seamless K-20

23 system and repealed the Florida Board of Regents, an entity

24 previously established by the Legislature to govern the

25 administration of the State University System, and

26 WHEREAS, in 2000, the Legislature consolidated the

27 administration of the state's institutions of higher education

28 with grades K through 12 in the Florida Board of Education

29 (later the State Board of Education) and the Commissioner of

30 Education, and

31 WHEREAS, in 2002, the voters amended the State

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1 Constitution to create the Board of Governors to "be
 2 responsible for the coordinated and accountable operation of
 3 the whole university system" and did not express an intent to
 4 limit legislative powers granted in section 1, Article IX of
 5 the State Constitution, and

6 WHEREAS, in its review of the ballot title and summary
 7 to the initiative proposal creating the Board of Governors,
 8 the Florida Supreme Court found that the amendment would
 9 authorize "the statewide board of governors to 'operate,
 10 regulate, control, and be fully responsible for the management
 11 of the whole university system'" [Advisory Opinion to the
 12 Attorney General Re Local Trustees, 819 So.2d 725, 729 (Fla.
 13 2002)], and

14 WHEREAS, the Florida Supreme Court found that the
 15 ballot title and summary for the proposed amendment plainly
 16 and unequivocally expressed its chief purpose and that this
 17 purpose "does not substantially affect or alter any provision
 18 in the State Constitution" [Id. at 732], and

19 WHEREAS, the Court's advisory opinion indicates that
 20 the Court interpreted "the plain unequivocal language" of the
 21 proposal's ballot summary as not making fundamental changes
 22 redistributing legislative power to an entity within another
 23 branch, which would alter the balance of governmental powers,
 24 and

25 WHEREAS, since 1968 and continuing through today,
 26 Section 1 of Article IX of the State Constitution provides
 27 that "[a]dequate provision shall be made by law for ... the
 28 establishment, maintenance, and operation of institutions of
 29 higher learning ...," and

30 WHEREAS, as of November 2002, the Board of Governors is
 31 charged by Section 7 of Article IX of the State Constitution

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1 with the responsibility to "operate, regulate, control, and be
2 fully responsible for the management of the whole university
3 system," and

4 WHEREAS, the canons of Florida statutory construction
5 require that laws on the same subject are to be construed "in
6 harmony with one another" so as not to render any part
7 meaningless based upon the presumption that the people would
8 not have adopted useless constitutional law [See, e.g., *Unruh*
9 *v. State*, 669 So.2d 242 (Fla. 1996); see, also, *State ex rel.*
10 *McKay v. Keller*, 191 So. 542 (Fla. 1939) (holding that
11 principles governing the construction of statutes are
12 generally applicable as well to the construction of
13 constitutions)], and

14 WHEREAS, in accordance with these dictates, it is the
15 Legislature's intention herein to harmonize and give
16 meaningful effect to both Sections 1 and 7 of Article IX of
17 the State Constitution, and

18 WHEREAS, litigants in *Floridians for Constitutional*
19 *Integrity, Inc., et al. v. State Board of Education and Board*
20 *of Governors*, Case No. 04-CA-3040, filed in the Second
21 Judicial Circuit in and for Leon County, Florida, have alleged
22 that the 2002 amendment so altered the State Constitution that
23 the Legislature cannot enact laws controlling the policy or
24 direction of the State University System, that the Board of
25 Governors is not subject to legislative control, that the
26 Board of Governors controls such public funds as tuition and
27 student fees, federal contracts and grants, and that all
28 authority over the State University System was transferred by
29 the 2002 amendment to the Board of Governors subject only to
30 legislative appropriation authority of only the state's
31 general revenue, and

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1 WHEREAS, on the contrary, the Florida Supreme Court
 2 stated that while the 2002 amendment interacts with Section 1
 3 of Article IX, "it does not substantially affect or change" it
 4 [Advisory Opinion, Id. at 730], and

5 WHEREAS, it is the duty of the Florida Legislature to
 6 uphold Section 3 of Article II of the State Constitution and
 7 safeguard the powers of one branch of government from
 8 encroachments from entities of the other branches, and

9 WHEREAS, the Legislature has found that the powers of
 10 the Legislature in Section 1 of Article IX of the State
 11 Constitution and the powers of the Board of Governors in
 12 Section 7 of Article IX of the State Constitution must and can
 13 be defined in harmony to give each entity its full measure of
 14 constitutional responsibility, and

15 WHEREAS, Section 18 of Article III of the State
 16 Constitution confers upon the Legislature the obligation to
 17 prohibit conflict between the public duties and private
 18 interests of state officers, and

19 WHEREAS, the members of the statewide board of
 20 governors and local boards of trustees, as established in
 21 Section 7, Article IX of the State Constitution, are state
 22 officers and subject to the ethics laws of the State of
 23 Florida, and

24 WHEREAS, it is the intent of the Legislature to ensure
 25 good government practices in the operation of the education
 26 boards of this state, and

27 WHEREAS, the Legislature finds that lobbyists serving
 28 as members of state education boards present an actual or
 29 potential conflict of interest, and

30 WHEREAS, the Legislature finds that the Board of
 31 Governors and the local boards of trustees should reach their

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1 decisions free of political influence and in the best
2 interests of the people of the State of Florida, NOW,
3 THEREFORE,
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