

1                   A bill to be entitled  
2           An act relating to governance of the State University  
3           System; providing definitions; specifying the  
4           constitutional duties of the Board of Governors of the  
5           State University System under s. 7, Art. IX of the State  
6           Constitution; specifying the constitutional duties of the  
7           Legislature; providing legislative intent; providing an  
8           effective date.

9  
10           WHEREAS, in 1999, the Florida Legislature, in its efforts  
11           to provide for a uniform, efficient, safe, secure, and high  
12           quality system of free public schools enacted chapter 99-398,  
13           Laws of Florida, the A+ Plan for transforming Florida schools,  
14           which provided a school grading system and strengthened  
15           Florida's education accountability system; and, in 2000, the  
16           Florida Legislature enacted chapter 2000-321, Laws of Florida,  
17           the Florida Education Governance Reorganization Act of 2000,  
18           which restructured the state's public education system to create  
19           a seamless K-20 system and repealed the Florida Board of  
20           Regents, an entity previously established by the Legislature to  
21           govern the administration of the State University System, and

22           WHEREAS, in 2000, the Legislature consolidated the  
23           administration of Florida's institutions of higher education  
24           with grades K through 12 in the Florida Board of Education  
25           (later the State Board of Education) and the Commissioner of  
26           Education, and

27           WHEREAS, in 2002, Florida voters amended the State  
28           Constitution to create the Board of Governors to administer the

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29 management of the State University System, and

30 WHEREAS, the ballot summary stated that the Board of  
31 Governors would "be responsible for the coordinated and  
32 accountable operation of the whole university system" but did  
33 not mention any limitation of legislative powers, and

34 WHEREAS, in its review of the ballot title and summary to  
35 the initiative proposal creating the Board of Governors, the  
36 Florida Supreme Court found that the amendment would authorize  
37 "the statewide board of governors to 'operate, regulate,  
38 control, and be fully responsible for the management of the  
39 whole university system' which is currently the legislative  
40 responsibility and duty of the Florida Board of Education, an  
41 organization located within the cabinet system of the executive  
42 branch," [Advisory Opinion to the Attorney General Re Local  
43 Trustees, 819 So.2d 725, 729 (Fla. 2002)], thereby equating the  
44 powers of the Board of Governors to the powers that had  
45 previously been allotted by the Legislature to the Board of  
46 Education, and

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

52 WHEREAS, the Court's advisory opinion indicates that the  
53 Court interpreted "the plain unequivocal language" of the  
54 proposal's ballot summary as not making fundamental changes  
55 redistributing legislative power to an entity within another  
56 branch, which would alter the balance of governmental powers,

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57 and

58 WHEREAS, since 1968 and continuing through today, section 1  
59 of Article IX of the State Constitution provides that  
60 "[a]dequate provision shall be made by law for ... the  
61 establishment, maintenance, and operation of institutions of  
62 higher learning ...," and

63 WHEREAS, as of November 2002, the Board of Governors is  
64 charged by section 7 of Article IX of the State Constitution  
65 with the responsibility to "operate, regulate, control, and be  
66 fully responsible for the management of the whole university  
67 system," and

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

77 WHEREAS, in accordance with these dictates, it is the  
78 Legislature's intention herein to harmonize and give meaningful  
79 effect to both sections 1 and 7 of Article IX of the State  
80 Constitution, and

81 WHEREAS, the First District Court has held (1) that the  
82 Board of Governors is the public employer for state university  
83 employees or at least is entitled to name the public employer  
84 for them [Fla. Pub. Emp. Council 79 v. PERC, 871 So.2d 270 (Fla.

85 1<sup>st</sup> DCA 2004)]; and (2) that the Board of Governors controls the  
 86 admissions policies of state universities [NAACP v. Fla. Bd. Of  
 87 Regents, 876 So.2d 636 (Fla. 1<sup>st</sup> DCA 2004)]; and, in dicta,  
 88 without considering existing portions of Article IX,  
 89 specifically those in section 1, and without any sufficiently  
 90 interested parties raising alternative arguments, the First  
 91 District Court has suggested that the Board of Governors' power  
 92 is subject only to the Legislature's authority to appropriate  
 93 funds, confirm appointed members of the board, and set staggered  
 94 terms for the appointed members, and

95 WHEREAS, such a view renders meaningless section 1 of  
 96 Article IX and grants greater powers to the Board of Governors  
 97 than the State Constitution dictates, while stripping the  
 98 Legislature of powers in a manner not intended by Floridians,  
 99 and

100 WHEREAS, litigants in Floridians for Constitutional  
 101 Integrity, Inc., et al. v. State Board of Education and Board of  
 102 Governors, Case No. 04-CA-3040, filed in the Second Judicial  
 103 Circuit in and for Leon County, Florida, have alleged that the  
 104 2002 amendment so altered the State Constitution that the  
 105 Legislature cannot enact laws controlling the policy or  
 106 direction of the State University System, that the Board of  
 107 Governors is not subject to legislative control, that the Board  
 108 of Governors controls such public funds as tuition and student  
 109 fees and federal contracts and grants, and that all authority  
 110 over the State University System was transferred by the 2002  
 111 amendment to the Board of Governors subject only to legislative  
 112 appropriation authority of only the state's general revenues,

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113 and

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

118 WHEREAS, the allegations of the plaintiffs in Floridians  
119 for Constitutional Integrity, Inc., cannot be reconciled with  
120 the Court's holding in Advisory Opinion to the Attorney General,  
121 infra, because the essence of legislative power is the exercise  
122 of policy-related discretion over the content of law and were  
123 the 2002 amendment construed to have given all lawmaking  
124 authority except for the authority to appropriate funds to the  
125 Board of Governors that certainly would have effectuated a very  
126 significant and substantial alteration to multiple provisions in  
127 the State Constitution, and

128 WHEREAS, section 7 of Article IX of the State Constitution  
129 does not expressly provide for the Board of Governors to  
130 exercise all legislative powers save the power to appropriate,  
131 and

132 WHEREAS, it is the duty of the Florida Legislature to  
133 uphold section 3 of Article II of the State Constitution and  
134 safeguard the powers of one branch of government from  
135 encroachments from entities of the other branches, and

136 WHEREAS, the Legislature has found that the powers of the  
137 Legislature in section 1 of Article IX of the State Constitution  
138 and the powers of the Board of Governors in section 7 of Article  
139 IX of the State Constitution must and can be defined in harmony  
140 to give each entity its full measure of constitutional

141 responsibility while fitting together in the balanced symmetry  
 142 envisioned by the voters of Florida who expressed their desire  
 143 for a Board of Regents type of executive oversight of the State  
 144 University System, NOW, THEREFORE,

145  
 146 Be It Enacted by the Legislature of the State of Florida:

147  
 148 Section 1. Responsibility for the State University System  
 149 under s. 7, Art. IX of the State Constitution; legislative  
 150 findings and intent.--

151 (1) LEGISLATIVE FINDINGS.--

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

153 1. "Board of Governors" as it relates to the State  
 154 University System and as used in s. 7, Art. IX of the State  
 155 Constitution and Title XLVIII and other sections of the Florida  
 156 Statutes is the Board of Governors of the State University  
 157 System which belongs to and is part of the executive branch of  
 158 state government.

159 2. "Institutions of higher learning" as used in the State  
 160 Constitution and the Florida Statutes includes publicly funded  
 161 state universities.

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

164 4. "State agency" as used in the Florida Statutes includes  
 165 publicly funded state universities.

166 5. "State university" or "state universities" as used in  
 167 the State Constitution and the Florida Statutes are agencies of  
 168 the state which belong to and are part of the executive branch

169 of state government.

170 (b) Constitutional duties of the Board of Governors of the  
 171 State University System.--In accordance with s. 7, Art. IX of  
 172 the State Constitution, the Board of Governors of the State  
 173 University System has the duty to operate, regulate, control,  
 174 and be fully responsible for the management of the whole  
 175 publicly funded State University System and the board, or the  
 176 board's designee, has responsibility for:

177 1. Defining the distinctive mission of each constituent  
 178 university.

179 2. Defining the articulation of each constituent  
 180 university in conjunction with the Legislature's authority over  
 181 the public schools and community colleges.

182 3. Ensuring the well-planned coordination and operation of  
 183 the State University System.

184 4. Avoiding wasteful duplication of facilities or programs  
 185 within the State University System.

186 5. Accounting for expenditure of funds appropriated by the  
 187 Legislature for the State University System as provided by law.

188 6. Submitting a budget request for legislative  
 189 appropriations for the institutions under the supervision of the  
 190 board as provided by law.

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

193 8. Approving, reviewing, and terminating State University  
 194 System degree programs.

195 9. Governing admissions to the state universities.

196 10. Serving as the public employer with respect to all

197 public employees of state universities for collective bargaining  
 198 purposes.

199 11. Establishing a personnel system for all state  
 200 university employees; however, the Department of Management  
 201 Services shall retain authority over state university employees  
 202 for programs established in ss. 110.123, 110.1232, 110.1234,  
 203 110.1238, and 110.161, Florida Statutes, and in chapters 121,  
 204 122, and 238, Florida Statutes.

205 12. Complying with, and enforcing for institutions under  
 206 the board's jurisdiction, all applicable local, state, and  
 207 federal laws.

208 (c) Constitutional duties of the Legislature.--In  
 209 accordance with s. 3, Art. II of the State Constitution, which  
 210 establishes the separation of powers of the three branches of  
 211 government; s. 1, Art. III of the State Constitution, which  
 212 vests the legislative power of the state in the Legislature; s.  
 213 8, Art. III of the State Constitution, which provides the  
 214 exclusive executive veto power of the Governor and the exclusive  
 215 veto override power of the Legislature; s. 19, Art. III of the  
 216 State Constitution, which requires the Legislature to enact  
 217 state planning and budget processes and requirements for budget  
 218 requests by general law; s. 1, Art. VII of the State  
 219 Constitution, which requires that the authority to expend state  
 220 funds be by general law enacted by the Legislature; and s. 1,  
 221 Art. IX of the State Constitution, which requires the  
 222 Legislature to make adequate provision by law for the  
 223 "establishment, maintenance, and operation of institutions of  
 224 higher learning," the Legislature has the following



225 responsibilities:

226 1. Making provision by law for the establishment,  
 227 maintenance, and operation of institutions of higher learning  
 228 and other public education programs that the needs of the people  
 229 may require.

230 2. Appropriating all state funds through the General  
 231 Appropriations Act or other law.

232 3. Establishing tuition and fees.

233 4. Establishing policies relating to merit and need-based  
 234 student financial aid.

235 5. Establishing policies relating to expenditure of,  
 236 accountability for, and management of funds appropriated by the  
 237 Legislature or revenues authorized by the Legislature. This  
 238 includes, but is not limited to, policies relating to:  
 239 budgeting; deposit of funds; investments; accounting;  
 240 purchasing, procurement, and contracting; insurance; audits;  
 241 maintenance and construction of facilities; property; bond  
 242 financing; leasing; and information reporting.

243 6. Maintaining the actuarial and fiscal soundness of  
 244 centrally administered state systems by requiring state  
 245 universities to continue to participate in programs such as the  
 246 Florida Retirement System, the state group health insurance  
 247 programs, the state telecommunications and data network  
 248 (SUNCOM), and the state casualty insurance program.

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

252 8. Establishing policies relating to the health, safety,

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253 and welfare of students, employees, and the public while present  
254 on the campuses of institutions of higher learning.

255 (2) LEGISLATIVE INTENT.--It is the intent of the  
256 Legislature to reenact laws relating to the Board of Governors  
257 of the State University System, the university boards of  
258 trustees, the State Board of Education, and the postsecondary  
259 education system in accordance with the findings of this act.

260 Section 2. This act shall take effect upon becoming a law.