

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19 a seamless K-20 system and repealed the Florida Board of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

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,

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 1st 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. 1st 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,

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 university" or "state universities" as used in
 165 the State Constitution and the Florida Statutes are agencies of
 166 the state which belong to and are part of the executive branch
 167 of state government. This definition of state universities as
 168 state agencies is only for the purposes of the delineation of

169 constitutional lines of authority. Statutory exemptions for
 170 state universities from statutory provisions relating to state
 171 agencies that are in effect on the effective date of this act
 172 remain in effect and are not repealed by virtue of this
 173 definition of state universities.

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

181 1. Defining the distinctive mission of each constituent
 182 university.

183 2. Defining the articulation of each constituent
 184 university in conjunction with the Legislature's authority over
 185 the public schools and community colleges.

186 3. Ensuring the well-planned coordination and operation of
 187 the State University System.

188 4. Avoiding wasteful duplication of facilities or programs
 189 within the State University System.

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

192 6. Submitting a budget request for legislative
 193 appropriations for the institutions under the supervision of the
 194 board as provided by law.

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

197 8. Approving, reviewing, and terminating State University
198 System degree programs.

199 9. Governing admissions to the state universities.

200 10. Serving as the public employer with respect to all
201 public employees of state universities for collective bargaining
202 purposes.

203 11. Establishing a personnel system for all state
204 university employees; however, the Department of Management
205 Services shall retain authority over state university employees
206 for programs established in ss. 110.123, 110.1232, 110.1234,
207 110.1238, and 110.161, Florida Statutes, and in chapters 121,
208 122, and 238, Florida Statutes.

209 12. Complying with, and enforcing for institutions under
210 the board's jurisdiction, all applicable local, state, and
211 federal laws.

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

225 Art. IX of the State Constitution, which requires the
226 Legislature to make adequate provision by law for the
227 "establishment, maintenance, and operation of institutions of
228 higher learning," the Legislature has the following
229 responsibilities:

230 1. Making provision by law for the establishment,
231 maintenance, and operation of institutions of higher learning
232 and other public education programs that the needs of the people
233 may require.

234 2. Appropriating all state funds through the General
235 Appropriations Act or other law.

236 3. Establishing tuition and fees.

237 4. Establishing policies relating to merit and need-based
238 student financial aid.

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

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

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

256 8. Establishing policies relating to the health, safety,
257 and welfare of students, employees, and the public while present
258 on the campuses of institutions of higher learning.

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

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