

1 A bill to be entitled

2 An act relating to postsecondary education; providing
3 definitions; specifying the constitutional duties of the
4 Board of Governors of the State University System under s.
5 7, Art. IX of the State Constitution; specifying the
6 constitutional duties of the Legislature; providing
7 legislative intent; amending s. 112.313, F.S.; prohibiting
8 citizen members of the Board of Governors of the State
9 University System and citizen members of a board of
10 trustees of a local constituent university from
11 representing principals before the Legislature; providing
12 an effective date.

13 WHEREAS, in 2000, the Florida Legislature enacted
14 chapter 2000-321, Laws of Florida, the Florida Education
15 Governance Reorganization Act of 2000, which restructured
16 the state's public education system to create a seamless
17 K-20 system and repealed the Florida Board of Regents, an
18 entity previously established by the Legislature to govern
19 the administration of the State University System, and

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

25 WHEREAS, in 2002, the voters amended the State
26 Constitution to create the Board of Governors to "be
27 responsible for the coordinated and accountable operation
28 of the whole university system" and did not express an

29 | intent to limit legislative powers granted in section 1,
30 | Article IX of the State Constitution, and

31 | WHEREAS, in its review of the ballot title and
32 | summary to the initiative proposal creating the Board of
33 | Governors, the Florida Supreme Court found that the
34 | amendment would authorize "the statewide board of
35 | governors to 'operate, regulate, control, and be fully
36 | responsible for the management of the whole university
37 | system'" [Advisory Opinion to the Attorney General Re
38 | Local Trustees, 819 So.2d 725, 729 (Fla. 2002)], and

39 | WHEREAS, the Florida Supreme Court found that the
40 | ballot title and summary for the proposed amendment
41 | plainly and unequivocally expressed its chief purpose and
42 | that this purpose "does not substantially affect or alter
43 | any provision in the State Constitution" [Id. at 732], and

44 | WHEREAS, the Court's advisory opinion indicates that
45 | the Court interpreted "the plain unequivocal language" of
46 | the proposal's ballot summary as not making fundamental
47 | changes redistributing legislative power to an entity
48 | within another branch, which would alter the balance of
49 | governmental powers, and

50 | WHEREAS, since 1968 and continuing through today,
51 | Section 1 of Article IX of the State Constitution provides
52 | that "[a]dequate provision shall be made by law for ...
53 | the establishment, maintenance, and operation of
54 | institutions of higher learning ...," and

55 | WHEREAS, as of November 2002, the Board of Governors
56 | is charged by Section 7 of Article IX of the State

57 Constitution with the responsibility to "operate,
58 regulate, control, and be fully responsible for the
59 management of the whole university system," and

60 WHEREAS, the canons of Florida statutory construction
61 require that laws on the same subject are to be construed
62 "in harmony with one another" so as not to render any part
63 meaningless based upon the presumption that the people
64 would not have adopted useless constitutional law [See,
65 e.g., *Unruh v. State*, 669 So.2d 242 (Fla. 1996); see,
66 also, *State ex rel. McKay v. Keller*, 191 So. 542 (Fla.
67 1939) (holding that principles governing the construction
68 of statutes are generally applicable as well to the
69 construction of constitutions)], and

70 WHEREAS, in accordance with these dictates, it is the
71 Legislature's intention herein to harmonize and give
72 meaningful effect to both Sections 1 and 7 of Article IX
73 of the State Constitution, and

74 WHEREAS, litigants in *Floridians for Constitutional*
75 *Integrity, Inc., et al. v. State Board of Education and*
76 *Board of Governors*, Case No. 04-CA-3040, filed in the
77 Second Judicial Circuit in and for Leon County, Florida,
78 have alleged that the 2002 amendment so altered the State
79 Constitution that the Legislature cannot enact laws
80 controlling the policy or direction of the State
81 University System, that the Board of Governors is not
82 subject to legislative control, that the Board of
83 Governors controls such public funds as tuition and
84 student fees, federal contracts and grants, and that all

85 authority over the State University System was transferred
86 by the 2002 amendment to the Board of Governors subject
87 only to legislative appropriation authority of only the
88 state's general revenue, and

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

93 WHEREAS, it is the duty of the Florida Legislature to
94 uphold Section 3 of Article II of the State Constitution
95 and safeguard the powers of one branch of government from
96 encroachments from entities of the other branches, and

97 WHEREAS, the Legislature has found that the powers of
98 the Legislature in Section 1 of Article IX of the State
99 Constitution and the powers of the Board of Governors in
100 Section 7 of Article IX of the State Constitution must and
101 can be defined in harmony to give each entity its full
102 measure of constitutional responsibility, and

103 WHEREAS, Section 18 of Article III of the State
104 Constitution confers upon the Legislature the obligation
105 to prohibit conflict between the public duties and private
106 interests of state officers, and

107 WHEREAS, the members of the statewide board of
108 governors and local boards of trustees, as established in
109 Section 7, Article IX of the State Constitution, are state
110 officers and subject to the ethics laws of the State of
111 Florida, and

112 WHEREAS, it is the intent of the Legislature to

113 ensure good government practices in the operation of the
 114 education boards of this state, and

115 WHEREAS, the Legislature finds that lobbyists serving
 116 as members of state education boards present an actual or
 117 potential conflict of interest, and

118 WHEREAS, the Legislature finds that the Board of
 119 Governors and the local boards of trustees should reach
 120 their decisions free of political influence and in the
 121 best interests of the people of the State of Florida, NOW,
 122 THEREFORE,

123
 124 Be It Enacted by the Legislature of the State of Florida:

125
 126 Section 1. Responsibility for the State University System
 127 under Section 7, Article IX of the State Constitution;
 128 legislative finding and intent.--

129 (1) LEGISLATIVE FINDINGS.--

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

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

137 2. "Institutions of higher learning" as used in the State
 138 Constitution and the Florida Statutes includes publicly funded
 139 state universities.

140 3. "Public officer" as used in the Florida Statutes

141 includes members of the Board of Governors.

142 4. "State university" or "state universities" as used in
 143 the State Constitution and the Florida Statutes are agencies of
 144 the state which belong to and are part of the executive branch
 145 of state government. This definition of state universities as
 146 state agencies is only for the purposes of the delineation of
 147 constitutional lines of authority. Statutory exemptions for
 148 state universities from statutory provisions relating to state
 149 agencies that are in effect on the effective date of this act
 150 remain in effect and are not repealed by virtue of this
 151 definition of state universities.

152 (b) Constitutional duties of the Board of Governors of the
 153 State University System.--In accordance with Section 7, Article
 154 IX of the State Constitution, the Board of Governors of the
 155 State University System has the duty to operate, regulate,
 156 control, and be fully responsible for the management of the
 157 whole publicly funded State University System and the board, or
 158 the board's designee, has responsibility for:

159 1. Defining the distinctive mission of each constituent
 160 university.

161 2. Defining the articulation of each constituent
 162 university in conjunction with the Legislature's authority over
 163 the public schools and community colleges.

164 3. Ensuring the well-planned coordination and operation of
 165 the State University System.

166 4. Avoiding wasteful duplication of facilities or programs
 167 within the State University System.

168 5. Accounting for expenditure of funds appropriated by the

169 Legislature for the State University System as provided by law.
 170 6. Submitting a budget request for legislative
 171 appropriations for the institutions under the supervision of the
 172 board as provided by law.
 173 7. Adopting strategic plans for the State University
 174 System and each constituent university.
 175 8. Approving, reviewing, and terminating degree programs
 176 of the State University System.
 177 9. Governing admissions to the state universities.
 178 10. Serving as the public employer to all public employees
 179 of state universities for collective bargaining purposes.
 180 11. Establishing a personnel system for all state
 181 university employees; however, the Department of Management
 182 Services shall retain authority over state university employees
 183 for programs established in sections 110.123, 110.1232,
 184 110.1234, 110.1238, and 110.161, Florida Statutes, and in
 185 chapters 121, 122, and 238, Florida Statutes.
 186 12. Complying with, and enforcing for institutions under
 187 the board's jurisdiction, all applicable local, state, and
 188 federal laws.
 189 (c) Constitutional duties of the Legislature.--In
 190 accordance with Section 3, Article II of the State Constitution,
 191 which establishes the separation of powers of three branches of
 192 government; Section 1, Article III of the State Constitution,
 193 which vests the legislative power of the state in the
 194 Legislature; Section 8, Article III of the State Constitution,
 195 which provides the exclusive executive veto power of the
 196 Governor and the exclusive veto override power of the

197 Legislature; Section 19, Article III of the State Constitution,
198 which requires the Legislature to enact state planning and
199 budget processes and requirements for budget requests by general
200 law; Section 1, Article VII of the State Constitution, which
201 requires that the authority to expend state funds be by general
202 law enacted by the Legislature; and Section 1, Article IX of the
203 State Constitution, which requires the Legislature to make
204 adequate provision by law for the "establishment, maintenance,
205 and operation of institutions of higher learning," the
206 Legislature has the following responsibilities:

207 1. Making provision by law for the establishment,
208 maintenance, and operation of institutions of higher learning
209 and other public education programs that the needs of the people
210 may require.

211 2. Appropriating all state funds through the General
212 Appropriations Act or other law.

213 3. Establishing tuition and fees.

214 4. Establishing policies relating to merit and need-based
215 student financial aid.

216 5. Establishing policies relating to expenditure of,
217 accountability for, and management of funds appropriated by the
218 Legislature or revenues authorized by the Legislature. This
219 includes, but is not limited to, policies relating to:
220 budgeting, deposit of funds; investments; accounting;
221 purchasing, procurement, and contracting; insurance; audits;
222 maintenance and construction of facilities; property; bond
223 financing; leasing; and information reporting.

224 6. Maintaining the actuarial and fiscal soundness of

225 centrally administered state systems by requiring state
226 universities to continue to participate in programs such as the
227 Florida Retirement System, the state group health insurance
228 programs, the state telecommunications and data network
229 (SUNCOM), and the state casualty insurance program.

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

233 8. Establishing policies relating to the health, safety,
234 and welfare of students, employees, and the public while present
235 on the campuses of institutions of higher learning.

236 (2) LEGISLATIVE INTENT.--It is the intent of the
237 Legislature to reenact laws relating to the Board of Governors
238 of the State University System, the university boards of
239 trustees, the State Board of Education, and the postsecondary
240 education system in accordance with the findings of this act.

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

243 112.313 Standards of conduct for public officers,
244 employees of agencies, and local government attorneys.--

245 (17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.--No
246 citizen member of the Board of Governors of the State University
247 System, nor any citizen member of a board of trustees of a local
248 constituent university, shall have or hold any employment or
249 contractual relationship as a legislative lobbyist requiring
250 annual registration and reporting pursuant to s. 11.045.

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