

ENROLLED
 HB 1001, Engrossed 2

2005 Legislature

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A bill to be entitled

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

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Reorganization Act of 2000, which restructured the state's public education system to create a seamless K-20 system and repealed the Florida Board of Regents, an entity previously established by the Legislature to govern the administration of the State University System, and

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

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

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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

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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

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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

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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

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includes members of the Board of Governors.

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

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

1. Defining the distinctive mission of each constituent university.

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

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

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

5. Accounting for expenditure of funds appropriated by the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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

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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

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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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