

By the Committee on Education; and Senator Lynn

581-2044-05

1 A bill to be entitled

2 An act relating to postsecondary education;

3 providing definitions; specifying the

4 constitutional duties of the Board of Governors

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

6 IX of the State Constitution; specifying the

7 constitutional duties of the Legislature;

8 providing legislative intent; amending s.

9 112.313, F.S.; prohibiting citizen members of

10 the Board of Governors of the State University

11 System and citizen members of a board of

12 trustees of a local constituent university from

13 representing principals before the Legislature;

14 providing an effective date.

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16 WHEREAS, in 2000, the Florida Legislature enacted

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

18 Governance Reorganization Act of 2000, which restructured the

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

20 system and repealed the Florida Board of Regents, an entity

21 previously established by the Legislature to govern the

22 administration of the State University System, and

23 WHEREAS, in 2000, the Legislature consolidated the

24 administration of the state's institutions of higher education

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

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

27 Education, and

28 WHEREAS, in 2002, the voters amended the State

29 Constitution to create the Board of Governors to "be

30 responsible for the coordinated and accountable operation of

31 the whole university system" and did not express an intent to

1 | limit legislative powers granted in Section 1, Article IX of
2 | the State Constitution, and

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

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

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

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

27 | WHEREAS, as of November 2002, the Board of Governors is
28 | charged by Section 7 of Article IX of the State Constitution
29 | with the responsibility to "operate, regulate, control, and be
30 | fully responsible for the management of the whole university
31 | system," and

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

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

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

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

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

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

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

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

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

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

28 WHEREAS, the Legislature finds that the Board of
29 Governors and the local boards of trustees should reach their
30 decisions free of political influence and in the best
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1 interests of the people of the State of Florida, NOW,
2 THEREFORE,

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4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Responsibility for the State University
7 System under Section 7, Article IX of the State Constitution;
8 legislative finding and intent.--

9 (1) LEGISLATIVE FINDINGS.--

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

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

17 2. "Institutions of higher learning" as used in the
18 State Constitution and the Florida Statutes includes publicly
19 funded state universities.

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

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

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

8 1. Defining the distinctive mission of each
9 constituent university.

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

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

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

17 5. Accounting for expenditure of funds appropriated by
18 the Legislature for the State University System as provided by
19 law.

20 6. Submitting a budget request for legislative
21 appropriations for the institutions under the supervision of
22 the board as provided by law.

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

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

27 9. Governing admissions to the state universities.

28 10. Serving as the public employer to all public
29 employees of state universities for collective bargaining
30 purposes.

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1 11. Establishing a personnel system for all state
2 university employees; however, the Department of Management
3 Services shall retain authority over state university
4 employees for programs established in sections 110.123,
5 110.1232, 110.1234, 110.1238, and 110.161, Florida Statutes,
6 and in chapters 121, 122, and 238, Florida Statutes.

7 12. Complying with, and enforcing for institutions
8 under the board's jurisdiction, all applicable local, state,
9 and federal laws.

10 (c) Constitutional duties of the Legislature.--In
11 accordance with Section 3, Article II of the State
12 Constitution, which establishes the separation of powers of
13 three branches of government; Section 1, Article III of the
14 State Constitution, which vests the legislative power of the
15 state in the Legislature; Section 8, Article III of the State
16 Constitution, which provides the exclusive executive veto
17 power of the Governor and the exclusive veto override power of
18 the Legislature; Section 19, Article III of the State
19 Constitution, which requires the Legislature to enact state
20 planning and budget processes and requirements for budget
21 requests by general law; Section 1, Article VII of the State
22 Constitution, which requires that the authority to expend
23 state funds be by general law enacted by the Legislature; and
24 Section 1, Article IX of the State Constitution, which
25 requires the Legislature to make adequate provision by law for
26 the "establishment, maintenance, and operation of institutions
27 of higher learning," the Legislature has the following
28 responsibilities:

29 1. Making provision by law for the establishment,
30 maintenance, and operation of institutions of higher learning
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1 and other public education programs that the needs of the
2 people may require.

3 2. Appropriating all state funds through the General
4 Appropriations Act or other law.

5 3. Establishing tuition and fees.

6 4. Establishing policies relating to merit and
7 need-based student financial aid.

8 5. Establishing policies relating to expenditure of,
9 accountability for, and management of funds appropriated by
10 the Legislature or revenues authorized by the Legislature.
11 This includes, but is not limited to, policies relating to:
12 budgeting, deposit of funds; investments; accounting;
13 purchasing, procurement, and contracting; insurance; audits;
14 maintenance and construction of facilities; property; bond
15 financing; leasing; and information reporting.

16 6. Maintaining the actuarial and fiscal soundness of
17 centrally administered state systems by requiring state
18 universities to continue to participate in programs such as
19 the Florida Retirement System, the state group health
20 insurance programs, the state telecommunications and data
21 network (SUNCOM), and the state casualty insurance program.

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

25 8. Establishing policies relating to the health,
26 safety, and welfare of students, employees, and the public
27 while present on the campuses of institutions of higher
28 learning.

29 (2) LEGISLATIVE INTENT.--It is the intent of the
30 Legislature to reenact laws relating to the Board of Governors
31 of the State University System, the university boards of

1 trustees, the State Board of Education, and the postsecondary
2 education system in accordance with the findings of this act.

3 Section 2. Subsection (17) is added to section
4 112.313, Florida Statutes, to read:

5 112.313 Standards of conduct for public officers,
6 employees of agencies, and local government attorneys.--

7 (17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.--No
8 citizen member of the Board of Governors of the State
9 University System, nor any citizen member of a board of
10 trustees of a local constituent university, shall have or hold
11 any employment or contractual relationship as a legislative
12 lobbyist requiring annual registration and reporting pursuant
13 to s. 11.045.

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

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1920

4 The committee substitute provides that the Board of Governors,
5 or its designee, is responsible for:

6 Defining the mission of each state university;

7 Defining the articulation of each state university with
8 the public schools and community colleges;

9 Ensuring the well-planned coordination and operation of
10 the State University System;

11 Avoiding wasteful duplication of facilities or programs;

12 Accounting for the expenditure of funds appropriated by
13 the Legislature;

14 Submitting a budget request for the state universities;

15 Adopting strategic plans for each university and the
16 State University System;

17 Approving, reviewing, and terminating degree programs of
18 the State University System;

19 Governing admissions to the state universities;

20 Serving as the public employer to all public employees of
21 the state universities for collective bargaining
22 purposes;

23 Establishing a personnel system for all state university
24 employees except for certain centrally administered state
25 programs; and

26 Complying with, and enforcing all applicable federal and
27 state laws.

28 The committee substitute establishes the following
29 responsibilities of the Legislature:

30 Making provision by law for the establishment,
31 maintenance, and operation of institutions of higher
32 learning;

33 Appropriating all state funds;

34 Establishing tuition and fees;

35 Establishing policies relating to expenditure of,
36 accountability for, and management of funds appropriated
37 by the Legislature or revenues authorized by the
38 Legislature;

39 Maintaining the actuarial and fiscal soundness of
40 centrally administered state systems by requiring state
41 universities to participate in programs such as the

1 Florida Retirement System, the state group health
2 insurance programs, the state telecommunications and data
3 network, and the state casualty insurance program;
4 Establishing and regulating the use of state powers and
5 protections; and
6 Establishing policies relating to the health, safety, and
7 welfare of individuals while present on the campuses of
8 institutions of higher learning.
9 The committee substitute prohibits citizen members of the
10 Board of Governors or state university boards of trustees from
11 having or holding any employment or contractual relationship
12 as a legislative lobbyist requiring annual registration and
13 reporting under s. 11.045.
14 The committee substitute defines members of the Board of
15 Governors as public officers and defines state universities as
16 state agencies for purposes of constitutional lines of
17 authority. The committee substitute retains state agency
18 exemptions for state universities that predate the act.
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