

House Bill No. 1001

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Reorganization Act of 2000, which restructured the state's public education system to create a seamless K-20 system and repealed the Florida Board of Regents, an entity previously established by the Legislature to govern the administration of the State University System, and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 intent to limit legislative powers granted in section 1, Article IX of the State Constitution, and

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

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

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

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

WHEREAS, as of November 2002, the Board of Governors is charged by Section 7 of Article IX of the State Constitution with the responsibility to “operate, regulate, control, and be fully responsible for the management of the whole university system,” and

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) LEGISLATIVE FINDINGS.—

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

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

2. “Institutions of higher learning” as used in the State Constitution and the Florida Statutes includes publicly funded state universities.

3. “Public officer” as used in the Florida Statutes 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 Legislature for the State University System as provided by law.

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

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

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

9. Governing admissions to the state universities.

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

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

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

(c) Constitutional duties of the Legislature.—In accordance with Section 3, Article II of the State Constitution, which establishes the separation of powers of three branches of government; Section 1, Article III of the State Constitution, which vests the legislative power of the state in the Legislature; Section 8, Article III of the State Constitution, which provides the exclusive executive veto power of the Governor and the exclusive veto override power of the Legislature; Section 19, Article III of the State Constitution, which requires the Legislature to enact state planning and budget processes and requirements for budget requests by general law; Section 1, Article VII of the State Constitution, which requires that the authority to expend state funds be by general law enacted by the Legislature; and Section 1, Article IX of the State Constitution, which requires the Legislature to make adequate provision by law for the “establishment, maintenance, and operation of institutions of higher learning,” the Legislature has the following responsibilities:

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

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

3. Establishing tuition and fees.
4. Establishing policies relating to merit and need-based student financial aid.
5. Establishing policies relating to expenditure of, accountability for, and management of funds appropriated by the Legislature or revenues authorized by the Legislature. This includes, but is not limited to, policies relating to: budgeting, deposit of funds; investments; accounting; purchasing, procurement, and contracting; insurance; audits; maintenance and construction of facilities; property; bond financing; leasing; and information reporting.
6. Maintaining the actuarial and fiscal soundness of centrally administered state systems by requiring state universities to continue to participate in programs such as the Florida Retirement System, the state group health insurance programs, the state telecommunications and data network (SUN-COM), and the state casualty insurance program.
7. Establishing and regulating the use of state powers and protections, including, but not limited to, eminent domain, certified law enforcement, and sovereign immunity.
8. Establishing policies relating to the health, safety, and welfare of students, employees, and the public while present on the campuses of institutions of higher learning.

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

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

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

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

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

Approved by the Governor June 22, 2005.

Filed in Office Secretary of State June 22, 2005.