

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Beltran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. The Division of Law Revision is directed to create part IX of chapter 112, Florida Statutes, consisting of s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2. Section 112.89, Florida Statutes, is created to read:

112.89 Fiduciary duty of care.-

(1) LEGISLATIVE FINDINGS AND PURPOSE.-The Legislature finds that appointed public officials and executive officers

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14 acting on behalf of governmental entities owe a fiduciary duty
15 to the entities they serve, including each constituent located
16 in the geographic area he or she represents and to the state and
17 its citizens as a whole. The Legislature finds that codifying a
18 fiduciary duty of care will require that appointed public
19 officials and executive officers stay adequately informed of
20 affairs, perform due diligence, perform reasonable oversight,
21 and practice fiscal responsibility regarding decisions involving
22 corporate and proprietary commitments on behalf of the entity
23 they serve.

24 (2) DEFINITIONS.—For purposes of this section, the term:

25 (a) "Appointed public official" means either a local
26 officer as defined in s. 112.3145(1)(a)2.a., b., and f., or a
27 state officer as defined in s. 112.3145(1)(c)2. and 3. For
28 purposes of this section, the term does not include a person
29 elected to office in any political subdivision of the state.

30 (b) "Executive officer" means the chief executive officer
31 of a governmental entity to which an appointed public official
32 is appointed. For purposes of this section, each governmental
33 entity shall have only one executive officer.

34 (c) "General counsel" means the chief legal counsel of a
35 governmental entity to which an appointed public official or an
36 executive officer is appointed or hired.

37 (d) "Governmental entity" means the entity, a board, a
38 council, a commission, an authority, or other body thereof, to

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39 which an appointed public official or an executive officer is
40 appointed or hired.

41 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
42 and executive officer owes a fiduciary duty of care to the
43 governmental entity he or she serves, as well as to each
44 constituent located in the geographic area he or she represents
45 and to the state and its citizens as a whole, in accordance with
46 law, and has a duty to:

47 (a) Act in accordance with the laws, ordinances, rules,
48 policies, and terms governing his or her office or employment.

49 (b) Act with the care, competence, and diligence normally
50 exercised by a reasonably prudent person in similar corporate
51 and proprietary circumstances.

52 (c) Act only within the scope of his or her authority.

53 (d) Refrain from conduct that is likely to damage the
54 financial or economic interests of the governmental entity.

55 (e) Use reasonable efforts to maintain documentation in
56 accordance with applicable laws.

57 (f) Maintain reasonable oversight of any delegated
58 authority and discharge his or her duties with the care that a
59 reasonably prudent person in a similar business position would
60 believe appropriate under the circumstances, and must:

61 1. Become reasonably informed in connection with any
62 decisionmaking function.

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63 2. Become reasonably informed when devoting attention to
64 any oversight function.

65 3. Keep reasonably informed concerning the affairs of the
66 governmental entity.

67 4. Keep reasonably informed concerning the performance of
68 the governmental entity's executive officers or other officers,
69 agents, or employees.

70 (4) TRAINING REQUIREMENTS.-

71 (a) A governmental entity must notify an appointed public
72 official or executive officer in writing of the opportunity for
73 training under this section within 30 days after the date of his
74 or her initial appointment, reappointment, hiring, or any
75 contract entered into or renewed on or after July 1, 2021.

76 (b) A governmental entity must provide an appointed public
77 official or executive officer with at least 5 hours of board
78 governance training, as described in this section, within 180
79 days after the official or executive officer requests to have
80 such training.

81 (c) A board governance training program must at a minimum
82 provide educational materials and instruction on all of the
83 following:

84 1. Generally accepted board governance principles and best
85 practices.

86 2. Board fiduciary duty of care legal analyses.

87 3. Board oversight and evaluation procedures.

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88 4. Governmental entity and executive officer
89 responsibilities.

90 5. Executive officer performance evaluations.

91 6. Selecting, monitoring, and evaluating an executive
92 management team.

93 7. Reviewing and approving proposed investments,
94 expenditures, and budget plans.

95 8. Financial accounting and capital allocation principles
96 and practices.

97 9. New governmental entity employee orientation.

98 10. The fiduciary duty of care and liabilities imposed
99 upon appointed public officials and executive officers under
100 this section.

101 (d)1. A governmental entity must offer an appropriate
102 training program or contract with a suitable training provider
103 to offer a board governance training program.

104 2. For a governmental entity with an annual revenue of
105 less than \$1 million, board governance training may be provided
106 by in-house counsel of the governmental entity or the unit of
107 government that created the governmental entity.

108 (e) A public body having management or supervision of the
109 appointed public official, executive officer, or the
110 governmental entity that the appointed public official or
111 executive officer serves; a Florida College System institution;
112 a state university; an accredited law school; or a nationally

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113 recognized entity specializing in board governance education may
114 provide board governance training.

115 (5) APPOINTMENT.—The appointment of an executive officer,
116 in-house general counsel or outside legal counsel, auditor, or
117 accounting firm by a governmental entity is subject to approval
118 by a majority vote of the governmental entity.

119 (6) STANDARDS FOR LEGAL COUNSEL AND LOBBYISTS.—

120 (a) All legal counsel, whether in-house general counsel or
121 outside legal counsel, employed by a governmental entity must
122 represent the legal interests and positions of the governmental
123 entity and not the interest of any individual or employee of the
124 governmental entity, unless such representation is directed by
125 the governmental entity. This paragraph does not prevent legal
126 counsel from representing a member of the governing body or an
127 employee of the governmental entity who is sued for conduct
128 committed in his or her official capacity, whether or not the
129 member or employee is sued in an official or individual
130 capacity, as long as there is no actual legal conflict between
131 the member or employee and the governing body.

132 (b) A lobbyist employed by a governmental entity must
133 represent the interests and positions of the governmental entity
134 and not the interest of any individual or employee of the
135 governmental entity.

136 (7) OUTSIDE OPINIONS ON CERTAIN MEASURES.—The governing
137 body of a governmental entity shall determine, on the record at

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138 a properly noticed meeting, whether the governmental entity
139 should obtain an outside opinion for any measure that will
140 require the governmental entity to make any of the following
141 expenditures:

- 142 (a) An amount in excess of \$1 million in any fiscal year;
- 143 (b) An amount in excess of \$5 million in the aggregate; or
- 144 (c) An amount in excess of \$250,000 in total annual
145 compensation, including bonuses, exit bonuses, accrued paid time
146 off, severance payments, and incentive payments for any employee
147 or officer.

148 (8) This section does not create a private cause of action
149 against an executive officer, an appointed public official, or a
150 governmental entity. However, this subsection does not limit
151 liability arising under any other law.

152 Section 3. This act shall take effect July 1, 2021.

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155 **T I T L E A M E N D M E N T**

156 Remove everything before the enacting clause and insert:

157 A bill to be entitled

158 An act relating to fiduciary duty of care for
159 appointed public officials and executive officers;
160 creating part IX of ch. 112, F.S., entitled "Fiduciary
161 Duty of Care for Appointed Public Officials and
162 Executive Officers;" creating s. 112.89, F.S.;

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163 providing legislative findings; providing definitions;
164 providing fiduciary duties of certain public officials
165 and executive officers; requiring a governmental
166 entity to notify certain public officials and
167 executive officers of board governance training within
168 a certain time; providing minimum board governance
169 training requirements; providing that certain
170 governmental entities may offer the training through
171 in-house counsel; providing which entities may provide
172 training; requiring a specified vote of a governing
173 body for the appointment of certain persons; providing
174 standards for legal counsel and lobbyists employed by
175 a governmental entity; providing construction;
176 requiring a governing body to vote at a properly
177 noticed meeting whether to obtain an outside opinion
178 relating to certain expenditures; prohibiting a
179 private cause of action; providing an exception;
180 providing an effective date.

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