



116502

LEGISLATIVE ACTION

| Senate     | . | House |
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| Comm: RCS  | . |       |
| 02/10/2020 | . |       |
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The Committee on Governmental Oversight and Accountability (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete 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:



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11 112.89 Fiduciary duty of care.-

12 (1) LEGISLATIVE FINDINGS AND PURPOSE.-The Legislature finds  
13 that appointed public officials and executive officers acting on  
14 behalf of governmental entities owe a fiduciary duty to the  
15 entities they serve. The Legislature finds that codifying a  
16 fiduciary duty of care will require that appointed public  
17 officials and executive officers stay adequately informed of  
18 affairs, perform due diligence, perform reasonable oversight,  
19 and practice fiscal responsibility regarding decisions involving  
20 corporate and proprietary commitments on behalf of the entity  
21 they serve.

22 (2) DEFINITIONS.-

23 (a) "Appointed public official" means either a "local  
24 officer" as defined in s. 112.3145(1) (a)2. or a "state officer"  
25 as defined in s. 112.3145(1) (c)2. and 3.

26 (b) "Department" means the Department of Business and  
27 Professional Regulation.

28 (c) "Executive officer" means the chief executive officer  
29 of a governmental entity to which an appointed public official  
30 is appointed.

31 (d) "Governmental entity" means the entity, or a board, a  
32 council, a commission, an authority, or other body thereof, to  
33 which an appointed public official or an executive officer is  
34 appointed or hired.

35 (3) FIDUCIARY DUTY OF CARE.-Each appointed public official  
36 and executive officer owes a fiduciary duty of care to the  
37 applicable entity in accordance with law he or she serves and  
38 has a duty to:

39 (a) Act in accordance with the laws, ordinances, rules,



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40 policies, and terms governing his or her office or employment.

41 (b) Act with the care, competence, and diligence normally  
42 exercised by private business professionals in similar corporate  
43 and proprietary circumstances.

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

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

47 (e) Use reasonable efforts to maintain documentation in  
48 accordance with applicable laws.

49 (f) Maintain reasonable oversight of any delegated  
50 authority and discharge his or her duties with the care that a  
51 reasonably prudent person in a like business position would  
52 believe appropriate under the circumstances, and must:

53 1. Become reasonably informed in connection with any  
54 decisionmaking function;

55 2. Become reasonably informed when devoting attention to  
56 any oversight function;

57 3. Keep reasonably informed concerning the affairs of the  
58 governmental entity; and

59 4. Keep reasonably informed concerning the performance of a  
60 governmental entity's executive officers or other officers,  
61 agents, or employees.

62 (4) TRAINING REQUIREMENT.—

63 (a) Beginning January 1, 2021, each appointed public  
64 official and executive officer shall complete a minimum of 5  
65 hours of board governance training for each term served.

66 1. An appointed public official or executive officer  
67 holding office or employed by an entity on January 1, 2021,  
68 shall complete the 5 hours of board governance training before



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69 the expiration of his or her term of service. If an appointed  
70 public official or executive officer is employed under a  
71 contract that does not specify a termination date for  
72 employment, the public official or executive officer shall  
73 complete the 5 hours of training by January 1, 2022, and once  
74 every 4 years thereafter for the duration of their employment.

75 2. An appointed public official or executive officer who is  
76 appointed, reappointed, or hired after January 1, 2021, shall  
77 complete the 5 hours of board governance training within 180  
78 days after the date of his or her appointment, reappointment, or  
79 hire.

80 (b) By January 1, 2021, the department shall:

81 1. Contract for or approve a board governance training  
82 program that includes an affordable web-based electronic media  
83 option; or

84 2. Publish a list of approved board governance training  
85 providers on its website. A provider may include a Florida  
86 College System institution, a state university, a nationally  
87 recognized entity specializing in board governance education, or  
88 any other entity deemed qualified by the department as capable  
89 of providing the minimum training requirements specified in this  
90 subsection.

91 (c) The board governance training programs must provide, at  
92 a minimum, educational materials and instruction on the  
93 following:

94 1. Generally accepted corporate board governance principles  
95 and best practices; corporate board fiduciary duty of care legal  
96 analyses; corporate board oversight and evaluation procedures;  
97 governmental entity responsibilities; executive officer



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98 responsibilities; executive officer performance evaluations;  
99 selecting, monitoring, and evaluating an executive management  
100 team; reviewing and approving proposed investments,  
101 expenditures, and budget plans; financial accounting and capital  
102 allocation principles and practices; and new governmental entity  
103 member orientation.

104 2. The fiduciary duty of care and obligations imposed upon  
105 appointed public officials and executive officers pursuant to  
106 this section.

107 (d) A governmental entity complies with the training  
108 requirement under this subsection by providing a department-  
109 approved program or contracting with a provider listed by the  
110 department under subparagraph (b)2. However, for governmental  
111 entities with annual revenues of less than \$300,000, board  
112 governance training may be provided by in-house counsel of the  
113 governmental entity or the unit of government that created the  
114 governmental entity, if applicable, so long as the training  
115 complies with the minimum course content established by  
116 department rule.

117 (e) Within 30 days after completion of the board governance  
118 training, each appointed public official and executive officer  
119 shall certify, in writing or electronic form and under oath, to  
120 the department that he or she:

121 1. Has completed the training required by this subsection;

122 2. Has read the laws and relevant policies applicable to  
123 his or her position;

124 3. Will work to uphold such laws and policies to the best  
125 of his or her ability; and

126 4. Will faithfully discharge his or her fiduciary



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127 responsibility, as imposed by this section.

128 (f) The department shall adopt rules to implement this  
129 subsection.

130 (g) This subsection does not apply to:

131 1. Appointed public officials and executive officers of  
132 governmental entities whose annual revenues are less than  
133 \$100,000 or to appointed public officials who hold elected  
134 office in another capacity; or

135 2. An appointed public official or executive officer who  
136 completes board governance training involving fiduciary duties  
137 or responsibilities which is required under any other state law.

138 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL  
139 COUNSELS.—The appointment of any executive officer or general  
140 counsel is subject to approval by a majority vote of the  
141 governmental entity.

142 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed  
143 by a governmental entity must represent the legal interests and  
144 positions of the governmental entity and not the interest of any  
145 individual or employee of the governmental entity, unless such  
146 representation is directed by the governmental entity.

147 Section 3. This act shall take effect July 1, 2020.

148  
149 ===== T I T L E A M E N D M E N T =====

150 And the title is amended as follows:

151 Delete everything before the enacting clause  
152 and insert:

153 A bill to be entitled  
154 An act relating to the fiduciary duty of care for  
155 appointed public officials and executive officers;



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156 providing a directive to the Division of Law Revision  
157 to create part IX of ch. 112, F.S.; creating s.  
158 112.89, F.S.; providing legislative findings and  
159 purpose; defining terms; establishing standards for  
160 the fiduciary duty of care for appointed public  
161 officials and executive officers of specified  
162 governmental entities; requiring training on board  
163 governance beginning on a specified date; requiring  
164 the Department of Business and Professional Regulation  
165 to contract for or approve such training programs or  
166 publish a list of approved training providers;  
167 specifying requirements for such training; authorizing  
168 training to be provided by in-house counsel for  
169 certain governmental entities; requiring appointed  
170 public officials and executive officers to certify  
171 their completion of the annual training; requiring the  
172 department to adopt rules; providing exceptions to the  
173 training requirement; specifying requirements for the  
174 appointment of executive officers and general counsels  
175 of governmental entities; specifying standards for  
176 legal counsel; providing an effective date.