

By Senator Lee

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1 A bill to be entitled
2 An act relating to the fiduciary duty of care for
3 appointed public officials and executive officers;
4 providing a directive to the Division of Law Revision
5 to create part IX of ch. 112, F.S.; creating s.
6 112.89, F.S.; providing legislative findings and
7 purpose; defining terms; establishing standards for
8 the fiduciary duty of care for appointed public
9 officials and executive officers of specified
10 governmental entities; requiring training on board
11 governance beginning on a specified date; requiring
12 the Department of Business and Professional Regulation
13 to contract for or approve such training programs or
14 publish a list of approved training providers;
15 specifying requirements for such training; authorizing
16 training to be provided by in-house counsel for
17 certain governmental entities; requiring appointed
18 public officials and executive officers to certify
19 their completion of the annual training; requiring the
20 department to adopt rules; providing an exception to
21 the training requirement; specifying requirements for
22 the appointment of executive officers and general
23 counsels of governmental entities; specifying
24 standards for legal counsel; providing an effective
25 date.

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

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29 Section 1. The Division of Law Revision is directed to

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30 create part IX of chapter 112, Florida Statutes, consisting of
31 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
32 Care for Appointed Public Officials and Executive Officers."

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

35 112.89 Fiduciary duty of care.—

36 (1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds
37 that appointed public officials and executive officers acting on
38 behalf of governmental entities owe a fiduciary duty to the
39 entities they serve. The Legislature finds that codifying a
40 fiduciary duty of care will require that appointed public
41 officials and executive officers stay adequately informed of
42 affairs, perform due diligence, perform reasonable oversight,
43 and practice fiscal responsibility regarding decisions involving
44 corporate and proprietary commitments on behalf of a
45 governmental entity.

46 (2) DEFINITIONS.—

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

50 (b) "Department" means the Department of Business and
51 Professional Regulation.

52 (c) "Executive officer" means the chief executive officer
53 of a governmental entity.

54 (d) "Governmental entity" means the entity, or a board, a
55 council, a commission, an authority, or other body thereof, to
56 which an appointed public official or an executive officer is
57 appointed or hired.

58 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official

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59 and executive officer owes a fiduciary duty of care to the
60 governmental entity he or she serves and has a duty to:

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

63 (b) Act with the care, competence, and diligence normally
64 exercised by private business professionals in similar corporate
65 and proprietary circumstances.

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

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

69 (e) Use reasonable efforts to maintain documentation in
70 accordance with applicable laws.

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

75 1. Become reasonably informed in connection with any
76 decisionmaking function;

77 2. Become reasonably informed when devoting attention to
78 any oversight function;

79 3. Keep reasonably informed concerning the affairs of the
80 governmental entity; and

81 4. Keep reasonably informed concerning the performance of a
82 governmental entity's executive officers or other officers,
83 agents, or employees.

84 (4) TRAINING REQUIREMENT.—

85 (a) Beginning January 1, 2021, each appointed public
86 official and executive officer of a governmental entity shall
87 complete a minimum of 5 hours of board governance training for

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88 each term served.

89 1. An appointed public official or executive officer
90 holding office or employed by a governmental entity on January
91 1, 2021, shall complete the 5 hours of board governance training
92 before the expiration of his or her term of service.

93 2. An appointed public official or executive officer who is
94 appointed, reappointed, or hired after January 1, 2021, shall
95 complete the 5 hours of board governance training within 180
96 days after the date of his or her appointment, reappointment, or
97 hire.

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

99 1. Contract for or approve a board governance training
100 program that includes an affordable web-based electronic media
101 option; or

102 2. Publish a list of approved board governance training
103 providers on its website. A provider may include a Florida
104 College System institution, a state university, a nationally
105 recognized entity specializing in board governance education, or
106 any other entity deemed qualified by the department as capable
107 of providing the minimum training requirements specified in this
108 subsection.

109 (c) The board governance training programs must provide, at
110 a minimum, educational materials and instruction on the
111 following:

112 1. Generally accepted corporate board governance principles
113 and best practices; corporate board fiduciary duty of care legal
114 analyses; corporate board oversight and evaluation procedures;
115 governmental entity responsibilities; executive officer
116 responsibilities; executive officer performance evaluations;

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117 selecting, monitoring, and evaluating an executive management
118 team; reviewing and approving proposed investments,
119 expenditures, and budget plans; financial accounting and capital
120 allocation principles and practices; and new governmental entity
121 member orientation.

122 2. The fiduciary duty of care and liabilities imposed upon
123 appointed public officials and executive officers pursuant to
124 this section.

125 (d) A governmental entity complies with the training
126 requirement under this subsection by providing a department-
127 approved program or contracting with a provider listed by the
128 department under subparagraph (b)2. However, for governmental
129 entities with annual revenues of less than \$300,000, board
130 governance training may be provided by in-house counsel of the
131 governmental entity or the unit of government that created the
132 governmental entity, if applicable, so long as the training
133 complies with the minimum course content established by
134 department rule.

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

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

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

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

144 4. Will faithfully discharge his or her fiduciary
145 responsibility, as imposed by this section.

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146 (f) The department shall adopt rules to implement this
147 subsection.

148 (g) This subsection does not apply to appointed public
149 officials and executive officers of governmental entities whose
150 annual revenues are less than \$100,000 or to appointed public
151 officials who hold elected office in another capacity.

152 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
153 COUNSELS.—The appointment of any executive officer or general
154 counsel is subject to approval by a majority vote of the
155 governing body of the governmental entity.

156 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
157 by a governmental entity must represent the legal interest and
158 position of the governing body of the governmental entity and
159 not the interest of any individual or employee of the
160 governmental entity.

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