

By the Committee on Governmental Oversight and Accountability;
and Senator Lee

585-03393-20

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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 exceptions to the
21 training requirement; specifying requirements for the
22 appointment of executive officers and general counsels
23 of governmental entities; specifying standards for
24 legal counsel; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. The Division of Law Revision is directed to
29 create part IX of chapter 112, Florida Statutes, consisting of

585-03393-20

20201270c1

30 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
31 Care for Appointed Public Officials and Executive Officers."

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

34 112.89 Fiduciary duty of care.—

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

45 (2) DEFINITIONS.—

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

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

51 (c) "Executive officer" means the chief executive officer
52 of a governmental entity to which an appointed public official
53 is appointed.

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

585-03393-20

20201270c1

59 and executive officer owes a fiduciary duty of care to the
60 applicable entity in accordance with law he or she serves and
61 has a duty to:

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

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

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

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

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

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

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

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

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

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

85 (4) TRAINING REQUIREMENT.—

86 (a) Beginning January 1, 2021, each appointed public
87 official and executive officer shall complete a minimum of 5

585-03393-20

20201270c1

88 hours of board governance training for each term served.

89 1. An appointed public official or executive officer
90 holding office or employed by an entity on January 1, 2021,
91 shall complete the 5 hours of board governance training before
92 the expiration of his or her term of service. If an appointed
93 public official or executive officer is employed under a
94 contract that does not specify a termination date for
95 employment, the public official or executive officer shall
96 complete the 5 hours of training by January 1, 2022, and once
97 every 4 years thereafter for the duration of their employment.

98 2. An appointed public official or executive officer who is
99 appointed, reappointed, or hired after January 1, 2021, shall
100 complete the 5 hours of board governance training within 180
101 days after the date of his or her appointment, reappointment, or
102 hire.

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

104 1. Contract for or approve a board governance training
105 program that includes an affordable web-based electronic media
106 option; or

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

114 (c) The board governance training programs must provide, at
115 a minimum, educational materials and instruction on the
116 following:

585-03393-20

20201270c1

117 1. Generally accepted corporate board governance principles
118 and best practices; corporate board fiduciary duty of care legal
119 analyses; corporate board oversight and evaluation procedures;
120 governmental entity responsibilities; executive officer
121 responsibilities; executive officer performance evaluations;
122 selecting, monitoring, and evaluating an executive management
123 team; reviewing and approving proposed investments,
124 expenditures, and budget plans; financial accounting and capital
125 allocation principles and practices; and new governmental entity
126 member orientation.

127 2. The fiduciary duty of care and obligations imposed upon
128 appointed public officials and executive officers pursuant to
129 this section.

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

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

- 144 1. Has completed the training required by this subsection;
- 145 2. Has read the laws and relevant policies applicable to

585-03393-20

20201270c1

146 his or her position;

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

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

151 (f) The department shall adopt rules to implement this
152 subsection.

153 (g) This subsection does not apply to appointed public
154 officials and executive officers who:

155 1. Serve governmental entities whose annual revenues are
156 less than \$100,000;

157 2. Hold elected office in another capacity; or

158 3. Complete board governance training involving fiduciary
159 duties or responsibilities which is required under any other
160 state law.

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

165 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
166 by a governmental entity must represent the legal interests and
167 positions of the governmental entity and not the interest of any
168 individual or employee of the governmental entity, unless such
169 representation is directed by the governmental entity.

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