

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and 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 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:

27  
28 Section 1. The Division of Law Revision is directed to  
29 create part IX of chapter 112, Florida Statutes, consisting of

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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

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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 a reasonably prudent person 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

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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:

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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

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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.