

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Beltran offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
6 Section 1. Part IX of chapter 112, Florida Statutes,
7 consisting of section 112.91, is created to read:

PART IX

FIDUCIARY DUTY OF CARE

10 112.91 Fiduciary duty of care for appointed public
11 officials and executive officers.-

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

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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 and reasonable oversight, and
21 practice fiscal responsibility regarding a governmental entity.

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

23 (a) "Appointed public official" means a local officer, as
24 defined in s. 112.3145(1)(a)2.a., b., and f., or a state
25 officer, as defined in s. 112.3145(1)(c)2. and 3. For purposes
26 of this section, a person elected to office in any political
27 subdivision of the state is not an appointed public official.

28 (b) "Executive officer" means the chief executive officer
29 of a governmental entity. For purposes of this section, each
30 governmental entity shall have only one executive officer.

31 (c) "Governmental entity" means a board, council,
32 commission, authority, or other similar body that an appointed
33 public official or executive officer serves.

34 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
35 and executive officer owes a fiduciary duty of care to the
36 governmental entity he or she serves, as well as to each
37 constituent located in the geographic area he or she represents
38 and to the state and its citizens as a whole, and has a duty to:

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

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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 public records in
48 accordance with applicable laws, ordinances, rules, policies,
49 and terms governing his or her office or employment.

50 (f) Maintain reasonable oversight of any delegated
51 authority and discharge his or her duties with the care that a
52 reasonably prudent person in a similarly situated private
53 business would believe appropriate under the circumstances.

54 (g) Obtain sufficient information about any decisionmaking
55 functions, affairs, and performance of the governmental entity's
56 executive officers, other officers, agents, or employees.

57
58 This subsection does not prohibit an appointed public official
59 from considering legitimate nonfinancial policy issues in
60 exercising his or her duties.

61 (4) TRAINING REQUIREMENTS.-

62 (a) A governmental entity must notify an appointed public
63 official or executive officer in writing of the opportunity for
64 training under this section within 30 days of the initial

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65 appointment, reappointment, hiring, or any new or extended
66 contract on or after July 1, 2021.

67 (b) A governmental entity must provide an appointed public
68 official or executive officer with at least 5 hours of board
69 governance training, as described in this section, within 180
70 days after such request by the official or executive officer.

71 (c) A board governance training program must at a minimum
72 provide educational materials and instruction on all of the
73 following:

74 1. Generally accepted board governance principles and best
75 practices.

76 2. Board fiduciary duty of care legal analyses.

77 3. Board oversight and evaluation procedures.

78 4. Governmental entity and executive officer
79 responsibilities.

80 5. Executive officer performance evaluations.

81 6. Selecting, monitoring, and evaluating an executive
82 management team.

83 7. Reviewing and approving proposed investments,
84 expenditures, and budget plans.

85 8. Financial accounting and capital allocation principles
86 and practices.

87 9. New governmental entity employee orientation.

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88 10. The fiduciary duty of care and liabilities imposed
89 upon appointed public officials and executive officers under
90 this section.

91 (d)1. A governmental entity must offer an appropriate
92 training program or contract with a suitable training provider
93 to offer a board governance training program.

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

98 (e) A Florida College System institution, a state
99 university, an accredited law school, or a nationally recognized
100 entity specializing in board governance education may provide
101 board governance training.

102 (5) APPOINTMENT.—The appointment of an executive officer,
103 in-house general counsel or outside legal counsel, auditor, or
104 accounting firm by a governmental entity shall require approval
105 by the affirmative vote of two-thirds of the members of the
106 governing body of the governmental entity voting thereon.

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

108 (a) All legal counsel, whether in-house general counsel or
109 outside legal counsel, employed by a governmental entity must
110 represent the legal interest and position of the governing body
111 of the governmental entity and not the interest of a member of
112 the governing body or an employee of the governmental entity,

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Published On: 4/18/2021 5:36:45 PM

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113 unless such representation is directed by the governmental
114 entity or is authorized by law. This subsection does not prevent
115 legal counsel from representing a member of the governing body
116 or an employee of the governmental entity who is sued for
117 conduct committed in his or her official capacity, whether or
118 not the member or employee is sued in an official or individual
119 capacity, as long as there is no actual legal conflict between
120 the member or employee and the governing body.

121 (b) A lobbyist employed by a governmental entity must
122 represent the legal interest and position of the governing body
123 of the governmental entity and not the interest of a member of
124 the governing body or an employee of the governmental entity.

125 (c) This subsection does not forbid legal counsel or a
126 lobbyist from considering legitimate nonfinancial policy issues
127 in the exercise of his or her duties.

128 (7) OUTSIDE OPINIONS ON CERTAIN MEASURES.—The governing
129 body of a governmental entity shall determine, on the record at
130 a properly noticed meeting, whether the entity should obtain an
131 outside opinion for any measure that will require the
132 expenditure, by that entity of:

133 (a) An amount in excess of \$1 million in any fiscal year;

134 (b) An amount in excess of \$5 million in the aggregate; or

135 (c) An amount in excess of, but not limited to, \$250,000
136 in total annual compensation, including bonuses, exit bonuses,

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137 accrued paid time off, severance payments, and incentive
138 payments, for any employee or officer.

139 (8) Nothing in this section shall be construed to create a
140 private cause of action against an executive officer, an
141 appointed public official, or a governmental entity. However,
142 this subsection does not limit any liability arising under any
143 other law.

144 Section 2. This act shall take effect July 1, 2021.

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

148 Remove everything before the enacting clause and insert:
149 An act relating to fiduciary duty of care for appointed public
150 officials and executive officers; creating part IX of ch. 112,
151 F.S., entitled "Fiduciary Duty of Care;" creating s. 112.91,
152 F.S.; providing legislative findings; providing definitions;
153 providing fiduciary duties of certain public officials and
154 executive officers; requiring a governmental entity to notify
155 certain public officials and executive officers of board
156 governance training by a specific date; providing minimum board
157 governance training requirements; providing that certain
158 governmental entities may offer the training through in-house
159 counsel; providing which entities may provide training;
160 requiring a specified vote of a governing body for the
161 appointment of certain persons; providing standards for legal

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Bill No. CS/HB 573 (2021)

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162 | counsel and lobbyists employed by a governmental entity;
163 | providing construction; requiring a vote of a governing body be
164 | taken regarding certain expenditures; providing that a private
165 | cause of action does not arise under the bill; providing an
166 | effective date.