

1 A bill to be entitled
2 An act relating to fiduciary duty of care for
3 appointed public officials and executive officers;
4 creating part IX of ch. 112, F.S., entitled "Fiduciary
5 Duty of Care;" creating s. 112.91, F.S.; providing
6 legislative findings; providing definitions; providing
7 fiduciary duties of certain public officials and
8 executive officers; requiring board governance
9 training for certain public officials and executive
10 officers by a specific date; providing minimum board
11 governance training requirements; providing that
12 certain governmental entities may offer the required
13 training through in-house counsel; providing which
14 entities may provide training; requiring appointed
15 public officials and executive officers to certify
16 completion of the required training; providing
17 applicability; providing that a training
18 certification, or lack thereof, is admissible in
19 certain civil actions; requiring a specified vote of a
20 governing body for the appointment of certain persons;
21 providing standards for legal counsel and lobbyists
22 employed by a governmental entity; providing
23 construction; providing an effective date.

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

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Section 1. Part IX of chapter 112, Florida Statutes, consisting of section 112.91, is created to read:

PART IX

FIDUCIARY DUTY OF CARE

112.91 Fiduciary duty of care for appointed public officials and executive officers.—

(1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds that appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve, including each constituent located in the geographic area he or she represents and to the state and its citizens as a whole. The Legislature finds that codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence and reasonable oversight, and practice fiscal responsibility regarding a governmental entity.

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

(a) "Appointed public official" means a local officer, as defined in s. 112.3145(1)(a)2.a., b., and f., or a state officer, as defined in s. 112.3145(1)(c)2. and 3.

(b) "Executive officer" means the chief executive officer of a governmental entity.

(c) "Governmental entity" means a board, council, commission, authority, or other similar body that an appointed

51 public official or executive officer serves.

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

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

59 (b) Act with the care, competence, and diligence normally
60 exercised by private business professionals in similar corporate
61 and proprietary circumstances.

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

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

65 (e) Use reasonable efforts to maintain public records in
66 accordance with applicable laws, ordinances, rules, policies,
67 and terms governing his or her office or employment.

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

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

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76 This subsection does not prohibit an appointed public official
 77 from considering legitimate nonfinancial policy issues in
 78 exercising his or her duties.

79 (4) TRAINING REQUIREMENTS.—

80 (a) An appointed public official or executive officer who
 81 is appointed or hired on or after January 1, 2022, must complete
 82 5 hours of board governance training within 180 days after the
 83 date of his or her appointment or hire. An appointed public
 84 official or executive officer who is an incumbent official or
 85 officer on or before December 31, 2021, must complete the 5
 86 hours of board governance training by December 31, 2022.

87 (b) A board governance training program must at a minimum
 88 provide educational materials and instruction on all of the
 89 following:

90 1. Generally accepted board governance principles and best
 91 practices.

92 2. Board fiduciary duty of care legal analyses.

93 3. Board oversight and evaluation procedures.

94 4. Governmental entity and executive officer
 95 responsibilities.

96 5. Executive officer performance evaluations.

97 6. Selecting, monitoring, and evaluating an executive
 98 management team.

99 7. Reviewing and approving proposed investments,
 100 expenditures, and budget plans.

101 8. Financial accounting and capital allocation principles
 102 and practices.

103 9. New governmental entity employee orientation.

104 10. The fiduciary duty of care and liabilities imposed
 105 upon appointed public officials and executive officers under
 106 this section.

107 (c)1. A governmental entity must offer an appropriate
 108 training program or contract with a suitable training provider
 109 to offer a board governance training program.

110 2. For a governmental entity with an annual revenue of
 111 less than \$300,000, board governance training may be provided by
 112 in-house counsel of the governmental entity or the unit of
 113 government that created the governmental entity.

114 (d) A Florida College System institution, a state
 115 university, an accredited law school, or a nationally recognized
 116 entity specializing in board governance education may provide
 117 board governance training.

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

122 1. Has completed the training required by this subsection.

123 2. Has read the laws, ordinances, rules, policies, and
 124 terms governing his or her office or employment.

125 3. Will work to uphold such laws and policies to the best

126 of his or her ability.

127 4. Will faithfully discharge his or her fiduciary
128 responsibility as imposed by this section.

129 (f) This subsection does not apply to any of the
130 following:

131 1. An appointed public official or executive officer of a
132 governmental entity with an annual revenue of less than
133 \$100,000.

134 2. An appointed public official who holds elected office
135 in another capacity.

136 3. An appointed public official who is a graduate of an
137 accredited law school or a member in good standing of The
138 Florida Bar.

139 4. An appointed public official who is a certified public
140 accountant licensed under chapter 473.

141 5. An appointed public official who holds a master's
142 degree in business administration from an accredited college or
143 university.

144 6. An appointed public official with at least 3 years of
145 service on the board of a publicly traded corporation that
146 issues securities traded on an exchange registered with the
147 United States Securities and Exchange Commission.

148 7. An appointed public official who is subject to license
149 or registration by the United States Securities and Exchange
150 Commission.

151 (g) In a civil action involving an appointed public
152 official, executive officer, or governmental entity, the
153 appointed public official's or executive officer's certification
154 required under paragraph (e) is admissible as evidence.
155 Additionally, the failure by an appointed public official or
156 executive officer to provide the certification required under
157 paragraph (e) is admissible as evidence, unless the appointed
158 public official or executive officer is not required to complete
159 board governance training under paragraph (f).

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

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

166 (a) All legal counsel, whether in-house general counsel or
167 outside legal counsel, employed by a governmental entity must
168 represent the legal interest and position of the governing body
169 of the governmental entity and not the interest of a member of
170 the governing body or an employee of the governmental entity.
171 This subsection does not prevent legal counsel from representing
172 a member of the governing body or an employee of the
173 governmental entity who is sued for conduct committed in his or
174 her official capacity, whether or not the member or employee is
175 sued in an official or individual capacity, as long as there is

176 | no actual legal conflict between the member or employee and the
177 | governing body.

178 | (b) A lobbyist employed by a governmental entity must
179 | represent the legal interest and position of the governing body
180 | of the governmental entity and not the interest of a member of
181 | the governing body or an employee of the governmental entity.

182 | (c) This subsection does not forbid legal counsel or a
183 | lobbyist from considering legitimate nonfinancial policy issues
184 | in the exercise of his or her duties.

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