

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 for Appointed Public Officials and  
6           Executive Officers;" creating s. 112.89, F.S.;  
7           providing legislative findings; providing definitions;  
8           providing fiduciary duties of certain public officials  
9           and executive officers; requiring a governmental  
10          entity to notify certain public officials and  
11          executive officers of board governance training within  
12          a certain time; providing minimum board governance  
13          training requirements; providing that certain  
14          governmental entities may offer the training through  
15          in-house counsel; providing which entities may provide  
16          training; requiring a specified vote of a governing  
17          body for the appointment of certain persons; providing  
18          standards for legal counsel and lobbyists employed by  
19          a governmental entity; providing construction;  
20          requiring a governing body to vote at a properly  
21          noticed meeting whether to obtain an outside opinion  
22          relating to certain expenditures; prohibiting a  
23          private cause of action; providing an exception;  
24          providing an effective date.

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  
 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  
 36 finds that appointed public officials and executive officers  
 37 acting on behalf of governmental entities owe a fiduciary duty  
 38 to the entities they serve, including each constituent located  
 39 in the geographic area he or she represents and to the state and  
 40 its citizens as a whole. The Legislature finds that codifying a  
 41 fiduciary duty of care will require that appointed public  
 42 officials and executive officers stay adequately informed of  
 43 affairs, perform due diligence, perform reasonable oversight,  
 44 and practice fiscal responsibility regarding decisions involving  
 45 corporate and proprietary commitments on behalf of the entity  
 46 they serve.

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

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

51 purposes of this section, the term does not include a person  
52 elected to office in any political subdivision of the state.

53 (b) "Executive officer" means the chief executive officer  
54 of a governmental entity to which an appointed public official  
55 is appointed. For purposes of this section, each governmental  
56 entity shall have only one executive officer.

57 (c) "General counsel" means the chief legal counsel of a  
58 governmental entity to which an appointed public official or an  
59 executive officer is appointed or hired.

60 (d) "Governmental entity" means the entity, a board, a  
61 council, a commission, an authority, or other body thereof, to  
62 which an appointed public official or an executive officer is  
63 appointed or hired.

64 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official  
65 and executive officer owes a fiduciary duty of care to the  
66 governmental entity he or she serves, as well as to each  
67 constituent located in the geographic area he or she represents  
68 and to the state and its citizens as a whole, in accordance with  
69 law, and has a duty to:

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

72 (b) Act with the care, competence, and diligence normally  
73 exercised by a reasonably prudent person in similar corporate  
74 and proprietary circumstances.

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

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

78 (e) Use reasonable efforts to maintain documentation in  
 79 accordance with applicable laws.

80 (f) Maintain reasonable oversight of any delegated  
 81 authority and discharge his or her duties with the care that a  
 82 reasonably prudent person in a similar business position would  
 83 believe appropriate under the circumstances, and must:

84 1. Become reasonably informed in connection with any  
 85 decisionmaking function.

86 2. Become reasonably informed when devoting attention to  
 87 any oversight function.

88 3. Keep reasonably informed concerning the affairs of the  
 89 governmental entity.

90 4. Keep reasonably informed concerning the performance of  
 91 the governmental entity's executive officers or other officers,  
 92 agents, or employees.

93 (4) TRAINING REQUIREMENTS.—

94 (a) A governmental entity must notify an appointed public  
 95 official or executive officer in writing of the opportunity for  
 96 training under this section within 30 days after the date of his  
 97 or her initial appointment, reappointment, hiring, or any  
 98 contract entered into or renewed on or after July 1, 2021.

99 (b) A governmental entity must provide an appointed public  
 100 official or executive officer with at least 5 hours of board

101 governance training, as described in this section, within 180  
 102 days after the official or executive officer requests to have  
 103 such training.

104 (c) A board governance training program must at a minimum  
 105 provide educational materials and instruction on all of the  
 106 following:

107 1. Generally accepted board governance principles and best  
 108 practices.

109 2. Board fiduciary duty of care legal analyses.

110 3. Board oversight and evaluation procedures.

111 4. Governmental entity and executive officer  
 112 responsibilities.

113 5. Executive officer performance evaluations.

114 6. Selecting, monitoring, and evaluating an executive  
 115 management team.

116 7. Reviewing and approving proposed investments,  
 117 expenditures, and budget plans.

118 8. Financial accounting and capital allocation principles  
 119 and practices.

120 9. New governmental entity employee orientation.

121 10. The fiduciary duty of care and liabilities imposed  
 122 upon appointed public officials and executive officers under  
 123 this section.

124 (d)1. A governmental entity must offer an appropriate  
 125 training program or contract with a suitable training provider

126 | to offer a board governance training program.

127 | 2. For a governmental entity with an annual revenue of  
 128 | less than \$1 million, board governance training may be provided  
 129 | by in-house counsel of the governmental entity or the unit of  
 130 | government that created the governmental entity.

131 | (e) A public body having management or supervision of the  
 132 | appointed public official, executive officer, or the  
 133 | governmental entity that the appointed public official or  
 134 | executive officer serves; a Florida College System institution;  
 135 | a state university; an accredited law school; or a nationally  
 136 | recognized entity specializing in board governance education may  
 137 | provide board governance training.

138 | (5) APPOINTMENT.—The appointment of an executive officer,  
 139 | in-house general counsel or outside legal counsel, auditor, or  
 140 | accounting firm by a governmental entity is subject to approval  
 141 | by a majority vote of the governmental entity.

142 | (6) STANDARDS FOR LEGAL COUNSEL AND LOBBYISTS.—

143 | (a) All legal counsel, whether in-house general counsel or  
 144 | outside legal counsel, employed by a governmental entity must  
 145 | represent the legal interests and positions of the governmental  
 146 | entity and not the interest of any individual or employee of the  
 147 | governmental entity, unless such representation is directed by  
 148 | the governmental entity. This paragraph does not prevent legal  
 149 | counsel from representing a member of the governing body or an  
 150 | employee of the governmental entity who is sued for conduct

151 committed in his or her official capacity, whether or not the  
152 member or employee is sued in an official or individual  
153 capacity, as long as there is no actual legal conflict between  
154 the member or employee and the governing body.

155 (b) A lobbyist employed by a governmental entity must  
156 represent the interests and positions of the governmental entity  
157 and not the interest of any individual or employee of the  
158 governmental entity.

159 (7) OUTSIDE OPINIONS ON CERTAIN MEASURES.—The governing  
160 body of a governmental entity shall determine, on the record at  
161 a properly noticed meeting, whether the governmental entity  
162 should obtain an outside opinion for any measure that will  
163 require the governmental entity to make any of the following  
164 expenditures:

165 (a) An amount in excess of \$1 million in any fiscal year;  
166 (b) An amount in excess of \$5 million in the aggregate; or  
167 (c) An amount in excess of \$250,000 in total annual  
168 compensation, including bonuses, exit bonuses, accrued paid time  
169 off, severance payments, and incentive payments for any employee  
170 or officer.

171 (8) This section does not create a private cause of action  
172 against an executive officer, an appointed public official, or a  
173 governmental entity. However, this subsection does not limit  
174 liability arising under any other law.

175 Section 3. This act shall take effect July 1, 2021.