

By Senator Diaz

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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 a training program 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.

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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

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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.a., b., c., d., or f.,
48 or a state officer as defined in s. 112.3145(1)(c)2. or 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) "General counsel" means the chief legal counsel of a
55 governmental entity to which an appointed public official or an
56 executive officer is appointed or hired.

57 (e) "Governmental entity" means the entity, or a board, a
58 council, a commission, an authority, or other body thereof, to

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59 which an appointed public official or an executive officer is
60 appointed or hired.

61 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
62 and executive officer owes a fiduciary duty of care to the
63 applicable entity he or she serves in accordance with law and
64 has a duty to:

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

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

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

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

73 (e) Use reasonable efforts to maintain documentation in
74 accordance with applicable laws.

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

79 1. Become reasonably informed in connection with any
80 decisionmaking function;

81 2. Become reasonably informed when devoting attention to
82 any oversight function;

83 3. Keep reasonably informed concerning the affairs of the
84 governmental entity; and

85 4. Keep reasonably informed concerning the performance of
86 the governmental entity's executive officers or other officers,
87 agents, or employees.

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88 (4) TRAINING REQUIREMENT.—

89 (a) Beginning January 1, 2023, each appointed public
90 official and executive officer shall complete a minimum of 5
91 hours of board governance training for each term served.

92 1. An appointed public official or executive officer
93 holding office or employed by a governmental entity on January
94 1, 2023, shall complete the 5 hours of board governance training
95 before the expiration of his or her term of service. If an
96 appointed public official or executive officer is employed under
97 a contract that does not specify a termination date for
98 employment, the public official or executive officer shall
99 complete the 5 hours of training by January 1, 2024, and once
100 every 4 years thereafter for the duration of his or her
101 employment.

102 2. An appointed public official or executive officer who is
103 appointed, reappointed, or hired after January 1, 2023, shall
104 complete the 5 hours of board governance training within 180
105 days after the date of his or her appointment, reappointment, or
106 hire.

107 (b) By January 1, 2023, the department shall:

108 1. Contract for or approve a board governance training
109 program that includes an affordable web-based electronic media
110 option; or

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

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117 subsection.

118 (c) The board governance training programs must provide, at
119 a minimum, educational materials and instruction on the
120 following:

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

131 2. The fiduciary duty of care and obligations imposed upon
132 appointed public officials and executive officers pursuant to
133 this section.

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

144 (e) Within 30 days after completion of the board governance
145 training, each appointed public official and executive officer

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146 shall certify, in writing or electronic form and under oath, to
147 the department that he or she:

148 1. Has completed the training required by this subsection;

149 2. Has read the laws and relevant policies applicable to
150 his or her position;

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

153 4. Will faithfully discharge his or her fiduciary duty, as
154 imposed by this section.

155 (f) The department shall adopt rules to implement this
156 subsection.

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

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

161 2. Hold elected office in another capacity; or

162 3. Complete board governance training involving fiduciary
163 duties or responsibilities which is required under any other
164 state law.

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

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

174 Section 3. This act shall take effect July 1, 2022.