

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 a governmental entity to
9 notify certain public officials and executive officers
10 of board governance training within a certain time;
11 providing minimum board governance training
12 requirements; providing that certain governmental
13 entities may offer the training through in-house
14 counsel; providing which entities may provide
15 training; requiring a specified vote of a governing
16 body for the appointment of certain persons; providing
17 standards for legal counsel and lobbyists employed by
18 a governmental entity; providing construction;
19 requiring a governing body to vote at a properly
20 noticed meeting whether to obtain an outside opinion
21 relating to certain expenditures; prohibiting a
22 private cause of action; providing an exception;
23 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. For purposes of this section, the term does not include a person elected to office in any political subdivision of the state.

(b) "Executive officer" means the chief executive officer of a governmental entity. For purposes of this section, each

51 governmental entity shall have only one executive officer.

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

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

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

62 (b) Act with the care, competence, and diligence normally
63 exercised by private business professionals in similar corporate
64 and proprietary circumstances.

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

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

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

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

75 (g) Obtain sufficient information about any decisionmaking

76 functions, affairs, and performance of the governmental entity's
77 executive officers, other officers, agents, or employees.

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79 This subsection does not prohibit an appointed public official
80 from considering legitimate nonfinancial policy issues in
81 exercising his or her duties.

82 (4) TRAINING REQUIREMENTS.—

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

88 (b) A governmental entity must provide an appointed public
89 official or executive officer with at least 5 hours of board
90 governance training, as described in this section, within 180
91 days after the official or executive officer requests to have
92 such training.

93 (c) A board governance training program must at a minimum
94 provide educational materials and instruction on all of the
95 following:

96 1. Generally accepted board governance principles and best
97 practices.

98 2. Board fiduciary duty of care legal analyses.

99 3. Board oversight and evaluation procedures.

100 4. Governmental entity and executive officer

101 responsibilities.

102 5. Executive officer performance evaluations.

103 6. Selecting, monitoring, and evaluating an executive
104 management team.

105 7. Reviewing and approving proposed investments,
106 expenditures, and budget plans.

107 8. Financial accounting and capital allocation principles
108 and practices.

109 9. New governmental entity employee orientation.

110 10. The fiduciary duty of care and liabilities imposed
111 upon appointed public officials and executive officers under
112 this section.

113 (d)1. A governmental entity must offer an appropriate
114 training program or contract with a suitable training provider
115 to offer a board governance training program.

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

120 (e) A Florida College System institution, a state
121 university, an accredited law school, or a nationally recognized
122 entity specializing in board governance education may provide
123 board governance training.

124 (5) APPOINTMENT.—The appointment of an executive officer,
125 in-house general counsel or outside legal counsel, auditor, or

126 accounting firm by a governmental entity shall require approval
 127 by the affirmative vote of two-thirds of the members of the
 128 governing body of the governmental entity voting thereon.

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

130 (a) All legal counsel, whether in-house general counsel or
 131 outside legal counsel, employed by a governmental entity must
 132 represent the legal interest and position of the governing body
 133 of the governmental entity and not the interest of a member of
 134 the governing body or an employee of the governmental entity,
 135 unless such representation is directed by the governmental
 136 entity or is authorized by law. This subsection does not prevent
 137 legal counsel from representing a member of the governing body
 138 or an employee of the governmental entity who is sued for
 139 conduct committed in his or her official capacity, whether or
 140 not the member or employee is sued in an official or individual
 141 capacity, as long as there is no actual legal conflict between
 142 the member or employee and the governing body.

143 (b) A lobbyist employed by a governmental entity must
 144 represent the legal interest and position of the governing body
 145 of the governmental entity and not the interest of a member of
 146 the governing body or an employee of the governmental entity.

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

150 (7) OUTSIDE OPINIONS ON CERTAIN MEASURES.—The governing

151 body of a governmental entity shall determine, on the record at
 152 a properly noticed meeting, whether the governmental entity
 153 should obtain an outside opinion for any measure that will
 154 require the governmental entity to make any of the following
 155 expenditures:

- 156 (a) An amount in excess of \$1 million in any fiscal year;
- 157 (b) An amount in excess of \$5 million in the aggregate; or
- 158 (c) An amount in excess of \$250,000 in total annual
 159 compensation, including bonuses, exit bonuses, accrued paid time
 160 off, severance payments, and incentive payments for any employee
 161 or officer.

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

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