

By Senator Diaz

36-00774-21

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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.

25  
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. or a "state officer"  
48 as defined in s. 112.3145(1) (c)2. and 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, 2022, 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, 2022, 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, 2023, and once  
100 every 4 years thereafter for the duration of their employment.

101 2. An appointed public official or executive officer who is  
102 appointed, reappointed, or hired after January 1, 2022, shall  
103 complete the 5 hours of board governance training within 180  
104 days after the date of his or her appointment, reappointment, or  
105 hire.

106 (b) By January 1, 2022, the department shall:

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

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

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

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

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

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

143 (e) Within 30 days after completion of the board governance  
144 training, each appointed public official and executive officer  
145 shall certify, in writing or electronic form and under oath, to

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146 the department that he or she:

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

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

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

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

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

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

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

160 2. Hold elected office in another capacity; or

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

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

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

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