

By the Committee on Community Affairs; and 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. 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.