

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Beltran offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 555 and 556, insert:

6 Section 11. The Division of Law Revision is directed to
7 create part IX of chapter 112, Florida Statutes, consisting of
8 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
9 Care for Appointed Public Officials and Executive Officers."

10 Section 12. Section 112.89, Florida Statutes, is created
11 to read:

12 112.89 Fiduciary duty of care.-

13 (1) LEGISLATIVE FINDINGS AND PURPOSE.-The Legislature
14 finds that appointed public officials and executive officers
15 acting on behalf of governmental entities owe a fiduciary duty
16 to the entities they serve. The Legislature finds that codifying

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

Amendment No.

17 a fiduciary duty of care will require that appointed public
18 officials and executive officers stay adequately informed of
19 affairs, perform due diligence, perform reasonable oversight,
20 and practice fiscal responsibility regarding decisions involving
21 corporate and proprietary commitments on behalf of the entity
22 they serve.

23 (2) DEFINITIONS.—

24 (a) "Appointed public official" means either a "local
25 officer" as defined in s. 112.3145(1) (a)2. or a "state officer"
26 as defined in s. 112.3145(1) (c)2. and 3.

27 (b) "Department" means the Department of Business and
28 Professional Regulation.

29 (c) "Executive officer" means the chief executive officer
30 of a governmental entity to which an appointed public official
31 is appointed.

32 (d) "Governmental entity" means the entity, or a board, a
33 council, a commission, an authority, or other body thereof, to
34 which an appointed public official or an executive officer is
35 appointed or hired.

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

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

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

Amendment No.

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

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

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

48 (e) Use reasonable efforts to maintain documentation in
49 accordance with applicable laws.

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

54 1. Become reasonably informed in connection with any
55 decisionmaking function;

56 2. Become reasonably informed when devoting attention to
57 any oversight function;

58 3. Keep reasonably informed concerning the affairs of the
59 governmental entity; and

60 4. Keep reasonably informed concerning the performance of
61 a governmental entity's executive officers or other officers,
62 agents, or employees.

63 (4) TRAINING REQUIREMENT.—

64 (a) Beginning January 1, 2021, each appointed public
65 official and executive officer shall complete a minimum of 5
66 hours of board governance training for each term served.

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

Amendment No.

67 1. An appointed public official or executive officer
68 holding office or employed by an entity on January 1, 2021,
69 shall complete the 5 hours of board governance training before
70 the expiration of his or her term of service. If an appointed
71 public official or executive officer is employed under a
72 contract that does not specify a termination date for
73 employment, the public official or executive officer shall
74 complete the 5 hours of training by January 1, 2022, and once
75 every 4 years thereafter for the duration of their employment.

76 2. An appointed public official or executive officer who
77 is appointed, reappointed, or hired after January 1, 2021, shall
78 complete the 5 hours of board governance training within 180
79 days after the date of his or her appointment, reappointment, or
80 hire.

81 (b) By January 1, 2021, the department shall:

82 1. Contract for or approve a board governance training
83 program that includes an affordable web-based electronic media
84 option; or

85 2. Publish a list of approved board governance training
86 providers on its website. A provider may include a Florida
87 College System institution, a state university, a nationally
88 recognized entity specializing in board governance education, or
89 any other entity deemed qualified by the department as capable
90 of providing the minimum training requirements specified in this
91 subsection.

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

Amendment No.

92 (c) The board governance training programs must provide,
93 at a minimum, educational materials and instruction on the
94 following:

95 1. Generally accepted corporate board governance
96 principles and best practices; corporate board fiduciary duty of
97 care legal analyses; corporate board oversight and evaluation
98 procedures; governmental entity responsibilities; executive
99 officer responsibilities; executive officer performance
100 evaluations; selecting, monitoring, and evaluating an executive
101 management team; reviewing and approving proposed investments,
102 expenditures, and budget plans; financial accounting and capital
103 allocation principles and practices; and new governmental entity
104 member orientation.

105 2. The fiduciary duty of care and obligations imposed upon
106 appointed public officials and executive officers pursuant to
107 this section.

108 (d) A governmental entity complies with the training
109 requirement under this subsection by providing a department-
110 approved program or contracting with a provider listed by the
111 department under subparagraph (b)2. However, for governmental
112 entities with annual revenues of less than \$300,000, board
113 governance training may be provided by in-house counsel of the
114 governmental entity or the unit of government that created the
115 governmental entity, if applicable, so long as the training

Amendment No.

116 complies with the minimum course content established by
117 department rule.

118 (e) Within 30 days after completion of the board
119 governance training, each appointed public official and
120 executive officer shall certify, in writing or electronic form
121 and under oath, to the department that he or she:

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

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

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

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

129 (f) The department shall adopt rules to implement this
130 subsection.

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

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

135 2. Hold elected office in another capacity; or

136 3. Complete board governance training involving fiduciary
137 duties or responsibilities which is required under any other
138 state law.

139 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
140 COUNSELS.—The appointment of any executive officer or general

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

Amendment No.

141 counsel is subject to approval by a majority vote of the
142 governmental entity.

143 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel
144 employed by a governmental entity must represent the legal
145 interests and positions of the governmental entity and not the
146 interest of any individual or employee of the governmental
147 entity, unless such representation is directed by the
148 governmental entity.

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150 -----

151 **T I T L E A M E N D M E N T**

152 Remove line 36 and insert:

153 changes made by the act; providing a directive to the Division
154 of Law Revision to create part IX of ch. 112, F.S.; creating s.
155 112.89, F.S.; providing legislative findings and purpose;
156 defining terms; establishing standards for the fiduciary duty of
157 care for appointed public officials and executive officers of
158 specified governmental entities; requiring training on board
159 governance beginning on a specified date; requiring the
160 Department of Business and Professional Regulation to contract
161 for or approve such training programs or publish a list of
162 approved training providers; specifying requirements for such
163 training; authorizing training to be provided by in-house
164 counsel for certain governmental entities; requiring appointed
165 public officials and executive officers to certify their

PCS for CSHB 1111 a2

Published On: 3/1/2020 4:25:03 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 1111 (2020)

Amendment No.

166 completion of the annual training; requiring the department to
167 adopt rules; providing exceptions to the training requirement;
168 specifying requirements for the appointment of executive
169 officers and general counsels of governmental entities;
170 specifying standards for legal counsel; creating s. 216.1366,
171 F.S.;