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State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

C. Christopher Anderson, III
*Executive Director/
General Counsel*

Kerrie J. Stillman
Deputy Executive Director

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

"A Public Office is a Public Trust"

MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Senior Attorney *GS*
DATE: January 6, 2021
RE: Rule Hearing on Rule 34-7.025, Florida Administrative Code

The Commission is being asked to consider and approve two rulemaking items at the January 22 meeting. This has been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

The second matter under consideration is an amendment to Rule 34-7.025, which a rule concerning the ethics training that various public officers have to receive. The amendment indicates that each member of the governing body of a commercial service airport is required to receive four hours of ethics training pursuant to Section 332.0075(4)(b), Florida Statutes. This new statutory provision reflects Chapter 2020-167, Laws of Florida, which was passed during the 2020 legislative session.

Pursuant to additional language in Section 332.0075(4)(b), the amendment to the Rule also indicates the topics which should be addressed in the training, as well as the statute's statement that if a member of a governing body of a commercial service airport has already completed four hours of ethics training pursuant to Section 112.3142, Florida Statutes—which is a separate ethics training statute—that will satisfy the training requirement of Section 332.0075(4)(b).

The Notice of Proposed Rule for this matter is attached, as well as Chapter 2020-167, Laws of Florida. You will be asked to approve the amendment prepared by staff at your January 22, 2020, Commission meeting.

Attachments

112.3215 FS. History—New 4-11-76, Formerly 34-7.10-7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 1-1-99, 1-1-00, 12-4-00, 12-21-00, 10-14-01, 11-22-01, 1-1-02, 1-1-03, 1-1-04, 1-1-05, 1-1-06, 6-15-06, 1-1-07, 1-1-10, 8-18-10, 1-1-11, 1-19-11, 11-4-13, 1-1-15, 11-24-15, 7-5-16, 1-9-17, 1-9-20, ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gray Schafer, Senior Attorney, Commission on Ethics, (850)488-7864

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chris Anderson, Executive Director, Commission on Ethics, (850)488-7864

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 16, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 21, 2020

COMMISSION ON ETHICS

RULE NO.: 34-7.025
 RULE TITLE: Ethics Training Course Content

PURPOSE AND EFFECT: The purpose of the amendment is to recognize changes made by Chapter 2020-167, Laws of Florida, which created Section 332.0075, F.S. Section 332.0075(4)(b), F.S., requires each member of the governing body of a commercial service airport to receive 4 hours of ethics training annually, addressing, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. The effect of the amendment will be to list these types of governing board members as public officers required to receive 4 hours of annual ethics training.

SUMMARY: The amendment indicates that each member of the governing body of a county, municipality, or special district that operates a commercial service airport is required by Section 332.0075(4)(b), F.S., to complete four (4) hours of ethics training each calendar year. The amendment includes the subject matter that should be covered in the training--which is laid out in Section 332.0075(4)(b)--and indicates that compliance with Section 112.3142, F.S., a separate ethics training requirement, will constitute compliance with Section 332.0075(4)(b). The amendment also encourages those providing training to attorneys subject to Section 332.0075(4)(b) to seek accreditation from the Florida Bar so that the attorneys may obtain continuing legal education credit.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly

regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based on past experience with other public officers who must complete similar four hours of ethics training, the adverse impact or regulatory costs, if any, do not exceed and would not be expected to exceed any one of the economic analysis criteria set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: Art. II, Section 8, Fla. Const., 112.322(9) FS.

LAW IMPLEMENTED: Chapter 2020-167, Laws of Florida
 A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: January 22, 2021, 11:00 a.m.
 PLACE: Agency for Health Care Administration, Fort Knox Office Complex - Building 3, 2727 Mahan Drive, Room A, Tallahassee, FL 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Administrative Assistant, Commission on Ethics, (850)488-7864. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gray Schafer, Senior Attorney, Commission on Ethics, (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

- 34-7.025 Ethics Training Course Content.
- (1) through (2) No change.
- (3)(a) Each member of the governing body of a county, municipality, or special district that operates a commercial service airport is required by Section 332.0075(4)(b), F.S., to complete four (4) hours of ethics training each calendar year addressing, at a minimum, Article II, Section 8, Florida Constitution, "Ethics in Government," and Chapter 112, Part III, F.S. (the "Code of Ethics for Public Officers and Employees," as well as the public records and public meeting laws of this state.

(b) Constitutional officers and elected municipal officers who are members of the governing bodies of commercial service airports, and who complete the ethics training required by Section 112.3142, F.S., shall be considered in compliance with the training required by Section 332.0075(4)(b), F.S.

(4) Providers are encouraged to seek accreditation from The Florida Bar for courses offered pursuant to Sections 112.3142 and 332.0075(4)(b), F.S., so that attendees who are members of The Florida Bar may also obtain continuing legal education credit for course attendance.

Rulemaking Authority 112.322(9), 112.3142 FS. Law Implemented 112.3142, 332.0075 FS. History—New 9-10-13, Amended 1-8-15, 1-9-20, ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gray Schafer, Senior Attorney, Commission on Ethics, (850)488-7864

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chris Anderson, Executive Director, Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 16, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 18, 2020

DEPARTMENT OF HEALTH

Board of Nursing

RULE NO.: RULE TITLE:

64B9-14.0015 Delegated Tasks

PURPOSE AND EFFECT: The Board proposes the promulgation of the rule to list the tasks that an RN may delegate to a CNA or HHA.

SUMMARY: The tasks that an RN may delegate to a CNA or HHA will be listed in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No

person or interested party submitted additional information regarding the economic impact at that time.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 464.2035(3), 464.0156(3) FS. LAW IMPLEMENTED: 464.0156, 464.2035 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Nursing, 4052 Bald Cypress Way, Bin #C02, Tallahassee, Florida 32399; MQA.Nursing@flhealth.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-14.0015 Delegated Tasks.

(1) A registered nurse may delegate tasks within the nurse’s scope of practice to a certified nursing assistant (CNA) or home health aide (HHA) who the registered nurse has determined is competent. Consideration of a CNA’s or HHA’s competence by the registered nurse and delegation of the task shall include:

(a) Comprehensive initial and ongoing assessment of the patient’s needs by a registered nurse,

(b) Consideration of the complexity of the delegated task,

(c) Experience and skill of the CNA or HHA,

(d) Willingness of the CNA or HHA to perform the task,

(e) Training and demonstrated safe performance of the delegated task by the CNA or HHA,

(f) Consent of the patient, the patient’s guardian, or designated health care surrogate to accept performance of the task by a CNA or HHA.

(2) Each registered nurse assigned to a patient must document her or his supervision and approval for the CNA or HHA to perform the delegated nursing task. A registered nurse may rescind a delegated task at any time.

Rulemaking Authority 464.2035(3), 464.0156(3), FS. Law Implemented 464.0156, 464.2035 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Nursing

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Nursing

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 20, 2020

CHAPTER 2020-167

Committee Substitute for Committee Substitute for House Bill No. 915

An act relating to commercial service airports; amending s. 11.45, F.S.; directing the Auditor General to conduct specified audits of certain airports; defining the term “large-hub commercial service airport”; amending s. 112.3144, F.S.; requiring certain members of the governing body of a large-hub commercial service airport to comply with certain financial disclosure requirements; providing that a separate filing is not required under specified circumstances; defining the term “large-hub commercial service airport”; creating s. 332.0075, F.S.; providing definitions; requiring the governing body of a municipality, county, or special district that operates a commercial service airport to establish and maintain a website; requiring the governing body to post or provide links to certain information on the website; providing for the redaction of confidential or exempt information regarding certain contracts; requiring commercial service airports to comply with certain contracting requirements; providing exceptions; requiring the governing body to approve, award, or ratify certain contracts; requiring governing body members and employees of a commercial service airport to comply with certain ethics requirements; requiring governing body members to complete annual ethics training; requiring governing bodies of commercial service airports to submit certain information annually to the Department of Transportation; requiring the department to review such information and submit an annual report to the Governor and Legislature; prohibiting the expenditure of certain funds unless specified conditions are met; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (m) is added to subsection (2) of section 11.45, Florida Statutes, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(m) At least once every 7 years, conduct an operational and financial audit of each large-hub commercial service airport. Each operational audit shall include, at a minimum, an assessment of compliance with s. 332.0075, including compliance with chapter 287, and compliance with the public records and public meetings laws of this state. For purposes of this paragraph, the term “large-hub commercial service airport” means a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the Federal Aviation Administration.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

Section 2. Paragraph (c) is added to subsection (1) of section 112.3144, Florida Statutes, to read:

112.3144 Full and public disclosure of financial interests.—

(1)

(c) Each member of the governing body of a large-hub commercial service airport, except for members required to comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution, shall comply with the financial disclosure requirements of s. 112.3145(3). For purposes of this paragraph, the term "large-hub commercial service airport" means a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the Federal Aviation Administration.

Section 3. Section 332.0075, Florida Statutes, is created to read:

332.0075 Commercial service airports; transparency and accountability; penalty.—

(1) As used in this section, the term:

(a) "Commercial service airport" means a primary airport as defined in 49 U.S.C. s. 47102 which is classified as a large, medium, or small hub airport by the Federal Aviation Administration.

(b) "Department" means the Department of Transportation.

(c) "Governing body" means the governing body of the county, municipality, or special district that operates a commercial service airport.

(2) Each governing body shall establish and maintain a website to post information relating to the operation of a commercial service airport, including:

(a) All published notices of meetings and published meeting agendas of the governing body.

(b) The official minutes of each meeting of the governing body, which shall be posted within 7 business days after the date of the meeting in which the minutes were approved.

(c) The approved budget for the commercial service airport for the current fiscal year, which shall be posted within 7 business days after the

date of adoption. Budgets must remain on the website for 2 years after the conclusion of the fiscal year for which they were adopted.

(d) A link to the Airport Master Plan for the commercial service airport on the Federal Aviation Administration's website.

(e) A link to all financial and statistical reports for the commercial service airport on the Federal Aviation Administration's website.

(f) Any contract or contract amendment executed by or on behalf of the commercial service airport in excess of the threshold amount provided in s. 287.017 for CATEGORY THREE, which shall be posted no later than 7 business days after the commercial service airport executes the contract or contract amendment. However, a contract or contract amendment may not reveal information made confidential or exempt by law. Each commercial service airport must redact confidential or exempt information from each contract or contract amendment before posting a copy on its website.

(g) Position and rate information for each employee of the commercial service airport, including, at a minimum, the employee's position title, position description, and annual or hourly salary. This information shall be updated annually.

(3)(a) Notwithstanding any other provision of law to the contrary, commercial service airports are subject to the requirements of chapter 287 for purchases of commodities or contractual services which exceed the threshold amount provided in s. 287.017 for CATEGORY THREE. If the purchase of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY THREE, the purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless an exception applies as provided in s. 287.057(3) or an immediate danger to the public health, safety, or welfare or other substantial loss to the commercial service airport requires emergency action.

(b) A governing body must approve, award, or ratify all contracts executed by or on behalf of a commercial service airport in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE as a separate line item on the agenda and must provide a reasonable opportunity for public comment. Such contracts may not be approved, awarded, or ratified as part of a consent agenda.

(4)(a) Members of a governing body and employees of a commercial service airport are subject to part III of chapter 112. However, this paragraph does not prohibit the application of more stringent ethical standards adopted by county or municipal charter, ordinance, or resolution of the governing body for its members and employees.

(b) Beginning January 1, 2021, each member of a governing body must complete 4 hours of ethics training each calendar year which addresses, at a

minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subject material is covered therein. Constitutional officers and elected municipal officers who are members of the governing body who complete the ethics training required in s. 112.3142 shall be considered in compliance with this paragraph.

(5)(a) Beginning November 1, 2021, and each November 1 thereafter, the governing body of each commercial service airport shall submit the following information to the department:

1. Its approved budget for the current fiscal year.
2. Any financial reports submitted to the Federal Aviation Administration during the previous calendar year.
3. A link to its website.
4. A statement, verified as provided in s. 92.525, that it has complied with part III of chapter 112, chapter 287, and this section.

(b) The department shall review the information submitted by the governing body of the commercial service airport and posted on the airport's website to determine the accuracy of such information. Beginning January 15, 2022, and each January 15 thereafter, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with this section.

(6) The department may not expend any funds allocated to a commercial service airport as contained in the adopted work program, unless pledged for debt service, until the commercial service airport demonstrates its compliance with this section.

Section 4. This act shall take effect October 1, 2020.

Approved by the Governor September 4, 2020.

Filed in Office Secretary of State September 4, 2020.