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COMMISSION ON ETHICS
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"A Public Office is a Public Trust"

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MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel (GS)
DATE: November 15, 2023
RE: Rule Hearing on amendments to Chapter 34-7.025

The Commission is being asked to consider and approve rulemaking involving a necessary amendment to Chapter 34-7.025, Florida Administrative Code (F.A.C.). The rule amendment has been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

This rulemaking is necessary to reflect a recent statutory change to Section 112.3142(2)(d), Florida Statutes, made by Chapter 2023-121, Laws of Florida. The Chapter Law modified Section 112.3142(2)(d) to begin requiring that elected officers of independent special districts, and each person appointed to fill a vacancy for an unexpired term of such an office, receive four hours of ethics training each calendar year, beginning on January 1, 2024. Currently, Rule 34-7.025 lists the types of public officers that have to receive four hours of ethics training under Section 112.3142, but the list must be updated to reflect this recent statutory change and include elected officers of independent special districts.

The text of the proposed amended rule, the Notice of Proposed Rulemaking, and Chapter 2023-121, Laws of Florida are attached. You will be asked to approve this proposed rulemaking at your December 1, 2023, Commission meeting.

Attachments

34-7.025 Ethics Training Course Content.

(1) Constitutional officers, elected municipal officers, ~~and~~ commissioners of community redevelopment agencies created under Part III of Chapter 163, F.S., and elected local officers of independent special districts, as defined in Section 189.012, Florida Statutes, including any person appointed to fill a vacancy for an unexpired term of such elective office of an independent special district, are required by Section 112.3142, F.S., to complete four (4) hours of ethics training each calendar year.

(2)(a) In addition to receiving training on Florida's public records laws (Chapter 119, F.S.) and open meetings laws (Chapter 286, F.S.), constitutional officers, elected municipal officers, ~~and~~ commissioners of community redevelopment agencies created under Part III of Chapter 163, F.S., and elected local officers of independent special districts, as defined in Section 189.012, Florida Statutes, including any person appointed to fill a vacancy for an unexpired term of such elective office of an independent special district, are required to obtain ethics training that is derived from 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."

(b) No change.

(3)(a) through (b) No change.

(4) No change.

PROPOSED EFFECTIVE DATE January 4, 2024.

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, 4-8-21,____.

this rule. This contract is effective from June 1, 2023 through May 31, 2024.

(b) Appendix A, for the 2023-2024 contract year, <http://www.flrules.org/Gateway/reference.asp?No=ref-14789>, required by Section 215.555(5)(e), F.S., which is called Form FHCF-2023K-1 "Appendix A to Reimbursement Contract" between (name of insurer) (the "Company")/NAIC # () and The State Board of Administration of the State of Florida ("SBA") which administers the Florida Hurricane Catastrophe Fund ("FHCF"), rev. 10/22 is hereby adopted and incorporated by reference into this rule. This appendix is effective from June 1, 2023 through May 31, 2024.

(2)(a) The reimbursement contract for the 2022-2023 contract year, <http://www.flrules.org/Gateway/reference.asp?No=ref-13637>, including all Amendments and Addenda, required by Section 215.555(4), F.S., which is called Form FHCF-2022K-"Reimbursement Contract" or "Contract" between (name of insurer) (the "Company")/NAIC # () and The State Board of Administration of the State of Florida ("SBA") which administers the Florida Hurricane Catastrophe Fund ("FHCF"), rev. 11/21 is hereby adopted and incorporated by reference into this rule. This contract is effective from June 1, 2022 through May 31, 2023.

(b) Addendum No. 1, which includes Appendix A, for the 2022-2023 contract year, <https://www.flrules.org/Gateway/reference.asp?No=Ref-14590>, required by Section 215.555(5)(e), F.S., which is called Form FHCF-2022K-1 "Addendum No. 1 to Reimbursement Contract" between (name of insurer) (the "Company")/NAIC # () and The State Board of Administration of the State of Florida ("SBA") which administers the Florida Hurricane Catastrophe Fund ("FHCF"), rev. 08/22 is hereby adopted and incorporated by reference into this rule. This addendum is effective from June 1, 2022 through May 31, 2023.

(3) The reimbursement contract form may be obtained by accessing the FHCF website at <https://fhcf.sbafla.comwww.sbafla.com/fhcf>; by submitting a written request to the State Board of Administration at P. O. Box 13300, Tallahassee, Florida 32317-3300; or by calling (850)413-1335.

(4)(a) Subsection 215.555(2), F.S., specifies definitions to be used in Section 215.555, F.S. SB 1058 as enacted during the 2022 Regular Session of the Florida Legislature added paragraph 215.555(2)(p), F.S. to define the term "unsound insurer" as "...an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in Section 624.80(2), F.S., or an insurer placed in receivership under Chapter 631, F.S." In addition, SB 1058 as enacted amends Section 215.555(5)(e), F.S., revising requirements for coverage under the Florida Hurricane Catastrophe Fund of certain

policies assumed by an authorized insurer or Citizens Property Insurance Corporation.

(b) The purpose of the subsection of this rule is to implement the revisions to subparagraphs Sections 215.555(2)(p) and (5)(e) only for the 2022-2023 Reimbursement Contract, including Addendum 1, and without consideration of the dates on which the Reimbursement Contract was executed or took effect.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-31-94, Amended 8-29-95, 5-19-96, 6-19-97, 5-28-98, 5-17-99, 9-13-99, 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 11-13-05, 5-10-06, 9-5-06, 5-8-07, 8-13-07, 6-8-08, 9-2-08, 3-30-09, 8-23-09, 3-29-10, 8-8-10, 12-12-10, 9-11-11, 12-19-11, 11-18-12, 12-2-13, 11-12-14, 6-2-15, 1-3-16, 11-9-16, 12-6-17, 1-29-19, 9-17-19, 11-12-19, 11-17-20, 11-10-21, 8-18-22, 10-11-22, X-XX-23.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gina Wilson, FHCF Chief Operating Officer, State Board of Administration of Florida.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Trustees of the State Board of Administration of Florida.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 25, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: June 27, 2023

COMMISSION ON ETHICS

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

PURPOSE AND EFFECT: Rulemaking is needed to reflect a recent statutory change to Section 112.3142(2)(d), Florida Statutes, made by Chapter 2023-121, Laws of Florida. The Chapter Law modified Section 112.3142(2)(d) to require that elected officers of independent special districts, and each person appointed to fill a vacancy for an unexpired term of such an elective office, receive four hours of ethic training each calendar year, beginning on January 1, 2024. Currently Rule 34-7.025 does not include officers of independent special district when listing the types of public officers that must receive four hours of ethics training under Section 112.3142. The Rule will be updated to reflect the statutory addition.

SUMMARY: Rules 34-7.025(1) and 34-7.025(2) will be updated to reflect that the statutory training requirements contained therein apply as well to elected local officers of independent special districts, as defined in Section 189.012, Florida Statutes, including any person appointed to fill a vacancy for an unexpired term of such elective office of an independent special district.



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, the adverse impact or regulatory costs, if any, do not exceed and would not be expected to exceed any one of the economic criteria set forth in Section 120.541, FS.

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: Sections 112.322(9) and 112.3142, Florida Statutes

LAW IMPLEMENTED: Section 112.3142, Florida Statutes

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: December 1, 2023, 8:30 a.m.

PLACE: First District Court of Appeal, Third Floor Courtroom, 2000 Drayton Drive, Tallahassee, Florida

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, Office Manager, Florida 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: Steven J. Zuilkowski, General Counsel, or Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.025 Ethics Training Course Content.

(1) Constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies created under Part III of Chapter 163, F.S., and elected local officers of independent special districts, as defined in Section 189.012, Florida Statutes, including any person appointed to fill a vacancy for an unexpired term of such elective office of an independent special district, are required

by Section 112.3142, F.S., to complete four (4) hours of ethics training each calendar year.

(2)(a) In addition to receiving training on Florida’s public records laws (Chapter 119, F.S.) and open meetings laws (Chapter 286, F.S.), constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies created under Part III of Chapter 163, F.S., and elected local officers of independent special districts, as defined in Section 189.012, Florida Statutes, including any person appointed to fill a vacancy for an unexpired term of such elective office of an independent special district, are required to obtain ethics training that is derived from 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.”

(b) No change.

(3)(a) through (b) No change.

(4) No change.

PROPOSED EFFECTIVE DATE January 4, 2024.

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, 4-8-21, ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerrie J. Stillman, Executive Director, Florida Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 25, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 5, 2023

COMMISSION ON ETHICS

RULE NO.: RULE TITLE:

34-12.750 Probable Cause Hearing

PURPOSE AND EFFECT: Rulemaking is needed to account for a recent statutory change to Section 112.3215(8)(d), Florida Statute, by Chapter 2023-49, Laws of Florida. This change modified how the Commission on Ethics may dispose of complaints or investigations resulting from complaints or random audits of lobbying reports. It specifies these types of proceedings may be dismissed at any stage of disposition if the Commission determines that it would not serve the public interest to proceed further. Currently, Rule 34-12.750(3) requires these matters to proceed to a probable cause hearing, and states these types of matters can only be dismissed based on a finding of no probable cause. The rulemaking would update this portion of the Rule to account for the statutory change.

CHAPTER 2023-121

Committee Substitute for House Bill No. 199

An act relating to ethics requirements for officers and employees of special tax districts; amending s. 112.313, F.S.; specifying that certain conduct by certain public officers and employees is deemed a conflict of interest; making technical changes; amending s. 112.3142, F.S.; requiring certain ethics training for elected local officers of independent special districts beginning on a specified date; specifying requirements for such training; providing an effective date.

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

Section 1. Subsection (7) of section 112.313, Florida Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency ~~is~~ shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section, including conduct that violates subsections (6) and (8), is ~~shall be~~ deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Section 2. Paragraphs (d) and (e) of subsection (2) of section 112.3142, Florida Statutes, are redesignated as paragraphs (e) and (f), respectively, present paragraph (e) of that subsection is amended, and a new paragraph (d) is added to that subsection, to read:

112.3142 Ethics training for specified constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies, and elected local officers of independent special districts.—

(2)

(d) Beginning January 1, 2024, each elected local officer of an independent special district, as defined in s. 189.012, and each person who is appointed to fill a vacancy for an unexpired term of such elective office 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 matter is covered by such class, seminar, or presentation.

(f)(e) ~~The Legislature intends that a constitutional officer, or elected municipal officer, or elected local officer of an independent special district who is required to complete ethics training pursuant to this section receive the required training as close as possible to the date that he or she assumes office. A constitutional officer, or elected municipal officer, or elected local officer of an independent special district assuming a new office or new term of office on or before March 31 must complete the annual training on or before December 31 of the year in which the term of office began. A constitutional officer, or elected municipal officer, or elected local officer of an independent special district assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which the term of office began.~~

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor May 24, 2023.

Filed in Office Secretary of State May 24, 2023.

Schafer, Grayden

From: Jones, Sharon
Sent: Wednesday, November 01, 2023 10:05 AM
To: Schafer, Grayden
Subject: Rules 34-7.025 and 34-12.750

Good morning.

I just wanted to let you know that your rules have been reviewed and the committee has no comment. I hope you have a great day.

Thank you,
Sharon

Sharon Jones

Chief Attorney
Joint Administrative Procedures Committee
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