

Commission on Ethics Regulatory Plan for July 1, 2023-June 30, 2024

Section 120.74, Florida Statutes, requires:

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.
2. If rulemaking is necessary to implement the law:
 - a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.
 - b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or
2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

Subsection (1)(a): New laws

Ch. 2023-005, Laws of Florida, states the officers and employees of the Central Florida Tourism Oversight District are subject to the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes). While this law expands the jurisdiction of the Commission on Ethics to encompass those serving in, and employed by, the Oversight District, it is not necessary

for the Commission to adopt rules to implement it because the law itself is clear and precise as to whom it affects and what it provides.

Ch. 2023-49, Laws of Florida, modifies several duties and authorities of the Commission, although rulemaking has already occurred concerning the majority of its modifications. The modifications are discussed below:

- First, Chapter 2023-49 modifies Section 112.3142(2)(e), Florida Statutes, to indicate that commissioners of community redevelopment agencies should receive their statutorily required four hours of ethics training as close as possible to the date that they assume office, and clarifies when training will be required for new commissioners beginning a term of office after the start of the year. This modification closes a loophole in the statute, as Section 112.3142, Florida Statutes, already required commissioners of community redevelopment agencies to receive four hours of ethics training, but simply failed to include such commissioners on the list of those subject to Section 112.3142(2)(e), which otherwise applied to everyone required to receive training under Section 112.3142. It is not necessary for the Commission to adopt rules to implement this change, as the law is clear and precise as to whom it affects and what it provides, and Rule 34-7.025 of the Florida Administrative Code already clarifies that community redevelopment agency commissioners must receive the four hours of training.
- Second, Chapter 2023-49 makes several modifications to the financial disclosure statutes (Sections 112.3144 and 112.3145, Florida Statutes). In particular, the law indicates: (1) the "Statement of Financial Interest" (CE Form 1) and related forms (CE Form 1F, CE Form 1X, and CE Form 2) must be filed electronically beginning on January 1, 2024; (2) filers may include attachments and supporting documentation when filing their financial disclosures; (3) certain additional positions (i.e., mayors, elected municipal governing board members, Commission on Ethics members) must file a CE Form 6; (4) filers may submit a federal income tax return in lieu of listing their sources of income one-by-one on a Form 6; and (5) the amount of a fine for the untimely filing of a financial disclosure shall be calculated based on when the filer submits the form through the electronic filing system. The law states the Commission shall engage in rulemaking to revise its financial disclosure forms, instructions, and rules to conform to these modifications, although it states any such revisions to the forms and instructions for the filing year of 2022 are exempt from the rulemaking requirements of Chapter 120, Florida Statutes. The Commission has recently engaged in rulemaking regarding all of these changes to the disclosure statutes. A Notice of Rule Development was published in the Florida Administrative Register on June 22, 2023 (Vol. 49/121), a Notice of Proposed Rulemaking and a Notice of Correction were published in the Florida Administrative Register on, respectively, June 29, 2023 (Vol. 49/126), and June 30, 2023 (Vol. 49/127), a public hearing was held on July 28, 2023, and an adoption packet was submitted to the Department of State on August 11, 2023, with an effective date of January 1, 2024.
- Third, Chapter 2023-49 modifies Section 112.3215, Florida Statutes, to clarify the circumstances under which the Commission may investigate a lobbying firm, lobbyist, principal, agency, officer, or employee concerning allegations raised in a sworn

complaint or in a random audit of lobbying reports. It is not necessary for the Commission to adopt rules to implement this change, as the law is clear and precise as to whom it affects and what it provides. However, Chapter 2023-49 also modifies how the Commission may dispose of complaints or investigations resulting from complaints or random audits of lobbying reports. It specifies these types of complaints or investigations may be dismissed at any stage of disposition if the Commission determines that proceeding further will not serve the public interest. Rulemaking is needed to implement this change, as Rule 34-12.750 of the Florida Administrative Code currently requires these types of matters to proceed to a probable cause hearing, and states dismissal can be predicated only on a finding of no probable cause. A Notice of Rule Development has not yet been published on updating Rule 34-12.750. It is anticipated that a Notice of Rule Development will be published by November 1, 2023, and that a Notice of Proposed Rulemaking will be published by December 1, 2023.

Ch. 2023-121, Laws of Florida, provides examples of conduct that will negate the application of the exemption found in Section 112.313(7)(a)1., Florida Statutes. This portion of the law may be implemented without rulemaking as it is clear and precise as to whom it affects and what it provides. It also modifies Section 112.3142, Florida Statutes, the ethics training statute, to require each elected local officer of an independent special district, and each person appointed to fill a vacancy for an unexpired term of such an elective office, to receive four hours of ethics training each calendar year. Rulemaking is needed to implement this particular change, as Rule 34-7.025 of the Florida Administrative Code—which lists the types of public officers who must receive training under Section 112.3142—currently does not include these types of special district officers. A Notice of Rule Development has not yet been published on updating Rule 34-7.025. It is anticipated that a Notice of Rule Development will be published by November 1, 2023, and that a Notice of Proposed Rulemaking will be published by December 1, 2023.

Ch. 2023-144, Laws of Florida, states that the members of the governing bodies of several entities (The Florida Self-Insurers Guaranty Association, Inc., The Joint Underwriting Association, The Florida Insurance Guaranty Association, Inc., The Florida Life and Health Guaranty Association, The Florida Health Maintenance Organization Consumer Assistance Plan, and The Florida Workers' Compensation Insurance Guaranty Association, Inc.) are subject to the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes). The law goes on to state any director or board member of these entities who fails to comply with the ethical prohibitions detailed therein—or with the statutes in the Code of Ethics—will be subject to the penalties provided under Sections 112.317 and 112.3173, Florida Statutes. While this law expands the jurisdiction of the Commission on Ethics to encompass these governing bodies, it is not necessary for the Commission to adopt rules to implement it because the law itself is clear and precise as to whom it affects and what it provides.

Subsection (1)(b): Laws not listed pursuant to paragraph (a) which the Commission expects to implement by rulemaking before July 1, 2023

Section 112.3147, F.S.

Rulemaking is intended to simplify, clarify, and update forms.

Subsection (1)(c): Updates to prior year's plan

None.

CERTIFICATION

I verify that I have reviewed the Commission on Ethics Regulatory Plan for July 1, 2023-June 30, 2024, and that the Commission regularly reviews all of its rules to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented. The period during which all rules have most recently been reviewed is July 31, 2022, through July 31, 2023.



Ashley Lukis
Chair, Florida Commission on Ethics

Date

9/23/23



Steven J. Zulkowski
General Counsel, Florida Commission on Ethics

Date

9/26/23