

Commission on Ethics Regulatory Plan for July 1, 2021-June 30, 2022

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. 2021-134 states the executive director, senior managers, and members of the board of directors of the Florida Birth-Related Neurological Injury Compensation Association are considered public officers or employees and 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 employee or board member who fails to comply with the ethical prohibitions detailed therein—or with the statutes in the Code of Ethics—will be subject to penalties provided under Sections 112.317 and 112.3173, Florida Statutes. While this law expands the jurisdiction of the Commission on Ethics to encompass the aforementioned public officers and employees, 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. 2021-164 requires each local workforce development board to indicate on its website that its members—as well as its executive director or the designated person responsible for the operational and administrative functions of the board—have filed their respective financial disclosure form with the Commission on Ethics. Information must also be provided on the website regarding how these disclosure forms may be reviewed. And, in the event that the local board does not maintain a website, the Department of Economic Opportunity is required to indicate the foregoing information on its website. It is not necessary for the Commission on Ethics to adopt rules to implement this law because it concerns tasks that must be performed by entities other than the Commission.

Ch. 2021-269 sets out standards of conduct that apply to commissioners on, and employees with, the Florida Gaming Control Commission. The law also states that Gaming Control Commissioners and employees are subject to the provisions in the Code of Ethics for Public Officers and Employees. The law authorizes the Commission on Ethics to accept and investigate—under preexisting procedures contained in Sections 112.322 through 112.3241, Florida Statutes—alleged violations of the standards of conduct by Gaming Control Commissioners and employees, as well as alleged violations of the Code of Ethics. The law requires the Commission on Ethics to provide a report of its findings and recommendations concerning such violations to the Governor, the President of the Senate, and the Speaker of the House. Moreover, the law states the Commission on Ethics may issue advisory opinions to Gaming Control Commissioners or employees concerning the application of the standards of conduct described therein, the Code of Ethics, and Section 16.71, Florida Statutes. And, in a separate provision within the law, the Commission on Ethics is authorized to receive and investigate—pursuant to preexisting procedures contained in Sections 112.322 through 112.3241, Florida Statutes—alleged violations of the standards governing the receipt and handling of ex parte communications by Gaming Control Commissioners. While this law expands the jurisdiction of the Commission on Ethics to encompass the aforementioned public officers and employees, it may be implemented without rulemaking because it 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, 2021

Section 112.3147, F.S.

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



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

As reflected on the agency's regulatory plan for July 1, 2020-June 30, 2021, Chapter 2020-167 (now Section 332.0075, Florida Statutes), provides that members of the governing bodies of large-hub commercial service airports must receive four hours training each year on the Code of Ethics, as well as on Article II, Section 8 of the Florida Constitution, and the public records and public meetings laws. The prior year's regulatory plan indicated the Commission on Ethics would engage in rulemaking to update the training section of various financial disclosure forms to reflect that it applies to members of these governing bodies. However, it was subsequently determined that the Commission had no authority to extend the training section on the financial disclosure forms to these governing bodies, and, therefore, no notice of rule development extending the training section was published. The basis of this determination is that Sections 112.3144(1)(a) and 112.3145(5), Florida Statutes, which prescribe requirements concerning financial disclosure forms, state only those filers required to obtain training under Section 112.3142, Florida Statutes, must certify on their forms that their training has been completed. There is no statutory requirement in Sections 112.3144 or Section 112.3145—or in Section 332.0075—that training completed under Section 332.0075 must be reflected on a financial disclosure form.

As reflected on the agency's regulatory plans for July 1, 2019-June 30, 2020 and for July 1, 2020-June 30, 2021, Chapter 2019-097 (now Section 112.31446, Florida Statutes), provides for an electronic filing system for financial disclosure, affecting portions of the financial disclosure statutes (Sections 112.3144 and 112.3145, Florida Statutes). In particular, beginning January 1, 2022, all disclosures filed pursuant to Section 112.3144 must be filed electronically through the electronic filing system created and maintained by the Commission as provided in Section 112.31446, Florida Statutes. The rules concerning disclosures filed pursuant to Section 112.3144, and the forms and instructions incorporated by reference therein, will need to be updated to reflect this pivot to electronic filing. A Notice of Rule Development was published in the Florida Administrative Register on September 9, 2021, identifying the particular rules, forms, and instructions that will be affected by this rulemaking. The general purpose of the rulemaking will be to clarify how disclosures filed pursuant to Section 112.3144 will be submitted through the electronic filing system, to delete rules rendered obsolete and/or unnecessary by the electronic filing system, and to simplify the instructions incorporated by reference within the rules, streamlining them to better focus filers on the information required by Section 112.3144.

CERTIFICATION

I verify that I have reviewed the Commission on Ethics Regulatory Plan for July 1, 2021-June 30, 2022, 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, 2020 through July 31, 2021.

  
JoAnne Lenzoff  
Chair, Florida Commission on Ethics

9-24-21  
Date

  
Caroline Klancke  
General Counsel, Florida Commission on Ethics

9-27-21  
Date