

Commission on Ethics Regulatory Plan for July 1, 2022-June 30, 2023

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. 2022-140, Laws of Florida, defines certain terms found in the constitutional prohibition in Section 8(f) of Article II of the Constitution, and that are to be used in Section 112.3121, Florida Statutes, a newly-created statute. The defined terms include a definition of "lobby" for purposes

of these provisions. The law also clarifies to whom the constitutional prohibition will apply, specifies what action the Commission on Ethics must take if a violation is found, and sets out the penalties which are available for such violations. While this law clarifies aspects of these constitutional and statutory provisions, it is not necessary for the Commission on Ethics to adopt rules implementing them because the law itself is clear and precise as to whom it affects and what it provides.

Ch. 2022-141, Laws of Florida defines certain terms found in Section 13(b) of Article V of the State Constitution, that are to be used in Section 112.3123, Florida Statutes, a newly-created statute. Similar to Chapter 2022-140, the law clarifies what actions the Commission must take if a violation of the constitutional prohibition is found, as well as what penalties are available for such a violation. The chief difference between Chapter 2022-140 and Chapter 2022-141 is that the latter law applies only to former justices and judges. It is not necessary for the Commission on Ethics to adopt rules implementing the law because the law itself is clear and precise as to whom it affects and what it provides.

Ch. 2022-157, Laws of Florida, contains modifications to implementation of the electronic filing system for financial disclosure, affecting portions of the financial disclosure statutes (Sections 112.3144 and 112.3145, Florida Statutes). In particular, the law modifies the date by which the "Full and Public Disclosure of Financial Interests" (CE Form 6) must be filed electronically—moving that date from January 1, 2022, to January 1, 2023—as well as the date by which the "Statement of Financial Interests" (CE Form 1) must be filed electronically—effectively moving that date from January 1, 2023, to July 1, 2023. The law also clarifies that any "Full and Public Disclosure of Financial Interests" (CE Form 6) submitted electronically before its effective date will be deemed filed, requires the Commission to notify filers through various methods that paper forms will continue to be accepted through December 31, 2022, and instructs the Commission—for the remainder of 2022—to accept disclosure forms authorized for use in the calendar year 2021, although the law requires that the dates on the forms be updated. It is not necessary for the Commission on Ethics to adopt rules implementing this law, as the Commission's existing rules regarding the filing of financial disclosure forms do not mention particular calendar years. Moreover, while the law authorizes the Commission to use a past paper form for the remainder of 2022—with the only change being to update the dates on the form—the law indicates the adoption of this revised form is exempt from the requirements of Chapter 120, Florida Statutes.

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

As reflected on the agency's regulatory plan for July 1, 2019-June 30, 2020, as well as on its regulatory plans for July 1, 2020-June 30, 2021, and July 1, 2021-June 30, 2022, Chapter 2019-097, Laws of Florida, (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). While the Commission's rules concerning disclosures filed pursuant to Section 112.3144 have already been updated, its rules concerning disclosures filed pursuant to Section 112.3145—as well as the forms and instructions incorporated by reference within those rules—will need to be updated to reflect this pivot to electronic filing. Because Chapter 2019-097 initially gave the Commission until January 1, 2023, to launch the electronic filing system for forms submitted pursuant to Section 112.3145—and because Chapter 2022-157 recently moved that date to July 1, 2023—rulemaking was not yet necessary to implement the electronic filing portion of the law regarding Section 112.3145. However, it is anticipated that the Commission will engage in rulemaking within the next year regarding disclosures filed pursuant to Section 112.3145. The general purpose of the rulemaking will be to clarify how disclosures filed pursuant to Section 112.3145 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 112.3145.

CERTIFICATION

I verify that I have reviewed the Commission on Ethics Regulatory Plan for July 1, 2022-June 30, 2023, 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, 2021, through July 31, 2022.

  
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John Grant  
Chair, Florida Commission on Ethics

September 9, 2022  
Date

  
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Steven J. Zuilkowski  
General Counsel, Florida Commission on Ethics

September 9, 2022  
Date