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"A Public Office is a Public Trust"

MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel, and Amelia Naomi, Staff Attorney GS AN
DATE: November 19, 2026
RE: Overview of Rulemaking required by Section 120.5435, Florida Statutes

This memorandum pertains to recent changes made to the Administrative Procedure Act (Chapter 120, Florida Statutes). These changes require state agencies to review each of their rules over a five-year period, accounting for various statutory factors. Summarized below are the requirements for this rule review, as well as an overview of the Commission on Ethics rules which your staff has already reviewed for this fiscal year. Also included below is a request for you to authorize staff to proceed with the next step in this rule review process.

Rule Review Requirements

The requirements regarding this rule review are found in Section 120.5435, Florida Statutes, which was a law passed in the 2025 legislative session.[1] According to Section 120.5435(2), Florida Statutes, each state agency—including the Commission on Ethics—must review all of its rules over the five fiscal years following the law's enactment, completing a review of at least 20 percent of its rules per year, until all of its subject rules have been reviewed.

When conducting its rule review, the agency must look at seven different factors listed in Section 120.5435(4), Florida Statutes. These factors are whether the rule under review:

[1] Section 120.5435 is found in Chapter 2025-189, Laws of Florida, which became effective on July 1, 2025.

1. Is a valid exercise of delegated legislative authority;

2. Has current statutory authority;

3. Reiterates or paraphrases statutory material;

4. Is in the proper form;

5. Is consistent with the expressed legislative intent pertaining to the specific provision of law which the rule implements;

6. Requires a technical or substantive update to reflect current use; and

7. Requires updated references to statutory citations and incorporated materials.

Section 120.5435 also provides a very specific timeline for how agencies should conduct this rule review each year:

- **By January 1**, agencies must submit a report to the President of the Senate, the Speaker of the House, and the Joint Administrative Procedures Committee (JAPC) summarizing its intended action on each rule being reviewed for that year. See § 120.5435(5), Fla. Stat. The statute only requires that this initial report contain a summary of the agency's intended actions, not the exact wordings that it wants to use.

- **By April 1**, agencies must inform JAPC—for each rule being reviewed that year—of its assessment of the seven factors in Section 120.5435(4), as well as its intended action (i.e., make no change, make a technical change, make a substantive change in which case a notice of rule development must also be filed in the Florida Administrative Register, or repeal the rule in which case a repeal notice must be filed in the Florida Administrative Register). See § 120.5435(6), Fla. Stat.

- **Before July 1**, JAPC will examine the intended actions for each rule under review and collect additional information from the agency if needed. See § 120.5435(7), Fla. Stat.

- **Following JAPC review**, agencies complete their rule review by complying with certain requirements (i.e., filing a certified copy of the reviewed rule and the JAPC certification with the Department of State if no changes or only technical changes are made, or filing notices to engage in rulemaking for each reviewed rule requiring a substantive change or repeal). See § 120.5435(8), Fla. Stat.

The purpose of this rule review process is to ensure that, by the close of the five-year period—which ends on July 1, 2030—agencies will have reviewed all their existing rules under the seven factors listed above, and made any changes needed to update them. See § 120.5435(2)(a), Fla. Stat.

This rule review process does not preclude agencies from continuing to engage in rulemaking as usual. Agencies may continue to adopt new rules, and update or repeal old rules as needed. It simply requires that, concurrent with normal rulemaking, an agency also reviews its existing rules under the seven statutory factors and make necessary changes.

Overview of Rules Being Reviewed for Fiscal Year of July 1, 2026 – June 30, 2027

Currently, the Commission on Ethics has 188 rules organized under various rule chapters in the Florida Administrative Code. Each of these rules will have to be reviewed over five-year review period, with at least 20 percent of the rules being reviewed per year. Staff is using the following schedule:

- July 1, 2025 – June 30, 2026 – Chapter 34-5 and Chapter 34-17, F.A.C. (**44 rules total**)
- July 1, 2026 – June 30, 2027 – Chapter 34-15, Chapter 34-18, and a portion of Chapter 34-12 (specifically Rules 34-12.00 through and including 34-12.210) (**39 rules total**)
- July 1, 2027 – June 30, 2028 – Chapter 34-9 and the remaining portion of Chapter 34-12 (specifically Rules 34-12.330 through and including Rule 34-12.760) (**44 rules total**)
- July 1, 2028 – June 30, 2029 – Chapter 34-6 and Chapter 34-13 (**39 rules total**)
- July 1, 2029 – June 30, 2030 – Chapter 34-7, Chapter 34-8, and Chapter 34-16 (**22 rules total**)

As noted above, the initial step in the rule review process is to submit a report by January 1 to the Senate President, the House Speaker, and JAPC summarizing the Commission's intended actions regarding the rules being reviewed during the July 1, 2026, through June 30, 2027 fiscal year. All that is required in this report is a summary of intended action, not the exact language which needs to be added or removed from the rules being reviewed.

Staff has reviewed the rules in Chapter 34-15, Chapter 34-18, and a portion of Chapter 34-12 using the factors in Section 120.5435, and has prepared the required summary for your review. The summary is attached to this memo. For each rule under review, the summary indicates either that no change is needed, or what technical or substantive changes are recommended. The summary recommends:

- Several rules being reviewed pertain to complaints alleging violations of Section 11.062(2), Florida Statutes, which is a law prohibiting the use of certain types of state funds for lobbying. Changes are needed in these rules to emphasize the statutory reporting requirements as to the Commission's findings in these cases and to bring the rules into conformity with how the Commission treats complaints in other contexts.

- Language reflecting that the Commission has the authority to investigate "other wrongful acts" committed by Respondents in matters alleging violations of Section 11.062(2) should be removed, as the Commission has no statutory authority to do so.

- Citations in certain rules need to be corrected to indicate the correct rulemaking authority under which the Commission adopted them. For instance, several rules being reviewed cite as authority to Section 112.3261, Florida Statutes, although this statute does not contain a grant of rulemaking authority for the Commission. There is, however, separate statutory authority that the Commission has to promulgate those rules.

- Certain rules being reviewed concern the lobbying of Water Management Districts under Section 112.3261, Florida Statutes. These rules need to be amended to treat the definition of "lobbies" as applied to Section 112.3261 consistently with the definition of "lobbies" in Section 112.3215, as is required by statute.

- Certain "notice" language explaining the purpose behind certain rules needs to be removed, as the statute requiring these rules has been in place for twelve years now, meaning the purpose at this point is well acknowledged.

- The definition of "relative" needs to be updated to be consistent with changes over the years as to how that term is defined in the Commission's statutes

- Renumbering subsections when needed.

Requested Commission Action

At your meeting on December 4, 2026, you will be asked to authorize staff to submit the attached summary, along with a cover memo, to the Senate President, the House Speaker, and JAPC, as required by statute. This will not be a rulemaking hearing. It is simply the initial step in this new rule review process. You only will be authorizing staff to submit this initial summary to these officers/agencies, thereby notifying them of the changes that likely will be needed. Next year, staff will propose actual updates to these rules reflecting the recommendations in the summary, and, at that time, you will be asked in a rulemaking hearing to approve those specific updates for the rules in question.

There are two documents that are being attached:

1) The existing rule text of Chapters 34-15, 34-18, and a portion of 34-12, Florida Administrative Code; and
2) The Summary of Intended Agency Action on Each Rule Under Review for Fiscal Year 2026-2027

Attachments

Summary of Intended Agency Action on Each Rule Under Review
Fiscal Year 2026-2027
Florida Commission on Ethics

Rule 34-12.010- Purpose and Scope of Rules.
- *No Change.*

Rule 34-12.015- Prohibitions.
- *Repeal the Rule*- It is simply repeating language already contained in statute.

Rule 34-12.020- Definitions.
- *No Change.*

Rule 34-12.030- Computation of Time.
- *No Change.*

Rule 34-12.100- "Lobbyist" Defined.
- *Technical Change*- In subsection (4) of the rule, the phrase "in behalf of" should be changed to "on behalf of."

Rule 34-12.110- Exclusions for Judicial Proceedings.
- *Technical Change*- In subsection (4) of the rule, the phrase "a proceeding involving" should be added before "birth-related neurological injuries" for grammatical reasons.

Rule 34-12.120- Exclusions for Administrative Proceedings as to Lobbying Activities Involving Water Management Districts.
- *Substantive Change*- Add the language in Rule 34-12.125(1)(e), F.A.C. into the list of formal administrative proceedings that are exempt below subparagraph (d). Also, delete the word "and" at the end of subparagraph (d).
- *Technical Change*- Re-number subparagraphs of the rule in accordance with the above change.
- *Substantive Change*- Delete subsection (3) of the rule.

[*Section 112.3261(1)(b), F.S., states that the term "lobbies" shall be interpreted and applied consistently with the rules of the Commission implementing Section 112.3215, F.S. Section 112.3215(1)(h)1., F.S., and Rule 34-12.125(1)(e), F.A.C. (the parallel rule implementing Section 112.3215, F.S.) exempt lobbying at <u>all</u> stages of Chapter 120 rulemaking proceedings. Subsection (3) of the rule only exempts lobbying at certain stages.*]

- *Technical Change*- Remove the citation to Section 112.3215, F.S., as this rule does not get its authority from that statute, nor does it implement it
- *Technical Change*- Remove the Chapter Law citation to Chapter 2014-183, Section 6, L.O.F.
- *Technical Change*- Add an amended date of October 29, 2014, as Commission records indicate this is when a technical title change to the rule occurred.

Rule 34-12.125- Exclusions for Administrative Proceedings.
- *Substantive Change*- Remove the bracketed language at the beginning of the rule, it has been there for approximately twelve years and adequate notice has therefore been given to the public concerning the intent of the rule.

- *Technical Change*- Remove the citation to Section 112.3261, F.S., as this rule does not implement that statute
- *Technical Change*- Remove the Chapter Law citation to Chapter 2014-183, Section 7, L.O.F., as this is the citation for Section 112.3261, F.S.

Rule 34-12.130- Exclusion for Officers or Employees of Agencies or Legislative or Judicial Branch Entities.

- *No Change.*

Rule 34-12.140- Exclusion for Confidential Informants.

- *No Change.*

Rule 34-12.150- Exclusion for Category One Purchases.

- *No Change.*

Rule 34-12.160- Examples of Lobbying Activities Involving Water Management Districts.

- *Substantive Change*- Subsection (1) of the rule should be deleted, as it concerns lobbying activities before the Office of the Governor.
- *Technical Change*- The rest of the subsections will need to be renumbered after removing subsection (1).
- *Substantive Change*- The word "agency" as used throughout the rule should be replaced with "Water Management District," and, where grammar requires, the word "an" that proceeds the word "agency" should be changed to "a."
- *Technical Change*- The phrase "in behalf" should be changed to "on behalf."
- *Technical Change*- Remove the citation to Section 112.3215, F.S., as this rule does not get its authority from that statute, nor does it implement it
- *Technical Change*- Remove the Chapter Law citation to Chapter 2014-183, Section 6, L.O.F.
- *Technical Change*- Add an amended date of October 29, 2014, as Commission records indicate this is when a technical title change to the rule occurred.

Rule 34-12.165- Examples of Lobbying Activities.

- *Substantive Change*- The bracketed notice at the beginning of the rule should be removed, it has been there for approximately twelve years and adequate notice has therefore been given to the public concerning the intent of the rule.
- *Technical Change*- Remove the citation to Section 112.3261, F.S., as this rule does not implement that statute
- *Technical Change*- Remove the Chapter Law citation to Chapter 2014-183, Section 7, L.O.F., as this is the citation for Section 112.3261, F.S.

Rule 34-12.170- Examples of Activities Not Constituting Lobbying Involving Water Management Districts.

- *Substantive Change*- Subsection (7) of the rule should be replaced with subsection (7) of Rule 34-12.175, F.A.C., for consistency in terms of what constitutes administrative proceedings (however, the word "a" before the word "rulemaking" in that rule should be deleted for grammatical reasons, and reference to an "agency" should be changed to "Water Management District").

- *Substantive Change-* The word "agency" as used throughout the rule should be replaced with "Water Management District," and, where grammar requires, the word "an" that proceeds the word "agency" should be changed to "a."
- *Technical Change-* The phrase "in behalf" should be changed to "on behalf."
- *Technical Change-* Remove the citation to Section 112.3215, F.S., as this rule does not get its authority from that statute, nor does it implement it
- *Technical Change-* Remove the Chapter Law citation to Chapter 2014-183, Section 6, L.O.F.
- *Technical Change-* Add an amended date of October 29, 2014, as Commission records indicate this is when a technical title change to the rule occurred.

Rule 34-12.175- Examples of Activities Not Constituting Lobbying.

- *Substantive Change-* The bracketed notice at the beginning of the rule can be removed, it has been there for approximately twelve years and adequate notice has therefore been given to the public concerning the intent of the rule.
- *Technical Change-* The word "a" preceding the word "rulemaking" in subsection (7) of the rule should be deleted for grammatical reasons.
- *Technical Change-* The phrase "in behalf" should be changed to "on behalf."
- *Technical Change-* Remove the citation to Section 112.3261, F.S., as this rule does not implement that statute
- *Technical Change-* Remove the Chapter Law citation to Chapter 2014-183, Section 7, L.O.F., as this is the citation for Section 112.3261, F.S.

Rule 34-12.180- Engendering "Goodwill."

- *Substantive Change-* The definition of "relative" in subsection (2) the rule appears to mostly follow the definition of "relative" found in Section 112.312(21), F.S. The rule needs to be amended to match that definition, as it has slightly changed since the rule was first created. Specifically, the following "relatives" need to be added: step grandchild, son-in-law, daughter-in-law, brother-in-law, sister-in-law, and an individual who, while the public officer or employee was a minor, was his or her legally recognized foster parent in the jurisdiction where the relationship occurred or an individual who is a current or former legally recognized foster child of the public officer or employee in the jurisdiction where the relationship occurs or occurred. Also, the phrase "a person who is" should be added before the phrase "engaged to be married"

Rule 34-12.190- Indirect Expenditures.

- *No Change.*

Rule 34-12.200- Lobbyist Registration Requirements.

- *Technical Change-* In subsection (6) of the rule, the phrase "in behalf" should be changed to "on behalf" for grammatical reasons.
- *Technical Change-* On the CE Form 20, where it has the effective date and rule cite, the phrase "Adopted by reference" should be changed to "Incorporated by reference" for clarity.
- *Technical Change-* Section 112.32151, F.S., should be added as a law implemented, as this is where the prohibition related to felons registering as lobbyists comes from.

Rule 34-12.210- Effective Date of Registration.

- *No Change.*

Rule 34-15.001- Scope and Applicability of Chapter.

- *No Change.*

Rule 34-15.0015- Time Periods.

- *No Change.*

Rule 34-15.0016- Filing and Serving Documents; Facsimile Transmissions.

- *No Change.*

Rule 34-15.0017- Presiding Officer.

- *No Change.*

Rule 34-15.002- Staff Procedures Upon Receipt of a Complaint.

- *Substantive Change-* Subsection (4) of the rule needs to be updated to provide that the Commission must report its finding of legal insufficiency to the public officers enumerated in Section 11.062(2)(e), F.S.
- *Substantive Change-* Language should also be added to provide that a copy of the report shall be furnished to the Complainant, the Respondent, and/or their counsel, as is consistent with the Commission's practices in other contexts.

Rule 34-15.0035- Delegation of Authority.

- *No Change.*

Rule 34-15.004- Subpoenas During Preliminary Investigation.

- *Substantive Change-* The rule needs to be changed to include complainants and their counsel, to be consistent with the Commission's current practices in other investigative contexts. For instance, in Rule 34-5.003, F.A.C. (a parallel rule governing subpoenas in the context of investigations concerning Part III of Chapter 112, F.S. and Article II, Section 8, Fla. Const.), complainants and their counsel are included.

Rule 34-15.005- Investigations.

- *Substantive Change-* The rule needs to be changed to remove subsection (4) (Evidence of Wrongful Acts Unrelated to the Complaint), as Section 11.062(2), F.S. does not explicitly allow the Commission to investigate other wrongful acts unrelated to alleged violations of Section 11.062(2), F.S., and the Commission does not currently do this.
- *Substantive Change-* After removing subsection (4), language in current subsection (6) related to preparing reports in accordance with subsection (4) also needs to be removed.
- *Technical Change-* Additionally, after removing subsection (4), current subsections (5) through (7) will need to be renumbered.

Rule 34-15.006- Counsel.

- *Substantive Change-* Add a new subsection to include procedures related to counsel for complainants, as the Commission allows complainants to be represented by counsel in other

contexts. For instance, in Rule 34-5.0045, F.A.C. (a parallel rule governing counsel in the context of proceedings concerning alleged violations of Part III of Chapter 112, F.S. and Article II, Section 8, Fla. Const.), complainants and their counsel are included.

- *Technical Change-* After adding the additional subsection, subsection (3) will need to be renumbered to subsection (4).

Rule 34-15.007- Probable Cause Determination.

- *Substantive Change-* Subsections (2) and (3) need to be amended to make the time frames related to furnishing documents and filing responses in the context of Section 11.062(2), F.S., investigations consistent with the Commission's current practices in the context of other investigations.
- *Substantive Change-* Subsection (4) needs to be amended to reflect that Complainants and counsel, as well as Respondents, have a right to attend probable cause hearings, as is consistent with the Commission's current practices in the context of other investigations.
- *Substantive Change-* Subsection (5) needs to be amended to move language from Rule 34-15.024(2), F.A.C. to the end of subsection (5) (language stating that the Complainant is not a party and is not entitled to address the Commission).
- *Substantive Change-* Subsection (6) needs to be amended to reflect that the Commission must report a finding of no probable cause to the public officers enumerated in Section 11.062(2)(e), F.S.
- *Substantive Change-* Also, the word "may" in the final sentence of subsection (6) (before subsection (6)(a)) needs to be changed to "must."

Rule 34-15.008- Notification of Manner of Disposition.

- *Substantive Change-* Language related to notifying complainants and/or their counsel should be added, to be consistent with the Commission's practices in other investigative contexts. The last sentence of Rule 34-5.007, F.A.C. should also be added to the end of the rule, to be consistent with the Commission's practices in other investigative contexts.
- *Substantive Change-* Language contained in the first sentence of the rule as it is currently written will be moved to Rule 34-15.010, F.A.C., as it pertains more to the content in that rule.

Rule 34-15.010- Procedures for Public Hearings, Generally.

- *Substantive Change-* Language from the first sentence currently contained in Rule 34-15.008, F.A.C., should be moved to the beginning of this rule, as it concerns public hearings. This language is reflective of language contained in Rule 34-5.007, F.A.C., which governs the Commission's practices as it pertains to its investigations into alleged violations of other statutes over which it has jurisdiction.
- *Technical Change-* The title of Chapter 28-106, F.A.C., needs to be updated to its current title, which is "Decisions Determining Substantial Interests."

Rule 34-15.013- Notice of Public Hearing.

- *Repeal the Rule-* For hearings conducted at the Division of Administrative Hearings, that agency has its own notification procedures. For hearings held before the Commission or its members, Rule 34-15.012, F.A.C., provides that hearings held before the Commission or its members shall be governed by Chapter 28-106, F.A.C. Rule 28-106.208. F.A.C., already contains notice requirements for hearings, rendering this rule moot.

Rule 34-15.017- Disqualification of Commission Members.

- *No Change.*

Rule 34-15.0171- Ex Parte Communications.

- *Substantive Change-* In the last sentence of subsection (2), the phrase "any party, including the Advocate, desiring" should be deleted and replaced with "If the respondent or Advocate desires"
- *Substantive Change-* Also in the last sentence of subsection (2), ",they" should be added after the phrase "ex parte communication"

Rule 34-15.0181- Subpoenas for Discovery; Discovery.

- *Repeal the Rule-* For hearings conducted at the Division of Administrative Hearings, that agency has its own procedures related to discovery and subpoenas. For hearings held before the Commission or its members, Rule 34-15.012, F.A.C., provides that hearings held before the Commission or its members shall be governed by Chapter 28-106, F.A.C. Rule 28-106.206, F.A.C., already contains requirements for discovery, and Rule 28-106.212, F.A.C., already contains requirements related to subpoenas, rendering this rule moot.

Rule 34-15.020- Stipulations, Settlements, and Consent Orders.

- *Substantive Change-* Language to the effect that the Commission must report any informal dispositions of complaints alleging a violation of Section 11.062(2), F.S., to the public officers enumerated in Section 11.062(2)(e), F.S., should be added.

Rule 34-15.024- Action on Recommended Final Order by the Full Commission.

- *No Change.*

Rule 34-15.025- Transmittal of Final Order.

- *Substantive Change-* The rule needs to be amended to reflect that the Commission must report its findings to the public officers enumerated in Section 11.062(2)(e), F.S.

Rule 34-18.001- Scope and Applicability of Chapter.

- *No Change.*