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Florida Enacts the First Significant Reforms to Agency Rulemaking and Other Processes in Years

By Tiffany Roddenberry, Chad Dunn, and Larry Sellers

In the 2025 legislative session, the Florida Legislature unanimously passed CS/SB 108 ("SB 108"), which significantly impacts agency rulemaking in numerous ways to bring greater transparency to rulemaking and other administrative tasks, including licensing. CS/CS/HB 433 ("HB 433"), which served as the House companion to SB 108, also included some significant and controversial proposals that were ultimately not adopted; a brief overview of those omitted provisions is included for context. Further, SB 108 includes many provisions that failed to pass in earlier years.

On June 26, 2025, Governor DeSantis approved SB 108, which was formally enacted as Chapter 2025-189, Laws of Florida. The legislation took effect July 1, 2025. A summary of the major components of the legislation follows.

Prescribed Timeframes for New Rule Development and Other Procedural Changes

New Deadlines for Notices of Rule Development and Proposed Rules. SB 108 amends section 120.54, Florida Statutes, to state that an agency "must publish a notice of rule development . . . **within 30 days** after the effective date of the law that requires rulemaking and provides a grant of rulemaking authority." § 120.54(1)(b), Fla. Stat. (emphasis added). The new law also amends section 120.74(4) and (5), Florida Statutes, to remove the prior default deadline of November 1 for publishing a notice of rule development when the enacting law does not specify a timeframe. Together, these changes standardize the timeline for initiating rulemaking and eliminate the previously applicable statutory fallback date.

Notice of rule development must be made in the Florida Administrative Register at least seven days before providing notice of a proposed rule. *See id.* § 120.54(2). The legislation also now requires a notice of proposed rule to be published in the Florida Administrative Register **within 180 days** after the most recent notice of rule development, unless the Legislature expressly provides a different date. The agency may exceed this timeframe if it submits to the Joint Administrative Procedures Committee ("JAPC"), at least seven business days before the end of the 180-day period, a concise statement that identifies the reasons for the delay. This statement must be updated quarterly until the agency has filed a notice of proposed rule.

Public Workshops. The legislation also clarifies that an agency may hold public workshops for purposes of rule development "or information gathering for the preparation of the statement of estimated regulatory costs" or SERC. *Id.* § 120.54(2)(c). Notably, when a workshop or public hearing is held, the agency must ensure

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Rule Challenge—Department's emergency rule was not an invalid exercise of delegated legislative authority

***Sanctuary Cannabis v. Fla. Dep't of Health*, 406 So. 3d 390 (Fla. 1st DCA 2025).**

Sanctuary Cannabis appealed an order denying its challenge to an emergency rule by the Department of Health ("Department"). Following the adoption of the medical use of marijuana amendment to the Florida Constitution, the legislature passed section 381.986, Florida Statutes, to administer the field. The statute requires that Medical Marijuana Treatment Centers ("MMTC"), the entities that distribute marijuana, obtain a license to operate. The statute also requires the Department to adopt rules which establish the licensing regime "including the initial application and biennial renewal fees sufficient to cover the costs of implementing and administering" section 381.986(8)(b), Florida Statutes.

In December 2022, the Department published Emergency Rule 64E22-10, which set forth the requirements for MMTCs to renew their licenses. The Emergency Rule included a formula to calculate the renewal fees, which resulted in an MMTC biennial renewal fee of approximately $1.3 million.

In 2023, Sanctuary Cannabis filed a petition for a formal administrative hearing challenging the Emergency Rule. Sanctuary Cannabis alleged the Emergency Rule was arbitrary and capricious because it failed to account for other sources of marijuana related revenue—specifically, revenue derived from a $75 fee paid by patients seeking identification cards and fines the Department was authorized to collect from MMTCs. Sanctuary Cannabis also argued that the Emergency Rule was an invalid exercise of delegated legislative authority under section 120.52(8)(f), Florida Statutes, because it imposed a "regulatory cost that could be reduced by the adoption of less costly alternatives that substantially accomplish the same objectives."

The Department rejected Sanctuary Cannabis's arguments. First, the Department argued that the Emergency Rule was not arbitrary or capricious because the plain text of section 381.986(8)(b), Florida Statutes, required MMTC application and renewal fees alone to cover the Department's costs of implementing and administering the MMTC licensing regime. With respect to Sanctuary Cannabis's argument under section 120.56(8)(f), the Department claimed that including other revenue sources would not comport with the express costs-coverage directive within the statute. The Administrative Law Judge agreed with the Department, and Sanctuary Cannabis appealed.

On appeal, Sanctuary Cannabis renewed their arguments that the formula failed to account for other revenue received by the Department that could be used to partially offset the implementation and administrative costs borne by MMTCs. The appellate court disagreed, stating that the plain text of section 381.986(8)(b), Florida Statutes, demands that the licensing fees cover two specific costs: the initial application and biennial renewal fees, and the statute does not grant the Department flexibility to net out the card fees paid by customers or other fines to lower the licensing costs. Addressing the argument under section 120.52(8)(f), the court found that the MMTC fees are not rule-imposed costs as contemplated under that statute. Instead, section 381.986(8)(b) specifies the costs that must be covered by fees. The court reasoned that the Department lacks discretion to alter the legislatively defined calculation requirements in favor of a method that shifts costs away from MMTCs. The court also noted that the card fee and fines, if included in the calculation, would not "substantially accomplish the statutory objective" as required under section 120.52(8)(f), Florida Statutes, because the section 381.986(8)(b) requires licensing fees to cover the implementation and administration costs, and says nothing about crediting other fees received by the Department. Accordingly, the appellate court affirmed.

Public Records—Executive Office of the Governor did not unreasonably delay production under the Public Records Act

***Exec. Off. of the Governor v. Fla. Ctr. for Gov't Accountability*, 408 So. 3d 839 (Fla. 1st DCA 2025).**

This appeal arises from a challenge to a circuit court order finding that the Executive Office of the Governor ("Office") and Governor Ron DeSantis violated Florida's public record laws by failing to timely respond to requests from the Florida Center for Government Accountability ("Center") related to the transportation of unauthorized aliens from Texas to Martha's Vineyard, Massachusetts.

On September 20, 2022, the Center submitted its first public records request seeking records sent or received by James Uthmeier during September 1, 2022, to September 15, 2022, including his phone log and text log. The next day, the Center sent its second request, asking for records purporting to be waivers signed by immigrants on the various flights from Texas to Martha's Vineyard as part of their relocation. On September 23, 2022, the Governor declared a State of Emergency for Tropical Storm Ian. Two days later, the Center sent a notice to the Office stating that if its requests were not fulfilled by September 30, the Center would seek judicial enforcement.

The Office provided the Center with partial production on October 7, 2022. The Office also indicated that a rolling production would be produced as documents were reviewed. The Center, however, responded that the Office did not provide a good faith response and filed suit on October 10, 2022.

The circuit court held that the Of-

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fice was not in compliance with Florida's Public Records Act. Specifically, the court found that the Office had failed to prove any steps it had taken to gather what the court considered to be public records about the state's business being transacted on personal devices. The court also concluded that the Office did not establish any statutory basis for redacting certain records produced to the Center. The circuit court ordered the Office to produce the remaining documents within twenty days and granted the Center's request for costs and fees, but reserved jurisdiction to determine the amount. The Office appealed.

On appeal, the Center argued the First District Court of Appeal lacked jurisdiction because the circuit court had not settled the amount of fees and costs. The appellate court rejected this argument, noting that the circuit court's order was final and appealable. It did not matter that the circuit court reserved jurisdiction on the ancillary matter of the fee award.

Next, the appellate court determined that the circuit court erred in finding the Office violated the Public Records Act. The appellate court first noted that the circuit court misplaced the burden when it found that the Office had not proven steps taken to gather public records. While the Center's petition was not styled as such, the appellate court determined the mandamus standard applied; therefore, the Center must establish a clear legal right to the requested relief and that the Office has an indisputable legal duty to perform the requested action.

Addressing the reasonableness of the Office's response, the court explained that the term "reasonable" in section 119.07(1)(a), Florida Statutes, contemplates that there may be a reasonable custodial delay necessary to retrieve and review records. In particular, custodians must review records for statutory exemptions and make required redactions. The court noted that the Center's request did not seek singular documents or already composed files, but instead was a comprehensive request that would take time. For example, seeking Uthmeier's phone records would require the custodian to sort public and private communications, which takes some time. Ultimately, the court concluded that given the scope of the request, coupled with the State of Emergency, the Office's response was not unreasonable.

Notably, the Office did not challenge the circuit court's decision regarding the unnecessary redactions. Accordingly, the appellate reversed only the conclusion that the Office failed to respond within a reasonable time and remanded.

Teacher Free Speech—School Board bears the burden to show that external speech was disruptive under *Pickering-Connick* test

Caggiano v. Duval Cnty. Sch. Bd., 403 So. 3d 1081 (Fla. 5th DCA 2025).

Thomas Caggiano appealed the Duval County School Board's final order adopting the ALJ's recommendation that Caggiano be disciplined for his violations of the teacher code of conduct.

During the 2020 election, Caggiano made a number of politically related posts on Facebook criticizing Presidential candidate Bernie Sanders, which the School Board believed violated several provisions of the teacher code of conduct. After a full evidentiary hearing, the ALJ determined that two posts warranted disciplinary action because they concerned violence and abuse of women and children, as well as women being raped. The ALJ recommended that Caggiano receive a three-day suspension without pay, a reprimand, and diversity training, which the School Board adopted in a final order. Caggiano appealed.

On appeal, the Fifth District Court of Appeal noted that the case was governed by the Pickering-Connick test, which asks whether the teacher spoke on a matter of public concern and, if so, whether teacher's free speech rights outweigh the School Board's interest in a workplace free from disruption. First, the court ruled that it was "obvious" Caggiano's Facebook posts involved a matter of public concern. Second, the court concluded that the administrative record lacked any evidence that the Facebook posts caused a disruption to the School Board. Without evidence to the contrary, the court summarized the political posts as "harmless political chitchat" and a "proverbial hill of beans." Thus, the Pickering-Connick balancing test favored Caggiano and the School Board violated his Free Speech rights when it disciplined him. The court reversed the School Board's final order with instructions that his suspension and reprimand be stricken from his record and that he receive full pay and all benefits to which he would have been entitled during his suspension.

Jurisdiction—District Court of Appeal lacks jurisdiction to review hearing officer's determination under Federal Summer Food Services Program but certiorari review potentially available in circuit court

Ninja Acad. v. Fla. Dep't of Agric. & Consumer Servs., **No. 1D2022-1139, --- So. 3d ----, 2025 WL 610634 (Fla. 1st DCA Feb. 26, 2025) & 2025 WL 2233403 (Aug. 6, 2025) (granting rehearing in part).**

Ninja Academy, Inc., appealed a final determination of an agency hearing officer from the Florida Department of Agriculture and Consumer Services ("DACS"), that denied and disallowed

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more than $10 million in reimbursement claims submitted by Ninja Academy under the Federal Summer Food Service Program ("SFSP") and terminated its participation in the SFSP for seven years. The court dismissed the appeal because it determined it lacked jurisdiction to review the agency hearing officer's determination.

The court noted that the Florida Constitution grants district courts of appeal "the power of direct review of administrative action, as prescribed by general law." In most appeals involving administrative actions, the general law conferring review authority of courts of appeal is found in Chapter 120, Florida's Administrative Procedure Act, specifically section 120.68, Florida Statutes. The court found that this is not one of those cases, as it involves a dispute over the reimbursement of SFSP funds in a federal food program that prescribes its own elaborate appeal scheme, which in turn is mirrored by a companion provision in Florida Statutes and DACS rules.

Federal regulations require participating state agencies to establish a procedure to be followed by an applicant appealing the denial of a sponsor's claim for reimbursement. The federal rule sets out minimum appellate procedures required to be adopted by participating states, including a hearing before a state review official. The determination by the state review official is the final administrative determination to be afforded to the appellant. Federal regulations do not provide for judicial review of this final administrative determination beyond the action of the hearing official.

Consistent with this federal regulatory scheme, the Florida Legislature required DACS to adopt and implement an appeal process by rule, as required by federal regulations. DACS, in turn, promulgated an SFSP-related appeals process providing, like the federal regulation, that the determination by the DACS hearing official is the final administrative determination to be afforded to the appellant. However, the DACS rule, unlike its federal counterpart, purports to allow any party adversely affected by the hearing officer's determination to seek judicial review in the district court of appeal. This is precisely what Ninja Academy sought to do.

The court noted however that, for a district court of appeal to have jurisdiction over a direct appeal of administrative action, there must be a statute providing for its jurisdiction. District court jurisdiction is only constitutionally available in so far as it "is prescribed by general law." The court found that an agency rule—here, the DACS rule—is not a general law. Accordingly, the court concluded that DACS cannot vest jurisdiction in the district courts of appeal by way of its SFSP rule, nor can the parties themselves confer jurisdiction on the court.

The governing Florida statute also fails to confer jurisdiction on the appellate court because it merely allowed DACS to adopt and implement an appeal process by rule, as required by federal regulations. Here, the federal regulations do not provide for judicial review of decisions made by the agency hearing officer. Instead, these federal regulations fix final authority over disputed claims with the federal agency, the United States Department of Agriculture.

The court also noted that, in light of the final review authority vested in the federal agency, there is no authority for reviewing the hearing officer's determination by common law writ of certiorari in the district court of appeal. Certiorari is an appropriate remedy to review a quasi-judicial action of an administrative agency only if another avenue is not available. In this case, the court concluded that another avenue is available because Ninja Academy's claim is reviewable within the United States Department of Agriculture under the federal appeal-process regulations that have been adopted and implemented in Florida.

After granting rehearing, the court revisited this portion of its decision, instead finding that a circuit court may have certiorari jurisdiction, observing that, in the administrative context, a line of cases recognizes the availability of certiorari review as a matter of right in circuit court when no other method of judicial review is provided—also known as "first-tier" certiorari review and "akin in many respects to a plenary appeal."

Because it lacked jurisdiction to review the hearing officer's final determination, the court dismissed the appeal, but transferred the case to the circuit court for consideration as a petition for writ of certiorari.

Statutory Interpretation—The appellate court applied fundamental principles of statutory interpretation to find that hookah met the definition of tobacco products and was therefore subject to excise taxes

***Global Hookah Distribs., Inc. v. Dep't of Business & Pro. Regul.*, Nos. 1D23-2608, 1D23-2608, --- So. 3d ----, 2025 WL 610433 (Fla. 1st DCA Feb. 26, 2025).**

Global Hookah Distributors, Inc. ("Global"), a distributor of hookah tobacco products, appealed a final administrative order of the Division of Alcoholic Beverages and Tobacco ("Division") denying its request for a refund of excise taxes and surcharges paid on its products under Florida's Other Tobacco Products (OTP) tax statutes. Global argued that its hookah tobacco did not meet the statutory definition of "tobacco products" under section 210.25(12), Florida Statutes, because its products were neither "loose tobacco" nor "suitable for smoking." The appellate court rejected these arguments and affirmed the Division's order, holding that Global's products fit within the statutory definition and were therefore taxable under sections 210.276 and 210.30, Florida Statutes.

Global, a North Carolina-based distributor, sold hookah tobacco in Florida for over two decades, remitting the OTP tax throughout that period. In 2019, Global applied for a refund of $1.4 million in excise taxes and surcharges it claimed to have overpaid between 2016 and 2019, asserting its products were not subject to the OTP tax because they were neither "loose" nor "suitable for smoking." The Division denied the request, and the matter proceeded to a formal administrative hearing under Chapter 120, Florida Statutes, before an ALJ.

At the hearing, the evidence showed that Global's hookah tobacco was produced from shredded tobacco leaves mixed with glycerol, molasses, and flavorings to form a sticky, gluey sub-

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stance. Consumers place a selected amount of this product into a hookah bowl, cover it with foil, and heat it indirectly with burning coals. The heat vaporizes the glycerol and nicotine, creating a visible cloud, which passes through the hookah's water chamber before being inhaled. While the tobacco itself does not combust, the charcoal burns, releasing particulates and gases, which combine with the nicotine vapor for inhalation. Global contended that this method of consumption—vaporization rather than combustion of tobacco—meant its product was not "smoked" as contemplated by the statute.

The ALJ disagreed, finding that Global's product was indeed "loose tobacco" and "suitable for smoking." The ALJ concluded that, despite the presence of binding agents, the tobacco remained shredded and loose within the meaning of the statute, as consumers select the amount they wish to use, and the product retains identifiable pieces of tobacco. The ALJ also found that the product was suitable for smoking under the common understanding of the term, as the activity involved inhaling a visible vapor cloud produced through heat and burning coals, a process widely recognized as "smoking." The Division adopted the ALJ's recommendation.

On appeal, Global renewed its arguments, asserting that the statutory definition of "smoking" requires the combustion of tobacco itself, which does not occur in hookah use. The court rejected this narrow interpretation, applying fundamental principles of statutory interpretation as set forth in Conage v. United States, 346 So. 3d 594 (Fla. 2022), and Alachua County v. Watson, 333 So. 3d 162 (Fla. 2022). The court reasoned that the statutory phrase "loose tobacco suitable for smoking" was intended to encompass tobacco products used to deliver nicotine via inhalation, regardless of whether the tobacco itself combusted.

Relying on in pari materia construction, the court harmonized the definition of tobacco products across section 210.25(12), Florida Statutes, which also includes products "suitable for chewing," reflecting the Legislature's intent to tax products based on their nicotine delivery mechanism, not their combustion method. The court also found the purpose of tobacco taxation—to regulate and discourage nicotine consumption—supported interpreting "smoking" broadly to include hookah use. Rejecting Global's reliance on technical definitions of smoke and combustion, the court concluded that an ordinary person, witnessing hookah use, would describe it as "smoking". The court also cited multiple scientific publications, governmental agencies, and dictionaries consistently referring to hookah use as smoking. The court declined to apply the taxpayer-friendly canon of construction because it found no ambiguity in the statute's fair reading. Instead, the statutory text, context, and purpose, along with common usage, supported the conclusion that Global's products were "loose tobacco suitable for smoking" and thus subject to the OTP tax. The court therefore affirmed.

Judge Roberts, however, dissented, arguing that the statutory text failed to clearly encompass hookah tobacco, and that any ambiguity should be resolved in favor of the taxpayer under longstanding rules of construction for tax statutes. The dissent emphasized that hookah tobacco does not combust and procures vapor, not smoke, as traditionally understood, and that courts should not fill perceived gaps between legislative intent and enacted text.

Agency Authority—The Commission on Ethics erred in rejecting the ALJ's findings, conclusions, and recommended penalty in final order

***Underhill v. Fla. Comm'n on Ethics*, 403 So. 3d 496 (Fla. 1st DCA 2025).**

Underhill appealed portions of a final order and public report of the Commission on Ethics ("Commission") directing public censure, reprimand, and payment of civil penalties amounting to $35,000 for ethical violations committed while serving as a county commissioner for Escambia County. The Commission further recommended, based on the "cumulative severity" of the ethical violations, that Underhill be removed from office.

This case originated from three ethics complaints filed against Underhill. Central to his appeal were the following two claims: (1) that Underhill violated section 112.313, Florida Statutes, by conferring a benefit when he published the transcript of the Board of County Commissioners' ("Board") shade meetings that were confidential and closed to the public; and (2) that he created a GoFundMe page for contributions towards his personal legal expenses in violation of section 112.3148, Florida Statutes. Following an investigation, the Commission found probable cause and referred the matter to the Division of Administrative Hearings.

After the hearing, the ALJ issued a recommended order finding Underhill committed three violations: (1) knowingly accepting one or more contributions to his legal defense fund from vendors and/or lobbyists in violation of section 122.3148(4); (2) failing to disclose contributions to his legal defense fund in violation of section 112.3148(8); and (3) failing to disclose a gift of legal services in violation of section 112.3148(8). However, the ALJ determined the Commission failed to prove by clear and convincing evidence that: (1) Underhill violated sections 112.313(6) and 112.313(8), Florida Statutes, by releasing the shade meeting transcripts because he did not enjoy a specific benefit therefrom; (2) Underhill "solicited" donations to his legal defense fund in violation of section 112.3148(3); and (3) Underhill violated section 112.3148(8) by failing to disclose reimbursed travel and shipping

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expenses. The ALJ recommended a public censure, reprimand, and a civil penalty of $5,000.

The parties timely filed exceptions to the recommended order, and the Commission ultimately rejected and modified certain factual findings and legal conclusions in its final order. Specifically, the Commission determined that while competent, substantial evidence supported the ALJ's conclusion that Underhill did not enjoy a benefit from the release of the shade transcripts, the ALJ failed to consider whether the recipient of the transcripts, Kemp Evans, received a benefit. The Commission determined that the record supported a finding that Evans received a benefit, relying on the ALJ's conclusion that "Underhill transmitted the shad transcripts to Kemp Evans in response to a public records request from Mr. Evans" and evidence that Underhill was specifically advised against the release of the transcripts by the county attorney and the County Commission, concluding that: "[G]iven what the ALJ found . . . no further fact finding is needed to show a benefit to Mr. Evans under [sub]section 112.313(8)." The Commission also rejected the ALJ's conclusion that no clear and convincing evidence was introduced to support that Underhill "solicited" donations in violation of section 112.3148(3), Florida Statutes. The Commission found that the plain reading of the term "solicit" in the statute does not imply any distinction between "passive" or "active" solicitation and that the statute plainly contemplates the creation of a legal fund on a fundraising platform. The Commission therefore modified the total recommended monetary penalties to $35,000. Additionally, due to the "cumulative severity" of the statutory violations, the Commission recommended that Underhill be removed from office.

On appeal, Underhill challenged the Commission's rejection and modification of the ALJ's findings of fact and conclusions of law that Underhill violated sections 112.313(8) and 112.3148(3), and the Commission's increase in monetary penalties and the penalty of removal from office. The First District Court of Appeal found that the Commission incorrectly applied the two statutory provisions to conclude that Underhill violated them and that the Commission abused its authority when it increased the recommended penalties.

In particular, the appellate court first agreed with the ALJ that no clear and convincing evidence was introduced that Underhill obtained a prohibited benefit by releasing the shade transcripts. The ALJ's finding that Evans received the transcript, but there was no benefit to anyone that flowed from that disclosure, was supported by the record evidence. The Commission's modification of this finding was error. The Commission's equation of "disclosure" with "benefit" to fill the fatal gap in the evidence was not supported by the plain text of the statute, which does not simply prohibit disclosure, but disclosure for gain or benefit. Having failed to point to any evidence the ALJ overlooked, the Commission incorrectly interpreted and applied a provision of law when the evidence and correct interpretation compelled a difference result.

The appellate court also agreed with the ALJ that Underhill was not shown to have violated section 112.3148(3), Florida Statutes, when he established a GoFundMe page for contributions to fund his personal legal expenses. That statute prohibits public employees, officers, and certain state personnel from "soliciting any gift . . . where such gift is for the personal benefit" of certain persons. Noting the term "solicit" is not defined in statute, the ALJ reasoned it should be ascribed the plain and ordinary dictionary meaning. The ALJ therefore found that the GoFundMe page was a passive, not active, request for funding, and that there was no evidence that Underhill personally or directly contacted anyone to donate to the page. The ALJ therefore found that the Commission failed to prove by clear and convincing evidence that Underhill directly contacted anyone to donate to his page in violation of the statute's solicitation prohibition. The Commission, however, rejected this interpretation and revised the ALJ's conclusions of law to conclude that, although there was no persuasive evidence that Underhill directly contacted a donor, the statute did not require direct contact. Instead, the Commission found general funding requests constituted "soliciting" under the statute.

The appellate court disagreed, looking to the plain text of the statute, the specific context in which the language was used, and the broader context of the statute as a whole. The court also noted that the Code of Ethics is penal in nature and therefore must be strictly construed with doubts being resolved in favor of the employee. Here, the statute prohibited not a general solicitation of a gift, but the solicitation of a particular type of gift: one that has as its source, among others, a vendor or lobbyist. The Commission therefore had to prove that the website was set up specifically to ask for this type of gift. As the ALJ found, there was no evidence showing that the website was set up to operate as anything other than a general solicitation of monetary contributions, regardless of sources. With nothing in the record to contradict the ALJ's finding, the Commission's conclusion that the website did constitute a prohibited solicitation was an erroneous reading of the statute's plain and ordinary meaning. Indeed, any other interpretation would mean that any public officer or employee would be prohibited from posting a passive GoFundMe page. If that were the case, there would have been no reason for the statute to provide

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a list of prohibited individuals from whom solicitations could be made because any general posting would be a violation of the statute.

The appellate court then reviewed the Commission's imposition of penalties under an abuse of discretion standard. Underhill argued that the Commission abused its direction by increasing the recommended penalties, imposing penalties where the ALJ did not determine that he violated certain statutes, and for recommending his removal from office. While section 120.57(1)(l), Florida Statutes, permits a change to be made to the recommended penalty, it requires review of the record and particularity. The purpose is to provide some assurance that the agency has gone through a thoughtful process of review and consideration before changing a recommended penalty. Because no such record review and provision of particulars was conducted or provided before the Commission increased the penalties, the appellate court found error. Specifically, the Commission failed or refused to address separately and particularly the penalty for each violation and specific reasons, with reference to the record, for increasing it. Instead, the record reflected that the increase in penalties was an arbitrary decision, including by determining an overall amount of a fine and then instructing that the total penalty amount be divided by the number of violations committed to arrive at an equally assigned penalty amount for each violation. This amounted to a lack of required assessment, which also applied to the penalty of removal from office. The only basis discussed was the "cumulative severity" of Underhill's actions, which lacks sufficient specificity. The court therefore found that the Commission abused its direction in increasing the penalty.

For all these reasons, the appellate court set aside the final order and remanded to the Commission with instruction to adopt in toto the ALJ's proposed order and public report.

CON Approval—Evidence demonstrated applicant met "special circumstances" standard under Rule 5C-1.0355(4)(d)

Hope Hospice & Cmty. Servs., Inc. v. Agency for Health Care Admin., 404 So. 3d 627 (Fla. 1st DCA 2025).

Hope Hospice and Community Services, Inc. ("Hope") appealed the Agency for Health Care Administration's ("AHCA") approval of VITAS Healthcare Corporation's ("VITAS") application to operate a new hospice program.

Hope was the lone provider of hospice services in Glades, Hendry, and Lee counties ("Special Area 8C") for decades. VITAS filed a letter of intent and application with AHCA in 2021 to establish a new hospice program in those counties. VITAS sought approval under Hospice Rule 5C-1.0355(4)(d), which it referenced as the "Not Normal Circumstances" provision, and asserted that Hope was not meeting rural hospice needs in Glades and Hendry counties and that Hope created unequitable access to hospice services in Special Area 8C.

After AHCA preliminarily approved VITAS's application and found that "special circumstances" existed justifying approval, Hope filed a petition for formal administrative hearing. Hope argued that VITAS failed to show the need for a new hospice program in Special Area 8C under the agency's "numeric need" standard of Rule 5C-1.0355(4)(a) or the "special circumstances" standard of Rule 5C-1.0355(4)(d). The ALJ recommended that AHCA approve VITAS's application after concluding that patients in Glades and Hendry counties were underserved. AHCA issued a final order granting VITAS's application, but it revised one paragraph in the ALJ's recommended order to clarify that certain assertions in the order were Hope's legal position. Hope appealed.

On appeal, Hope raised three issues. First, Hope argued that AHCA improperly allowed VITAS to amend its CON application, because VITAS sought approval under the "Not Normal Circumstances" provision, which did not exist. Rule 5C-1.0355(4)(d) contains a "special circumstances" provision, which Hope alleged was a different standard. The court rejected this argument, finding that by citing the specific rule, VITAS's assertions were clear. Moreover, the court concluded that there was no evidence of confusion based upon VITAS's original use of the phrase "Not Normal Circumstances," and Hope itself framed its arguments within the parties' pre-hearing stipulation in opposition to VITAS satisfying the "special circumstances" provision of the rule.

Second, Hope argued that Rule 5C-1.0355(4)(d) requires a demonstration that patients are "not being served" and that AHCA based its decision upon patients being "underserved." According to Hope, the "underserved" standard meant that VITAS was required to prove that Hope was not serving anyone within the terminally ill population or within Special Area 8C. The court, however, disagreed, concluding that the statutory and regulatory scheme were designed to make sure an entire population had sufficient service. The court concluded that Hope's interpretation defied common sense and conflicted with an "ordinary reader['s]" understanding of the hospice scheme. After reviewing the evidence in the administrative record, the court was satisfied that VITAS met its burden to show the existence of "special circumstances" as intended by the rule.

Third, Hope challenged AHCA's clarification of the ALJ's findings of fact with regard to Hope's position in AHCA's final order. But the court agreed with VITAS that AHCA's revisions made no substantive differences and thus was not reversible error. Because AHCA's actions were not arbitrary, capricious, or in violation of section 120.68(7)(c), Florida Statutes, the court found no grounds for reversal.

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DOAH Case Notes

By Gar Chisenhall

Siranaula v. Extreme Rage Paintball Park, **Case No. 24-4426 (DOAH Recommended Order Feb. 18, 2025; FCHR Final Order May 8, 2025) (Pratt, ALJ)**

BACKGROUND: Anthony Siranaula worked for Extreme Rage Paintball Park ("the Paintball Park"). During his tenure at the Paintball Park, a manager would send him weekly text messages asking if he wanted to work on certain days. Siranaula would respond by stating whether he was willing and available on those days. Siranaula's duties at the Paintball Park included providing safety briefings, taking participants to and from the paintball fields, monitoring the paintball games for safety, and checking on the tanks used to fill the paintball guns. When a manager met with Siranaula to discuss complaints about him from other Paintball Park workers, Siranauala resigned. On April 15, 2024, Siranaula filed an employment complaint of discrimination with the Florida Commission on Human Relations ("the Commission") alleging that he was discriminated against based on his race and national origin. The Commission ultimately referred the matter referred the matter to DOAH.

OUTCOME: The ALJ observed that the Florida Civil Rights Act ("the Act") prohibits discrimination against employees and concluded that Siranaula failed to prove that he was the Paintball Park's employee within the meaning of the Act. While working for the Paintball Park, "Siranaula had the discretion to set his own schedule in all relevant respects. For example, Mr. Siranaula could choose to work or not work on a given day. Mr. Siranaula also maintained the right to quit working for [the Paintball Park] of his own accord. Because the greater weight of the evidence showed that Mr. Siranaula was an independent contractor rather than an employee, he cannot avail himself of protections provided to employees under [the Act]." The Commission adopted the recommended order in toto.

Shindorf v. Diocese of Venice, **Case No. 24-4738 (DOAH Recommended Order April 17, 2025; FCHR Final Order July 17, 2025) (Pratt, ALJ).**

BACKGROUND: Saints Peter and Paul the Apostles Catholic Church ("the Church") is a parish of the Diocese of Venice ("the Diocese"). Sheila Shindorf was the Church's music director. After the Church's pastor terminated Shindorf, she filed an employment discrimination complaint alleging the Church discriminated against her based on a disability and retaliated against her for accusing a parishioner of misconduct.

OUTCOME: The Diocese argued that the ministerial exception barred DOAH from adjudicating any of Shindorf's claims. The ministerial exception comes from the First Amendment and prohibits tribunals from adjudicating employment disputes involving important positions with churches and other religious institutions. In assessing whether the ministerial exception applies in a particular case, a tribunal assesses four factors: (1) the employee's title; (2) the substance reflected in that title; (3) the employee's own use of that title; and (4) the important religious functions performed by the employee. The ALJ determined, under the totality of the circumstances, that Shindoff fell within the religious exception. Accordingly. the ALJ recommended that the Florida Commission on Human Relations dismiss Shindoff's claim. The Commission adopted the recommended order in toto.

Rodriguez v. Ft. Pierce Hous. Auth., **Case No. 24-4324 (DOAH Recommended Order March 12, 2025; FCHR Final Order June 19, 2025) (Finkbeiner, ALJ).**

BACKGROUND: The Fort Pierce Housing Authority ("the Housing Authority") administers housing choice voucher assistance pursuant to federal regulations. Keysha Rodriguez has two young children and participates in the housing choice voucher assistance program. On December 6, 2023, Rodriguez transferred her housing voucher from the New York City Housing Authority ("NYC Housing Authority") to the Housing Authority. Because Rodriguez's daughter has a history of explosive behavior, separation anxiety, and self-harm, Rodriguez sought a three-bedroom voucher so that her other child would not be injured by her daughter. The Housing Authority typically issues a two-bedroom voucher to families of three such as Rodriguez's. Therefore, Rodriguez sought an accommodation, and her accommodation request form was completed by a pediatrician who opined that Rodriguez's daughter was disabled within the meaning of federal and state law.

On January 31, 2024, the pediatrician's office faxed the completed accommodation request form to Housing Authority. No response was forthcoming. On March 21, 2024, Rodriguez sent another accommodation request, along with additional supporting documentation, to the Housing Authority. Again, no response. On April 24, 2024, the Housing Authority notified Rodriguez that it had not received her accommodation request form and that the request for an accommodation was being denied. On May 31, 2024, the NYC Housing Authority transmitted an amended voucher to the Housing Authority providing for a third bedroom to accommodate the daughter's disability. On July 26, 2024, Rodriguez filed a complaint with the Commission alleging that the Housing Authority discriminated against her due to her daughter's disability and thus violated the Florida Fair Housing Act by denying her accommodation request. The Commission ultimately referred the matter to DOAH.

OUTCOME: In her Recommended Order, the ALJ noted the four elements that a petitioner must prove in order to support a failure to accommodate claim: (1) there

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must be a disability within the meaning of the Florida Fair Housing Act; (2) a reasonable accommodation must have been requested; (3) the requested accommodation was necessary to allow an opportunity to use and enjoy the dwelling at issue; and (4) the respondents refused to make the requested accommodation. After concluding that Rodriguez had satisfied the first three elements, the ALJ noted that, under federal law, failing to timely respond to an accommodation request amounts to a constructive denial. In such instances, federal case law directs that a tribunal should determine the cause of the delay and assign responsibility. The ALJ determined that the Housing Authority was responsible for the delay in Ms. Rodriguez's accommodation request being granted. Accordingly, the ALJ recommended that the Commission enter a final order determining that the Housing Authority engaged in unlawful discrimination and violated the Florida Fair Housing Act by refusing to make a reasonable accommodation. The Commission adopted the recommended order in toto.

Bonnevier v. Dep't of Mgmt. Servs., Div. of Retirement, **Case No. 24-3854 (DOAH Recommended Order Mar. 10, 2025; DMS Final Order Apr. 30, 2025) (Stevenson, ALJ).**

BACKGROUND: The Department of Management Services, Division of Retirement ("the Division") is responsible for administering the Florida Retirement System ("FRS"). Section 121.091, Florida Statutes, provides that retirement benefits may not be paid unless an FRS member has terminated employment and filed an application in the manner prescribed by the Division. Florida Administrative Code Rule 60S-4.0035 mandates that if an FRS member fails to apply for retirement within 30 calendar days after retiring, then the FRS member's effective retirement date shall be the first day of the month following the month in which the Division receives the member's application.

Lyn Bonnevier worked as an emergency medical technician for Flagler County in 1978 and 1979. However, Flagler County failed to report Ms. Bonnevier as an FRS-eligible employee and failed to make contributions to FRS on her behalf while she was employed by Flagler County. Between the time Bonnevier left her position with Flagler County and the end of her government employment in 1988, she accumulated 9.33 years of creditable FRS service. FRS members who enrolled in the program prior to July 1, 2001, must have 10 years of creditable service in order to be eligible to receive a retirement benefit. Section 121.021(17)(a) defines "creditable service as the sum of an employee's service "if all required contributions have been paid." Therefore, if Flagler County had properly credited her with service, then Ms. Bonnevier would have accumulated the required ten years of service as of 1988.

After prodding from Bonnevier, Flagler County submitted FRS contributions to the Division in July of 2024 for Bonnevier's service in 1978 and 1979. Those contributions were 45 years late and established Bonnevier's effective retirement date as August 1, 2024. But for Flagler County's misfeasance, Bonnevier would have been eligible to receive retirement benefits on her 62nd birthday in 2021.

On August 2, 2024, the Division denied Bonnevier's request for payment of her retirement benefits retroactive to August 1, 2021.

OUTCOME: The ALJ concluded that Bonnevier "should have been vested at the time she left employment in 1988, but the remedy she seeks is beyond the authority of this tribunal." There is "no statute that gives the Division or DOAH the authority to waive the statutory requirement of ten years of creditable service and the payment of all contributions by the employer for an employee to be vested in the FRS pension plan." Therefore, while characterizing Bonnevier as a "uniquely sympathetic petitioner," the ALJ recommended that the Division issue a final order denying her request for payment of retroactive retirement benefits. The Division issued a final order doing just that, approving the recommended order in toto.

Apalachicola Bay & River Keeper, Inc. v. Clearwater Land & Minerals Fla., LLC**, Case No. 24-2283 (DOAH Recommended Order Apr. 28, 2025; DEP Final Order June 16, 2025) (Stevenson, ALJ).**

BACKGROUND: Clearwater Land and Minerals Fla., LLC ("Clearwater") is a Florida limited liability company that applied, on December 4, 2023, for a permit to drill for

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oil and gas in Calhoun County, Florida. The proposed drilling site is in an area that provides essential feeding and nesting grounds for a diverse assemblage of upland, coastal, and estuarine wildlife. Several of the native species are threatened or endangered. The Department of Environmental Protection ("the Department") issued a proposed permit to Clearwater to drill a directional exploratory well on the site in question. Apalachicola Bay and River Keeper, Inc. d/b/a Apalachicola Riverkeeper ("Riverkeeper") is a 1,300 member, not-for-profit Florida corporation dedicated to protecting the environment of the Apalachicola River, its tributaries, watershed, and the adjacent inland coastal waters of St. Vincent Sound, Apalachicola Bay, St. George Sound, and Alligator Harbor. On June 6, 2024, Riverkeeper filed a petition for formal administrative hearing alleging that Clearwater's application failed to meet the criteria in chapter 377 of the Florida Statutes and chapters 62C-25 through 62C-30 of the Florida Administrative Code.

OUTCOME: The ALJ observed in his recommended order that significant components of Clearwater's application were created "in direct response" to Riverkeeper's Petition and not part of the original application approved by the Department. Those components included the conceptual stormwater plan and the basis for judging the economic viability of the proposed permit. While noting that he was presiding over a de novo proceeding, the ALJ stated that "it is less than ideal for a DOAH ALJ to be the first level of review for matters of this scientific and technical complexity. As suggested above, it appears to the undersigned that once Riverkeeper's critique forced Clearwater to make significant changes to the Proposed Permit, the time had come for [the Department] to exercise its discretion to rescind the proposed approval long enough to subject those changes to expert scrutiny at least equal to that applied to Clearwater's original application. Established precedent allows permit amendments even up to the final hearing, but in this case, the better practice would have been another round of agency review that forced Clearwater to specify the design and construction of the stormwater control system." Ultimately, the ALJ concluded that "[w]eighing the criteria of section 377.241, balancing environmental interests against the right to explore for oil, leads to the conclusion that the Proposed Permit should be denied."

The Department adopted the recommended order subject to certain exceptions that the Department accepted, none of which disturbed the ultimate recommendation that the Proposed Permit be denied.

Aguilar v. Whisper Lakes Unit 2 Homeowners Ass'n, Inc., Case No. 25-0334 (DOAH Recommended Order May 1, 2025; DOC Final Order July 29, 2025) (Pratt, ALJ).

BACKGROUND: Whisper Lakes Unit 2 Homeowners Association, Inc. ("Whisper Lakes HOA") is the governing body for Whisper Lakes Unit 2, located in Orlando, Florida. The Department of Commerce ("the Department") is responsible for evaluating submissions from communities seeking to revive declarations of covenants that have ceased to govern their communities. Whisper Lakes HOA's restrictive covenants expired on approximately July 29, 2018, and Whisper Lakes HOA sent a revitalization approval packet to the Department on August 15, 2024, for review pursuant to chapter 720, Florida Statutes. On October 11, 2024, the Department issued a letter approving of the proposed, revived declaration. The Department's approval letter included a "Notice of Administrative Rights" stating that "any person whose substantial interests are affected by this determination has the opportunity for an administrative proceeding pursuant to section 120.569, Florida Statutes." The approval letter also stated that a petition must be filed with the Department within 21 calendar days of receipt or the right to an administrative proceeding is waived.

On November 19, 2024, Whisper Lakes HOA recorded the revitalized documents and the approval letter in the public records of Orange County, Florida. Whisper Lakes HOA also mailed, on November 19, 2024, a letter to all its members describing the revitalization. However, there was no mention of the opportunity to request an administrative hearing or the deadline for doing so.

Tunia Aguilar owns a parcel within the Whisper Lakes HOA community. Aguilar received Whisper Lakes HOA's letter on November 25, 2024, but she only became aware of the 21-day deadline for requesting an administrative hearing because she had done her own legal research. On December 26, 2024, the Department received a petition from Aguilar challenging the Department's approval of the proposed, revived declaration. The Department referred this dispute to DOAH and argued that Aguilar's petition was untimely filed.

OUTCOME: Because Aguilar never received a copy of the Department's approval letter, the ALJ concluded that Whisper Lakes HOA must establish the date on which the 21-day period for filing a hearing request began to run by proving that Ms. Aguilar received actual notice by other means. The ALJ rejected Whisper Lakes HOA's argument that its November 19, 2024 letter provided Aguilar with actual notice by directing her to publicly available records containing the Department's approval letter. Because Aguilar reviewed those records on December 13, 2024, the ALJ concluded she received actual notice on that date and thus her petition was timely filed on December 26, 2024.

The Department adopted the recommended order in toto.

Florida State University College of Law Summer 2025 Update

by Erin Ryan, Associate Dean for Environmental Programs

"Here at FSU, we are sending warm wishes to all for a lovely and restorative summer—but not too warm, as we all try so hard to beat the heat! As record-setting heat domes prompt further questions about climate resilience, we're proud to see our students and alumni engaging directly with these challenges. We are especially proud of **Kinsey Garn** and **Zachary Roper**, two stand-out Environmental Certificate earners who graduated with program honors this Spring, and we look forward to the impacts they will have in the field.

Indeed, we congratulate all of our newest graduates, who helped us celebrate another productive year at the Center. In 2024-25, we offered 17 courses and hosted 18 speakers over the calendar of events that we hosted as part of our enrichment series and student-led programming—helping us maintain our standing among the best environmental law programs nationally and as the #1 program in Florida. As always, we share deep gratitude with the members of our community who continue to infuse our program with such energy and creativity.

Looking ahead to the fall, we are excited to welcome a new cohort of students and to sponsor another robust year of programming, headlined by our Distinguished Lecture Series—Professor Kirsten Engel of the University of Arizona in the fall, and Professor Robert Glicksman of George Washington University in the spring. You can find more details on our upcoming courses and events below and use the links at the bottom to catch up on any of last year's events that you may have missed. But for now, do stay cool everyone!" -ER

Below highlights the activities and events of the **FSU Center for Environmental, Energy, and Land Use Law,** student, alumni, and faculty achievements, and recent faculty scholarships.

Fall 2025 Events

Each year, we offer a range of enrichment events for students in the Environmental Law Certificate Program and the broader FSU Law community. Whether you're on campus or tuning in remotely, we hope you'll join us for one of our engaging events.

Explore our fall program events below:

• **Environmental Program Introductory Meeting**, Friday, September 5, 12:30-1:30pm. (Interested in our environmental certificate program? This is your chance to learn about it!)

• **Environmental Externship Luncheon,** Wednesday, September 17, 12:30-1:30pm.

• **Lunch and Learn: Spring 2026 Course Tasting Menu,** Wednesday, October 1, 12:30-1:30pm.

• **Enrichment Lecture: Kamaile Turčan** (University of Hawaii) via Zoom, Wednesday, October 8, 3:30-4pm, on the changing administrative landscape for environmental law.

• **Distinguished Environmental Lecture: Kirsten Engel** (University of Arizona) Wednesday, October 22, 3:30-4:30pm, on new opportunities for synergy between state and federal environmental law, followed by a reception until 5:30pm.

• **Enrichment Lecture: Alda Balthrop-Lewis** (Florida State University Department of Religion) Wednesday, November 5, 3:30-4:30pm, on environmental ethics and religion.

More information about these events, including links to the livestreams, will be provided as we get closer to the dates.

Faculty Focus: Shi-Ling Hsu

Professor Shi-Ling Hsu received a grant of around $5,000 from the Foundation for Natural Resources and Energy Law, furthering his research into the poorly understood sources of opposition to carbon taxes. Social psychology research suggests that people form opinions about public policies based on information most familiar or accessible to them, to the exclusion of potentially more relevant factors.

Hsu's research will aim to identify some of the psychological mechanisms by which people form opinions regarding carbon taxes, largely based on their perception of the negative costs associated with them, and how public opinion might be better informed by more sophisticated framing of policy problems that couple costs with lesser understood benefits.

Student Organization Spotlight

Please welcome the new **Environmental Law Society** board for the 2025-2026 Academic Year!

Samantha Chair (Class of 2027), President, is a rising 2L currently externing at the Florida Division of Administrative Hearings. The summer placement offers valuable exposure to administrative proceedings and opportunities to build legal research and writing skills through work on real-time hearings.

Jayden Bashe (Class of 2027), Vice President, is a rising 2L spending the summer at the Florida Fish and Wildlife Conservation Commission. The externship provides hands-on experience at the intersection of administrative and environmental law, with research focused on captive wildlife regulations, land use, and marine fisheries management.

Matthew Scarbrough (Class of 2026) Secretary, is a rising 3L working this summer at the Florida Department of Agriculture and Consumer Services. The

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role involves contributing to ongoing legal work through research assignments and motion drafting, offering insight into the agency's broad regulatory responsibilities.

Sydney McLain (Class of 2026), Treasurer, is a rising 3L serving as a housing law clerk for Legal Services of North Florida. The position allows for practical experience in public interest law, with a focus on housing-related legal issues impacting underserved communities.

Alumni Spotlight

Holly Parker Curry (JD '21), was invited to present on the State of Marine Protected Areas and Fisheries Management in the Southern Ocean at the 21st International Wildlife Law Conference hosted this past April by Stetson Law's Institute for Biodiversity Law and Policy. In June, she attended the United Nations Ocean Conference in Nice, France, where she participated in a panel discussion titled Bringing Antarctica and the Southern Ocean Closer to Home, which focused on efforts to recognize Antarctica as an autonomous, rights-bearing entity.

Curry is the Marine Protected Areas Campaign Director at the Antarctic and Southern Ocean Coalition (ASOC). As the only environmental NGO invited to observe Antarctic Treaty System meetings, ASOC works at the highest levels of Antarctic governance to effect change from within. Prior to joining ASOC, Curry clerked for U.S. District Judge Robert L. Hinkle in the U.S. District Court for the Northern District of Florida and later practiced land use law at Theriaque & Spain Law Firm. Additionally, Curry has worked for the Surfrider Foundation, the Nature Conservancy, and U.S. Senate. She holds a B.S. in International Affairs, M.S. in Applied American Politics & Policy, and J.D. summa cum laude with a certificate in Environmental and Land Use Law from Florida State University College of Law.

Information on the FSU Center for Environmental, Energy, and Land Use Law events is available at Environmental Program Events | College of Law or reach out to Professor James Parker-Flynn, Center Director for more information (jparkerflynn@law.fsu.edu).

Florida Enacts the First Significant Reforms to Agency Rulemaking...
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that those responsible for preparing the SERC, if applicable, are available to explain the proposal and respond to questions or comments. *Id.*

Notice of Intended Action Requirements. When adopting a rule, the notice of intended action must now contain additional information, including the proposed rule number, name and contact information for the agency employee who may be contacted regarding the intended action, a "concise" summary of any statement of estimated regulatory cost "that describes the regulatory impact of the rule in readable language," and an "agency website address" where the SERC can be viewed in its entirety. *See id*. § 120.54(3)(a).

The notice of intended action must be published in the Florida Administrative Register at least seven days after the notice of rule development and at least 28 days before the intended action. If any of the information required to be included in the notice is omitted or incorrect, the agency must publish a notice of correction in the Florida Administrative Register at least seven days before the intended agency action. *Id*. § 120.54(3)(a)5.

Notably, a new provision in section 120.54(3)(d)3. states that after the agency files the notice of intended decision, the agency must withdraw the proposed rule if the agency has either failed to adopt it within the prescribed timeframes or failed to submit the concise statement required under subparagraph (2)(a)2. If, 30 days after notice by JAPC that the agency has failed to either adopt the proposed rule within the prescribed timeframes or submit the required statement, the agency has not given notice of withdrawal of the proposed rule, JAPC must notify the Department of State that the date for adoption of the rule or submission of the required statement has expired, and the Department of State must publish a notice of withdrawal of the proposed rule. Within 30 days after the withdrawal, the agency must begin rulemaking again if the mandatory grant of rulemaking authority the agency relied on as authority in pursuing the original rule action is still in effect at the time of the original rule's withdrawal.

Legislative Ratification. For rules that require legislative ratification but are not ratified by the adjournment sine die of the regular session immediately following the timely filing for adoption of the rule, the agency must withdraw the rule. Within 90 days after sine die, the agency may initiate rulemaking again, or if the rulemaking authority granted the agency was mandatory, the agency must initiate rulemaking again if the relied upon authority is still in effect at the time of the original rule's withdrawal. Id. § 120.54(3)(d)4.c.

On a quarterly basis, JAPC must compile and post on its website a list of each failure by an agency to file a notice of proposed rule within the 180-day timeframe prescribed by statute and include certain information for each failure specified by statute. Id. § 120.54(3)(d)7.

Agency Review of Rules

New section 120.5435, Florida Statutes, provides that by July 1, 2030, each agency, in coordination with JAPC, shall review all existing rules adopted by the agency before July 1, 2025. This review entails determination of whether each rule is a valid exercise of delegated legislative authority, has current statutory authority, reiterates or paraphrases statute, is in proper form, is consistent with expressed legislative intent, requires a technical or substantive update to reflect current use, and requires updated references to statutory citations and incorporated materials. This new statute also explains the actions that an agency may take after its review, including making no change to the rule, making a technical change to the rule, making a substantive change to the rule, and repealing the rule.

Like many unsuccessful bills from prior years, HB 433 had proposed a "repromulgation" mechanism; HB 433's would have been linked to the new five-year agency rule review process. Under that proposal, agencies would have been required to repromulgate any existing rule that, upon review, was found not to warrant revision or repeal. The repromulgation process would have followed similar notice requirements as original rulemaking but, notably, would have precluded any opportunity for challenge or administrative hearing under Chapter 120. However, the "repromulgation" proposal did not survive the legislative process and was not included in the passed SB 108.

Beginning October 1, 2025, each agency shall include a list of its existing rules in its annual regulatory plan, as well as a schedule of the rules it will review each year during the five-year rule review period. (Section 120.74, Florida Statutes, is also revised to require detailed information on this rule review as part of the agency's regulatory plan.) Ultimately, the agency must review at least 20 percent of its rules per year, until all its rules have been reviewed.

Any rule initially adopted after July 1, 2025, must be reviewed in the fifth year following adoption.

By January 1 of each year, the agency shall submit to the Senate President, House Speaker, and JAPC a report that summarizes the agency's intended action on each rule under review during that fiscal year. JAPC must review these reports by July 1 each year, and where the agency recommends no change or a technical change, JAPC must certify whether the agency has responded in writing to all material and timely written comments or inquiries that JAPC made.

This rule review is complete upon the agency filing a certified copy of the reviewed rule if no change or only a technical change is made or filing the appropriate notice for rulemaking if the agency is proceeding with substantive changes. The Department of State must publish in the Florida Administrative Register a notice of the completed rule review and update the history note of the rule in the Florida Administrative Code to reflect the date of completion.

No Automatic Expiration or Repeal of Rules

Section 120.536(5), Florida Statutes, now states that "[u]nless otherwise expressly authorized by law, a rule may not include a provision whereby the entire rule, or a provision thereof, automatically expires or is repealed on a specific date or at the end of a specified period." This provision was in response to the Governor's directive that agencies include a five-year sunset in all rules. See Nov. 11, 2019 Letter from Governor DeSantis to Agency Heads. Notably, JAPC regularly objected to such sunset provisions on the basis that no provision in Chapter 120 provides for the automatic

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sunset of agency rules and removal of a rule requires following rulemaking procedures. See, e.g., JAPC Objection Report, Rule 59C-1.005 (Feb. 3, 2025).

Incorporation of Material into Rules

Section 120.54(1)(b)(i)4. now states that in rules proposed after July 1, 2025, material may not be incorporated by reference unless it is submitted in an electronic, text-searchable format that can be made available for free public access through hyperlink within the rule, unless the material is protected by copyright.

Emergency Rules

With respect to emergency rules, the legislation clarifies that the impetus for such rules may be legislative authorization and that the agency must publish in the notice of emergency rules "the agency's findings of immediate danger, necessity, and procedural fairness or a citation to the grant of emergency rulemaking authority." § 120.54(4), Fla. Stat. Notice of the renewal of an emergency rule must be published in the Florida Administrative Register before the emergency rule's expiration and state the facts and reasons for renewal.

For emergency rules with an effective period greater than 90 days intended to replace existing rules, a note must be added to the existing rule's history note which identifies the emergency rule that is intended to supersede the existing rule and include the date the emergency rule was filed with the Department of State. Emergency rules must also be published in the Florida Administrative Code.

An agency may supersede an emergency rule through adoption of another emergency rule before the superseded rule expires, but the reason for doing so must be provided and the duration of the superseding rule may be no longer than the effective period of the rule being superseded.

Agencies may also make technical changes to an emergency rule within seven days after the rule is adopted, which must be published in the Florida Administrative Register as a notice of correction.

Agencies may also repeal an emergency rule before it expires by providing notice in the Florida Administrative Register that meets certain requirements.

SERCs and LCRAs

The legislation also makes some significant changes to SERCs prepared by agencies and proposals for lower cost regulatory alternatives ("LCRAs") that may be submitted in response to a proposed rule.

Notably, HB 433 originally proposed requiring agencies to prepare a SERC for any proposed rule, regardless of anticipated impact. This change would have marked a significant expansion of current SERC requirements. The provision did not make into the final incarnation of SB 108.

With respect to an agency's decision as to whether a SERC is required, SB 108 states that the agency must make available any information created or used by the agency in determining whether a proposed rule meets any of the factors which require preparation of a SERC, and those docu-

ments will become part of the rulemaking record. § 120.54(3)(b), Fla. Stat. However, the agency is not required to estimate the proposed rule's impact to the factors. *Id.*

To the extent the SERC statute requires consideration of the proposed rule's impact on small business, the legislation deletes prior language which allowed the agency to consider a different definition of "small business" in certain cases. Id. § 120.54(3)(b)2.a. With respect to regulatory alternatives, "[a]n agency shall provide [JAPC] a copy of any regulatory alternative offered to the agency within 7 days after its delivery to the agency," and an "agency may not file a rule for adoption before such regulatory alternative, if applicable, has been provided to" JAPC.

The legislation clarifies section 120.541, Florida Statutes, to state that if a good faith written proposal for an LCRA is submitted to an agency after the agency has published a notice of change, such proposal is deemed to be made in good faith "only if the person reasonably believes, and the proposal states the person's reasons for believing that the proposed rule, as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses which was not created by the previously proposed rule."

The agency must also provide JAPC any proposal for an LCRA within seven days of receipt and any response by the agency to such response within seven days of release. The agency may not file a rule for adoption before such documents have been provided to JAPC. *Id.* § 120.541(1)(a).

The legislation also defines "transactional costs" for purposes of a SERC, stating that such costs "may" include filing fees, expenses to obtain a license, necessary equipment, labor, and capital expenditures, among other items. *Id.* § 120.541(2)(d). When evaluating the impacts anticipated to be caused by a proposed rule, the agency must include, if applicable, market impacts likely to result from compliance with the proposed rule, as further described in the statute. *Id.* § 120.541(2)(f).

Any changes to SERCs must also be publicized. *Id.* § 120.541(6)(c).

The legislation also amended section 120.54(3)(d) to state that "[a]ny change, other than a technical change, to a [SERC] requires a notice of change" to be filed, and the notice of change "must include a summary of any revision to the [SERC] required by s. 120.541(1)(c)."

Petitions to Initiate Rulemaking

The legislation provides that whe the agency receives a petition to initiate rulemaking, the agency must provide the petition to JAPC within seven days of receipt. The agency must also notify JAPC of its intended action or response within seven days. § 120.54(7), Fla. Stat.

Reporting of Compliance with Licensing Timeframes

Section 120.74(1)(g) provides that, beginning October 1, 2025, each agency responsible for issuing licenses must track the agency's compliance with the licensing timeframes established in section 120.60, Florida Statutes, and beginning on October 1, 2026, must include in the regulatory plan detailed information regarding how well agencies are meeting the statutory timeframes. No later than December 31 of each year, JAPC must submit a consolidated annual agency licensing performance report, which in turn must be published in the first available issue of the Florida Administrative Register.

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As noted above, SB 108's many changes to agency rulemaking and processes took effect on July 1, 2025. It remains to be seen whether it represents a sea change in agency rulemaking.

Tiffany Roddenberry and Larry Sellers are partners at Holland & Knight LLP in Tallahassee, Florida, where they practice primarily administrative law.

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ADMINISTRATIVE LAW ARTICLES AND OTHER FEATURES

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