

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 37 Ethics Requirements for Public Officials

SPONSOR(S): State Affairs Committee; Ethics, Elections & Open Government Subcommittee; Roach and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 774

FINAL HOUSE FLOOR ACTION: 113 Y's 2 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 37 passed the House on April 26, 2023, as CS/CS/SB 774.

The Code of Ethics for Public Officers and Employees (Code of Ethics) establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially. The Commission on Ethics (Commission) is an independent commission that, in part, maintains financial disclosure filings of constitutional officers and state officers and employees, administers fines for late filed annual financial disclosures, and administers the executive branch lobbying registration and reporting laws.

The bill makes the following changes to the Code of Ethics:

- Requires Commission members, mayors, and elected members of a municipal governing body to file the CE Form 6 (Form 6) disclosure starting January 1, 2024, instead of the CE Form 1 (Form 1) disclosure.
- Maintains the current requirement that Form 6 filers submit their disclosures electronically beginning January 1, 2023, and requires Form 1 filers to submit their disclosures electronically beginning January 1, 2024.
- Allows federal income tax returns and other attachments be included with Form 6 electronic submissions.
- Requires the Commission to provide certain notices regarding Form 1 and Form 6 electronic filings.
- Extends the annual filing deadline for both Form 1 and Form 6 filers.
- Provides that the computation of a fine for late filing of financial disclosures will use the electronic submittal date.
- Requires the Commission to investigate sworn complaints or random lobbying audit reports *only* when individuals or entities have intentionally failed to disclose a material fact or has knowingly submitted false information.
- Authorizes the Commission to dismiss certain complaints or investigations if the public interest is not served by proceeding further.
- Increases the civil penalty that may be assessed for a violation of the Code of Ethics from \$10,000 to \$20,000.
- Allows commissioners of community redevelopment agencies to use the same training schedule as all other public officers subject to the ethics training requirement.
- Allows a candidate qualifying for office to submit a verification or receipt of electronic filing of a financial disclosure to the local filing officer.
- Grants the Commission an exception to the rulemaking requirements of the Administrative Procedure Act for forms promulgated for the 2022 filing year.

The bill may have a negative, but likely insignificant, impact on state expenditures. See Fiscal Comments.

The bill was approved by the Governor on May 11, 2023, ch. 2023-49, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)¹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.² The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics (Commission).³

Commission on Ethics

The Commission was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.⁴ The State Constitution and state law designate the Commission as the independent commission provided for in s. 8(f), Art. II of the state constitution.⁵ Constitutional duties of the Commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.⁶ In addition to its constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;⁷
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁸
- Administers the executive Branch lobbying registration and reporting law;⁹
- Maintains financial disclosure filings of constitutional officers and state officers and employees;¹⁰ and
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.¹¹

Lobbyist Registration and Compensation Reporting

Lobbyists must register to lobby the executive branch and the legislative branch in Florida. Executive branch lobbying is regulated by the Code of Ethics and administered by the Commission.¹² Legislative branch lobbying is regulated primarily by Joint Rule of the Florida Legislature and administered by the Office of Legislative Services.¹³ Both registration systems require lobbyists to annually register for each principal¹⁴ represented and to indicate the entities to be lobbied.¹⁵ In addition, lobbying firms must file

¹ See Pt. III, Ch. 112, F.S.; see also Art. II, s. 8(h)(1), FLA. CONST.

² Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited May 3, 2023).

³ See Pt. III, Ch. 112, F.S.

⁴ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited May 3, 2023); See also S. 112.320, F.S.

⁵ Article II, s. 8(i)(3), FLA. CONST.; S. 112.320, F.S.

⁶ Article II, s. 8(f), FLA. CONST.

⁷ Section 112.322(3)(a), F.S.

⁸ Section 112.322(2)(b), F.S.

⁹ Sections 112.3215 and 112.32155, F.S.

¹⁰ Section 112.3144, F.S.

¹¹ Section 112.31455, F.S.; see also Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited May 3, 2023).

¹² Section 112.3215, F.S.

¹³ Section 11.045, F.S. and Joint Rule 1.

¹⁴ Section 112.3215(1)(i), F.S.

¹⁵ Section 112.3215(3), F.S.; Joint Rule 1.2

quarterly compensation reports.¹⁶ Both the Commission and the Legislature have instituted electronic registration and compensation reporting.¹⁷ Executive branch lobbyists, however, must supply a written oath to complete each registration as well as a signed statement of authority from the principal.¹⁸

State agency employees and employees of legislative and judicial branch entities acting in the normal course of their duties are exempt from executive branch lobbying registration.¹⁹ However, local government officers and employees must register to lobby the state executive branch.

Compensation reporting is subject to random audits and, in the case of executive branch lobbying firms, findings of non-compliance are reported to the Commission for investigation.²⁰

The executive branch lobbyist registration and reporting law provides specific procedures for its enforcement.²¹ The Commission reports probable cause findings to the Governor and Cabinet for appropriate action, which can include a fine up to \$5,000 and prohibition from lobbying for up to two years.²² A person accused of violating the lobbyist registration law may also request a hearing within 14 days of the mailing of the probable cause notification.²³

Procedures on Complaints and Violations

Current law requires the Commission to investigate possible violations and other alleged breaches of the public trust within the Code of Ethics when in receipt of a complaint signed under oath or affirmation or when a written referral is received from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney.²⁴ The Commission then begins a preliminary investigation of each legally sufficient complaint to determine if there is probable cause that a violation has occurred.²⁵ The Commission may, at its discretion, dismiss any complaint or referral at any stage of disposition should it determine that the public interest would not be served by proceeding further but a report must be issued stating with particularity its reasons for dismissal.²⁶ The Commission may also dismiss any complaint or referral if it determines that the violation that is alleged or has occurred is a *de minimis* violation attributable to inadvertent or unintentional error;²⁷ however, the Commission may not dismiss complaints alleging *de minimis* violations involving financial disclosure statements.²⁸

Penalties

Current law provides a range of penalty provisions for violations of the Code of Ethics that cover public officers and employees, former public officers and employees, candidates, and lobbyists and lobbying firms.²⁹ Depending on the position that the individual holds, there are different penalties that can be enforced, including:³⁰

- Impeachment, removal from office, or dismissal of employment;
- Suspension from office or employment;
- Disqualification from being on the ballot;
- Demotion;
- Reduction in salary;

¹⁶ Section 112.3215(5)(a)1., F.S.; Joint Rule 1.4

¹⁷ Section 112.32155, F.S.; Joint Rule 1.1(2)(f)

¹⁸ Section 112.3215(3), F.S.

¹⁹ Section 112.3215(1)(h)2., F.S.

²⁰ Section 112.3215(8)(c), F.S.

²¹ Section 112.3215(8) and (9), F.S.

²² Sections 112.3215(9) and 112.3215(10), F.S.

²³ Section 112.3215(9), F.S.

²⁴ Section 112.324(1), F.S.

²⁵ Section 112.324(3), F.S.

²⁶ Section 112.324(12), F.S.

²⁷ Section 112.324(11)(a), F.S.

²⁸ Section 112.324(11)(b), F.S.

²⁹ Section 112.317(1), F.S.

³⁰ *Id.*

- Forfeiture of no more than one-third of his or her salary per month for no more than 12 months;
- Public censure and reprimand;
- A civil penalty not to exceed \$10,000;
- Restitution of any pecuniary benefits received because of the violation committed.

Although the Commission does not have the authority to directly impose the above penalties, in its findings, the Commission makes recommendations to the appropriate disciplinary authority for the individual or entity who was found in violation of the Code of the Ethics.³¹

Disclosure of Financial Interests

The State Constitution requires elected constitutional officers, candidates for such offices, and statewide elected officers to file full and public disclosure of their financial interests.³² Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.³³

The term “full and public disclosure of financial interests” means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.³⁴ The disclosure must be accompanied by either a copy of the filer’s most recent federal income tax return or a sworn statement that identifies each separate source and amount of income that exceeds \$1,000.³⁵ The Commission has created by rule CE Form 6 (Form 6) to be used to make the required full and public financial disclosure.³⁶

Currently, individuals holding the following positions must file Form 6:³⁷

- Governor;
- Lieutenant Governor;
- Cabinet members;
- Legislators;
- State attorneys;
- Public defenders;
- Clerks of circuit court;
- Sheriffs;
- Tax collectors;
- Property appraisers;
- Supervisors of elections;
- County commissioners;
- Elected Superintendents of schools;
- District school board members;
- Jacksonville City Council members, including the mayor;
- Judges of compensation claims;
- Duval County Superintendent of Schools;
- Florida Housing Finance Corporation board members;
- Each member of a large-hub commercial service airport; and
- Each member of an expressway authority, a transportation authority (except the Jacksonville Transportation Authority), a bridge authority, or a toll authority created pursuant to chapter 348 or chapter 343, F.S., or any other general law.

³¹ Section 112.324(3), F.S.

³² Article II, s. 8(a), FLA. CONST.

³³ See s. 112.3144(1)(b), F.S.

³⁴ Article II, s. 8(j)(1), FLA. CONST.

³⁵ *Id.*; see also s. 112.3144, F.S.

³⁶ Section 112.3144(8), F.S.

³⁷ Rule 34-8.003, F.A.C.; see also Commission on Ethics, *Filing Information*, available at https://www.ethics.state.fl.us/Documents/Forms/Form1.html#form_6 (last visited May 3, 2023).

Reporting individuals must file Form 6 annually with the Commission by 5 p.m. on July 1.³⁸ Additionally, candidates for a constitutional office must make a full and public disclosure of their financial interests at the time of qualifying.

Current law requires a less detailed disclosure of financial interests using the Commission's CE Form 1 (Form 1) for certain local officers, including all officers holding elected positions in political subdivisions of the state, other than counties, as well as specified appointive officers.³⁹ Other persons filing Form 1 include specified state officers and employees as well as persons seeking to qualify as candidates for state or local office.⁴⁰

Form 1 requires those individuals to disclose their primary sources of income, other than their public position, secondary sources of income, real property, intangible personal property, liabilities, and interests in specific businesses.⁴¹

Although no specific dollar values of incomes, property or liabilities are required to be reported, the filer must report which assets or liabilities exceed certain dollar thresholds.⁴² Form 1 filers must disclose all sources of income in excess of \$2,500, excluding public salary, all sources of income from a business entity that the filers had a material interest in where their gross income was in excess of \$5,000 and in excess of 10 percent of the business' gross income. Form 1 filers must also disclose any property, except for their residence or vacation home, in which the person owns more than 5 percent of the value of the property, as well as any intangible property in excess of \$10,000 and any liability in excess of \$10,000.⁴³ Form 1 must be filed annually with the Commission by 5 p.m. on July 1.⁴⁴

Candidate Qualifications Respecting Financial Disclosures

Under current law, at the time of qualifying for office, each candidate for a constitutional office must file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation. A candidate for any other office, including local elective office, must file a statement of financial interests.⁴⁵ When a candidate has qualified for office prior to the deadline to file an annual financial disclosure, the disclosure filed with the candidate's qualifying papers is deemed to satisfy the annual disclosure requirement.⁴⁶

Beginning January 1, 2023, under the Code of Ethics, an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement may submit a copy of the financial disclosure form filed with the Commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies.⁴⁷ A candidate not subject to an annual filing requirement does not file with the Commission, but may complete and print the appropriate financial disclosure form to file with the officer before whom he or she qualifies.⁴⁸

Under current law, in order for a candidate to be qualified for nomination or election to office, the filing officer must receive the full and public disclosure or statement of financial interests by the end of the qualifying period.⁴⁹ If the filing officer receives qualifying papers during the qualifying period prior to the last day of qualifying, which do not include all statutorily required items, the filing officer must make a

³⁸ Section 112.3144(8)(d), F.S.

³⁹ Section 112.3145, F.S.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Section 112.3145(3), F.S.

⁴³ Section 112.3145(3)(b), F.S.

⁴⁴ Section 112.3145(2)(b), F.S.

⁴⁵ Section 99.061(5), F.S.

⁴⁶ Sections 112.3144(3) and 112.3145(2)(a), F.S.

⁴⁷ Sections 112.3144(4) and 112.3145(2)(c), F.S.

⁴⁸ Section 112.3144(4), F.S.

⁴⁹ Section 99.061(7)(a)5., F.S.

reasonable effort to notify the candidate of any missing or incomplete items and must inform the candidate that all required items must be received by the close of qualifying.⁵⁰

Mandatory Annual Ethics Training

Current law requires constitutional officers,⁵¹ elected municipal officers, and commissioners of community redevelopment agencies to complete four hours of ethics training annually that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code of Ethics, and Florida law on public records and public meetings.⁵² Each officer subject to the annual ethics training requirement must certify on his or her Form 1 or Form 6 disclosure that he or she has completed the required training.⁵³

Additionally, current law requires the Commission to adopt rules establishing minimum course content for the portion of an ethics training class that addresses the constitutional ethics provisions and the Code of Ethics.⁵⁴ The Commission's current rule⁵⁵ requires course content to include one or more of the following subjects:

- Doing business with one's own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
- Post-office holding restrictions;
- Restrictions on the employment of relatives;
- Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
- Financial disclosure requirements, including the automatic fine and appeal process;
- Commission procedures on ethics complaints and referrals; and
- The importance of and process for obtaining advisory opinions rendered by the Commission.

Effect of the Bill

Financial Disclosure

The bill requires Commission members, mayors, and elected members of a municipal governing body to begin filing Form 6 disclosure starting January 1, 2024, instead of Form 1. The bill also clarifies that when qualifying for office or when appointed to fill a vacancy of these offices, the person filling a vacancy must file within 30 days of appointment.

The bill maintains the current requirement for Form 6 filers to submit their disclosures electronically beginning January 1, 2023. The bill requires Form 1 filers to submit their disclosures electronically beginning January 1, 2024. It extends the annual filing deadline for both Form 1 and Form 6 filers from 5:00 p.m. to 11:59 p.m.

⁵⁰ Section 99.061(7)(b), F.S.

⁵¹ The term "constitutional officers" includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools." Section 112.3142(1), F.S.

⁵² Section 112.3142(2), F.S.

⁵³ Sections 112.3144(1)(a) and 112.3145(5), F.S.

⁵⁴ Section 112.3142(2)(d), F.S.

⁵⁵ Rule 34-7.025, F.A.C.

The bill makes the following changes relating to electronic filing of Form 1 and Form 6 disclosures:

- Allows federal income tax returns and other attachments be included with electronic submissions but requires all attachments and schedules associated with the tax return also be submitted.
- Requires the Commission to notify by email all persons required to file a financial disclosure and specifies the information that must be in such notice.
- Prohibits the Commission from providing paper forms to file Form 1 and Form 6 disclosures.
- Clarifies that the Commission must send a delinquency notice by email for late Form 1 and Form 6 filers instead of current law, which requires the notices be mailed.
- Requires the Commission to publish a notice on the electronic filing system to remind users to redact social security numbers, bank account numbers, PIN information, and taxpayer identification numbers.
- Provides that the computation of a fine for late filing of financial disclosures will use the electronic submittal date.
- Allows a candidate qualifying for office to submit a verification or receipt of electronic filing of a financial disclosure to the local filing officer to satisfy the requirement that such filing occur before qualifying.
- Provides that a candidate for local office who is required to file a Form 6 while in office, must also file a Form 6 at the time of qualifying for that same office.

The bill requires local officers to file their quarterly reports of the names of clients represented for a fee or commission through the Commission's electronic filing system beginning January 1, 2024.

Ethics Training

The bill allows commissioners of community redevelopment agencies to use the same training schedule as all other public officers subject to the ethics training requirement.

Commission Investigations

The bill requires the Commission to investigate any lobbying firm, lobbyist, principal, agency, officer, or employee *only* when individuals or entities have intentionally failed to disclose a material fact or has knowingly submitted false information.

The bill authorizes the Commission to dismiss a complaint or investigation originating from a random audit of lobbying reports if "the public interest is not served by proceeding further," and requires the Commission to issue a report stating the reasons for the dismissal. It also authorizes the Commission to dismiss de minimis violations concerning filing disclosures as well as the authority to dismiss proceedings involving lobbying registrations and reports if the public interest is not served by proceeding further.

The bill increases the civil penalty that may be assessed for a violation of the Code of Ethics from \$10,000 to \$20,000.

Commission Rulemaking Authority

The bill requires the Commission to revise its financial disclosure forms and instructions and any related rules to conform to this act as necessary but creates an exemption from rulemaking requirements under the Administrative Procedure Act for revisions to disclosure forms and instructions pertaining to the 2022 filing year.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill imposes new financial disclosure requirements on certain elected officers of local government that will have a negative but likely insignificant fiscal impact on the Commission due to the increased number of Form 6 submissions that will need to be processed.