

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7021      PCB PIE 19-01      Financial Disclosure  
**SPONSOR(S):** Public Integrity & Ethics Committee, Altman  
**TIED BILLS:** HB 7023      **IDEN./SIM. BILLS:** SB 7040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee	17 Y, 0 N	Kiner	Rubottom
1) Appropriations Committee	28 Y, 0 N	Mullins	Pridgeon
2) State Affairs Committee			

### SUMMARY ANALYSIS

The bill modernizes and streamlines the financial disclosure filing process by providing for mandatory electronic filing of financial disclosure. To accomplish this, the bill requires the Florida Commission on Ethics (Commission) to procure and test an electronic financial disclosure filing system by January 1, 2022.

The bill requires the electronic financial disclosure filing system to meet minimum requirements set by the bill. For example, the bill requires the electronic financial disclosure filing system to allow disclosures to be completed and submitted online and accessible and searchable for the public. The electronic financial disclosure filing system must also issue a verification or receipt to the filer confirming the Commission has received the disclosure and provide a method for an attorney or certified public accountant to complete the disclosure on behalf of the filer.

Filers required to file a full and public disclosure of financial interests (FORM 6) will be required to file their forms electronically by January 1, 2022, while filers required to file a statement of financial interests (FORM 1) will be required to file electronically by January 1, 2023.

To facilitate the transition to mandatory electronic filing, the bill makes changes to provisions of law governing FORM 6 and FORM 1 financial disclosure filings. Among these revisions, are the removal of the ability of FORM 6 filers to submit a copy of their most recent federal income tax return to show income and the removal of the ability of FORM 1 filers to report required information, such as primary sources of income, using a comparative threshold based on a percentage value.

The estimated cost for the mandatory electronic financial disclosure filing system is \$2.22M to \$5M over three to four fiscal years (approximately \$740K to \$1.27M per year), depending on the amount of remediation that is necessary for the current Financial Disclosure Management System (FDMS) to accommodate electronic filing. This estimate was prepared by the Office of Legislative Information Technology Services (OLITS), which is a joint office of the Florida Legislature that supports the Commission and maintains FDMS. This cost estimate is based on custom software development performed by OLITS with the assistance of four to seven staff augmentation contractors. The bill's requirement for the Commission to procure an electronic filing system does not require an appropriation, as OLITS has sufficient carry forward funds to cover the expenditure.

The bill may have an indeterminate positive impact on local governments, to the extent filers who currently file financial disclosure documents with local qualifying officers will instead file electronically with the Commission once the electronic financial disclosure filing system is in operation.

Except for Section 2 of the bill, which is effective January 1, 2020, the bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Current Law***

Florida ethics laws provide for two tiers of financial disclosure: (1) full and public disclosure of financial interests (FORM 6); and (2) statement of financial interests (FORM 1).<sup>1</sup> The financial disclosure filing process is overseen by the Florida Commission on Ethics (Commission) with the assistance of local qualifying officers.

##### Full and Public Disclosure of Financial Interests (FORM 6)

The Florida Constitution and general law require all elected constitutional officers, and candidates for such offices, to file a full and public disclosure of their financial interests (FORM 6).<sup>2</sup> Other public officers, candidates, and public employees may be required to file a FORM 6 as determined by law.<sup>3</sup>

Officers subject to either the constitutional or statutory requirement to file the FORM 6 include the Governor; Lieutenant Governor; Cabinet members; legislators; county commissioners; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; elected superintendents of schools; district school board members; judges of compensation claims; Jacksonville City Council members (including mayor); Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to Chapter 348 or 343, F.S., or any other general law.

The FORM 6 requires the filer to disclose his or her net worth, each separate source of income in excess of \$1,000, and each asset and liability in excess of \$1,000.<sup>4</sup> To show income, the filer may provide a copy of his or her most recent federal income tax return.<sup>5</sup> These values are to be calculated as of December 31 of the preceding year.<sup>6</sup> The FORM 6 must be sworn.<sup>7</sup>

The FORM 6 is due July 1. A grace period is provided until September 1 of each year. Filers that do not file their disclosure by September 1 are subject to automatic fines of \$25 per day, up to a maximum of \$1,500.

A candidate for an office subject to the FORM 6 filing requirement must file a FORM 6 with his or her qualifying papers. If the candidate is an incumbent qualifying to run for the same office or holds another office subject to the FORM 6 filing requirement, the qualifying officer must forward an electronic copy of the FORM 6 to the Commission by July 1.<sup>8</sup>

General law also requires an individual subject to the FORM 6 filing requirement to file a final disclosure statement within 60 days after leaving his or her public position.<sup>9</sup> The final disclosure must cover the period between January 1 of the year in which the person leaves and the last day of office, unless the

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<sup>1</sup> FLA. CONST., art. II, s. (8)(a), s. 112.3144, F.S., and s. 112.3145, F.S.

<sup>2</sup> FLA CONST., art. II, ss. 8(a), (i)(2), and s. 112.3144, F.S.

<sup>3</sup> FLA CONST., art. II, s. 8(a)

<sup>4</sup> FLA. CONST., art. II, s. 8(i)1.

<sup>5</sup> Id.

<sup>6</sup> Rule 34-8.004, F.A.C.

<sup>7</sup> FLA. CONST., art. II, s. 8(i)1.

<sup>8</sup> S. 112.3144(2), F.S.

<sup>9</sup> S. 112.3144(7), F.S.

person takes another public position for which a FORM 6 is required within the 60-day period, or if the person is otherwise required to file a FORM 6.<sup>10</sup>

For calendar year 2018, there were 1,398 individuals required to file FORM 6.<sup>11</sup>

### Statement of Financial Interests (FORM 1)

The statement of financial interests (FORM 1) requires less detail than the FORM 6 and is filed by certain state and local officers and employees.

Examples of state officers required to file the FORM 1 include appointed members of boards, commissions, authorities, or councils that have statewide jurisdiction – excluding advisory bodies; members of the State University System Board of Governors; the State University System Chancellor and Vice Chancellor; members of a state university board of trustees; the Deputy Chief Judge of Compensation Claims and any compensation claims judge; and members of the judicial nominating commission for any district court of appeal or any judicial circuit.<sup>12</sup> State officers subject to the FORM 1 filing requirement file with the Commission on Ethics.<sup>13</sup>

Examples of state employees required to file the FORM 1 include the public counsel; assistant state attorneys; assistant public defenders; criminal conflict and civil regional counsels (including assistant counsels); each appointed agency secretary (including an assistant or deputy secretary); an executive director of a state department (including an assistant or deputy secretary); an agency division director, assistant division director, deputy director, bureau chief, and assistant bureau chief; a general counsel of a state agency (including deputy general counsels); administrative law judges and hearing officers; and a business manager or purchasing agent with authority to make any purchase over \$20,000 (CATEGORY ONE).<sup>14</sup> State employees subject to the FORM 1 filing requirement file with the Commission on Ethics.<sup>15</sup>

Examples of local officers required to file the FORM 1 include elected political subdivision officers; appointed members of political subdivision boards, councils, commissions, authorities, or other bodies of political subdivisions; and a community college or junior college district board of trustees.<sup>16</sup> Local officers subject to the FORM 1 filing requirement file with their local supervisor of elections.<sup>17</sup>

Examples of local employees required to file the FORM 1 include, but are not limited to, a county or city manager; the chief administrative employee of a county, municipality, or other political subdivision; a chief county or municipal building code inspector; a chief of police, a fire chief, a municipal clerk; community college president; and purchasing agent with authority to make any purchase over \$20,000 (CATEGORY ONE).<sup>18</sup> Local officers subject to the FORM 1 filing requirement file with their local supervisor of elections.<sup>19</sup>

The FORM 1 requires filers to disclose their primary sources of income (other than from their public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified

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<sup>10</sup> Id.

<sup>11</sup> See Florida Commission on Ethics 'Annual Report to the Florida Legislature for Calendar Year 2018.' A copy of the report may be obtained from the Florida Commission on Ethics.

<sup>12</sup> S. 112.3145(1)(c), F.S.

<sup>13</sup> S. 112.3145(2)(c), F.S.

<sup>14</sup> S. 112.3145(1)(b), F.S.

<sup>15</sup> S. 112.3145(2)(c), F.S.

<sup>16</sup> S. 112.3145(1)(a), F.S.

<sup>17</sup> S. 112.3145(2)(c), F.S.

<sup>18</sup> S. 112.3145(1)(a), F.S.

<sup>19</sup> S. 112.3145(2)(c), F.S.

businesses.<sup>20</sup> Filers are allowed to report information using a comparative threshold based on a percentage value or an absolute dollar value.

The FORM 1 is due July 1. A grace period is provided until September 1 of each year. Filers that do not file their disclosure by September 1 are subject to automatic fines of \$25 per day, up to a maximum of \$1,500.

A candidate for an office subject to the FORM 1 filing requirement must file a FORM 1 with his or her qualifying papers.<sup>21</sup> If the candidate qualifies prior to the annual FORM 1 filing deadline, the FORM 1 that is filed with the candidate's qualifying papers will satisfy the annual disclosure requirement.<sup>22</sup> If the candidate qualifies after the annual FORM 1 filing deadline, the candidate will file a copy of the FORM 1 with the qualifying officer.<sup>23</sup>

General law also requires an individual subject to the FORM 1 filing requirement to file a final disclosure statement within 60 days after leaving his or her public position.<sup>24</sup> The final disclosure must cover the period between January 1 of the year in which the person leaves and the last day of office or employment, unless the person takes another public position for which a FORM 1 or FORM 6 is required within the 60-day period, or if the person is otherwise required to file a FORM 1 or FORM 6.<sup>25</sup>

For calendar year 2018, there were 36,787 individuals required to file FORM 1.<sup>26</sup> Of these, 13,975 were state level FORM 1 filers, while 22,812 individuals were local level FORM 1 filers.<sup>27</sup>

### Quarterly Client Disclosures

Each elected constitutional officer, state officer, local officer, and specified state employee is required to file a quarterly report of the names of clients represented for a fee or commission, except for appearances in ministerial matters, before agencies at his or her level of government. This disclosure is known as the FORM 2. According to the Commission, there were 55 FORM 2 filed with the Commission during calendar year 2018.

### Public Records Exemptions for Personally Sensitive Information

Under Florida law, certain personally sensitive information, if held by an agency, is protected from public disclosure. For example, social security numbers held by an agency are confidential and exempt<sup>28</sup>, while bank account numbers and debit, charge, and credit card numbers held by an agency are exempt.<sup>29</sup>

The Commission is considered an 'agency' for the purposes of Florida's public records laws.<sup>30</sup> This means that when a filer inadvertently includes his or her social security number with his or her FORM 6, the Commission must redact the social security number before publishing the FORM 6 on its website or releasing it in response to a public records request.

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<sup>20</sup> S. 112.3145(3), F.S.

<sup>21</sup> S. 112.3145(2)(a), F.S.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> S. 112.3145(2)(b), F.S.

<sup>25</sup> Id.

<sup>26</sup> See Florida Commission on Ethics 'Annual Report to the Florida Legislature for Calendar Year 2018.' A copy of the report may be obtained from the Florida Commission on Ethics.

<sup>27</sup> Id.

<sup>28</sup> S. 119.071(5)(a)5., F.S.

<sup>29</sup> S. 119.071(b), F.S.

<sup>30</sup> S. 119.011(2), F.S.

According to the Commission, personally sensitive information, when inadvertently disclosed, is most often included on an attached copy of a filer's most recent federal income tax return. While the instructions on the FORM 6 instruct filers to redact any social security numbers or account numbers before attaching their returns, the Commission still spends a significant amount of time redacting personally sensitive information. In addition, financial account numbers may be inadvertently filed with copies of account statements accompanying a Form 6.

### Electronic Financial Disclosure

In 2015, the Florida Commission on Ethics submitted a proposal to legislative leaders for a mandatory electronic filing system.<sup>31</sup> The proposal was submitted in accordance with a 2013 law that required the Commission on Ethics to develop a proposal that addressed certain criteria, such as that it provide for access through the Internet, make filings available and searchable through the Internet, prevent unauthorized access to the electronic filing system, provide a method for an attorney or certified public accountant to sign the disclosure form to indicate he or she prepared the form and, upon his or her reasonable knowledge and belief, the form is true and correct, address whether additional statutory or rulemaking authority is necessary for implementation of the system, contemplate alternative filing procedures in the event the electronic filing system becomes inoperable, provide an emailed receipt verifying filing, and address the feasibility of subjecting those who file the less detailed statement of financial interests to the electronic financial disclosure filing requirement.<sup>32</sup>

### ***Effect of Proposed Changes***

#### Electronic Financial Disclosure Filing System – Section 1

The bill requires the Commission on Ethics (Commission) to procure and test a mandatory electronic filing system by January 1, 2022. It is anticipated the electronic filing system will be developed by the Office of Legislative Information Technology Services (OLITS), which is a joint office of the Florida Legislature. The Commission on Ethics does not contemplate going through a ch. 287 procurement process as it is a legislative entity and not subject to the requirements of state procurement law. Filers who file the full and public disclosure of financial interests (FORM 6), final FORM 6, or any amendments thereto, must file electronically by January 1, 2022. Those who file the statement of financial interests (FORM 1), final FORM 1, and any amendments thereto, must file electronically by January 1, 2023.

Further, the bill requires the electronic filing system to, at a minimum, do the following:

- provide for access through the Internet for the completion and submission of FORM 6s, FORM 1s, and other required forms;
- facilitate uploading of submitted information to the Commission using software that must be approved by the Commission;
- establish a procedure to make filings available in a searchable format that is accessible by an individual using standard web-browsing software;
- issue a verification or receipt that the Commission has received the filing of the financial disclosure form;
- provide a secure method that prevents unauthorized access to electronic filing system functions or data; and
- provide a method for an attorney or certified public accountant to sign the disclosure form to indicate he or she prepared the form and, upon his or her reasonable knowledge and belief, the form is true and correct.

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<sup>31</sup> A copy of the proposal is on file with the House of Representatives, Public Integrity & Ethics Committee.

<sup>32</sup> S. 112.31445, F.S.

The bill requires the Commission to provide each filer a secure log-in to the electronic filing system.

The bill contains a provision designed to facilitate financial disclosure if the electronic filing system becomes inoperable. Specifically, the bill provides that if the Governor declares the electronic filing system inoperable, the Commission must accept submissions of disclosures or statements through other methods as specified by order of the Governor. Rather than require specific 'other methods,' this provision is designed to provide the Governor flexibility when declaring such order. This provision is modeled after Senate and House Joint Rule 1.4, relating to lobbying firm compensation reporting. Joint Rule 1.4 provides, "[i]f the President of the Senate and the Speaker of the House of Representatives jointly declare that the electronic [lobbying firm compensation reporting] system is not operable, the reports shall be filed in accordance with instructions on the [Lobbyist Registration and Compensation Reporting System] website which will be posted for a reasonable period of time."

To assist the electronic financial disclosure filing process, the bill requires each unit of government to assign an electronic mail account to any of its officers, members, or employees who must file a financial disclosure form with the Commission on Ethics. The bill requires each filer to provide the electronic mail account address to the Commission on Ethics, so that it can be used to notify filers of the filing requirement, deadline, and any applicable fines for non-compliance with the filing requirement.

The estimated cost for the mandatory electronic financial disclosure filing system is \$2.22M to \$5M over three to four fiscal years (approximately \$740K to \$1.27M per year), depending on the amount of remediation that is necessary for the current Financial Disclosure Management System (FDMS) to accommodate electronic filing. This estimate was prepared by OLITS, which developed and maintains FDMS. This cost estimate is based on custom software development performed by OLITS with the assistance of four to seven staff augmentation contractors.

#### Revision to the Disclosure Period – Section 2

To alleviate confusion among filers and to ensure all disclosures cover the same time period, the bill revises the definition of the term 'disclosure period' to include a calendar year in lieu of a taxable year. This change is effective January 1, 2020.

#### Revisions to FORM 6 Filing Process – Section 3

Beginning January 1, 2022, FORM 6s, final FORM 6s, any amendments thereto, and any other form required by s. 112.3144, F.S., must be filed electronically with the Commission. This electronic filing requirement is applicable to candidates running for an office subject to the FORM 6 filing requirement. However, these individuals will still file with their qualifying officer until January 1, 2022. FORM 6 filers will be required to electronically sign their disclosure, under penalty of perjury, declaring the information stated in the disclosure is true.

Upon becoming law, the bill eliminates the ability of FORM 6 filers to submit a copy of their most recent income tax return along with their disclosure.

The bill also prohibits the Commission from requesting, and a filer providing, in any filing or submission, any of the following information:

- social security number;
- bank, mortgage, or brokerage account number;
- debit, charge, or credit card number;
- personal identification number; or
- taxpayer identification number.

If a filer submits personally sensitive information, such as a social security number, bank, mortgage, or brokerage account number, debit, charge, credit card number, or any other personal or account information that is legally protected from disclosure under state or federal law, he or she waives whatever public records protection that applies. However, the bill requires the Commission redact this information upon written request of the filer. In making such request, the filer must specify the information inadvertently included and the specific section or sections of the disclosure in which it was included.

To facilitate the electronic financial disclosure filing process, and to reduce the reliance on mailing forms and notices, the bill requires the Commission to collect filer email addresses. The bill requires each unit of government with officers subject to the filing requirement to assist the Commission in these efforts. By January 1, 2022, the Commission is required to remind filers of the filing deadline, send delinquency notices by email, and, upon request of the filer, provide verification to the filer the Commission has received the submitted disclosure.

#### Revisions to FORM 1 Filing Process – Section 4

Beginning January 1, 2023, FORM 1s, final FORM 1s, any amendments thereto, quarterly client disclosures (FORM 2), and any other form required by s. 112.3145, F.S., must be filed electronically with the Commission. This electronic filing requirement is applicable to candidates running for an office subject to the FORM 1 filing requirement. However, these individuals will still file with their qualifying officer until January 1, 2023. FORM 1 filers will be required to electronically sign their disclosure, under penalty of perjury, declaring the information stated in the disclosure is true.

The bill reduces the number of individuals subject to the FORM 1 filing requirement by removing compensation claims judges, including the Deputy Chief Judge, as these officers file a FORM 6. By recommendation of the Commission, the bill also removes assistant bureau chiefs from the FORM 1 filing requirement. Finally, the bill increases the purchasing power threshold that would subject a state or local government employee that is a business manager or purchasing agent to the FORM 1 filing requirement. Pursuant to the bill, the threshold is increased to \$35,000 (CATEGORY TWO) from \$20,000 (CATEGORY ONE).

After January 1, 2023, filers will no longer be allowed to report using a comparative threshold based on a percentage value.

The bill also prohibits the Commission from requesting, and a filer providing, in any filing or submission, any of the following information:

- federal income tax return;
- social security number;
- bank, mortgage, or brokerage account number;
- debit, charge, or credit card number;
- personal identification number; or
- taxpayer identification number.

If a filer submits personally sensitive information, such as a social security number, bank, mortgage, or brokerage account number, debit, charge, credit card number, or any other personal or account information that is legally protected from disclosure under state or federal law, he or she waives whatever public records protection that applies. However, the bill requires the Commission redact this information upon written request of the filer. In making such request, the filer must specify the information inadvertently included and the specific section or sections of the disclosure in which it was included.

To facilitate the electronic financial disclosure filing process, and to reduce the reliance on mailing forms and notices, the bill requires the Commission to collect filer email addresses. The bill requires each unit of government with officers subject to the filing requirement to assist the Commission in these efforts. By January 1, 2023, the Commission (with assistance from supervisors of elections) is required to remind filers of the filing deadline, send delinquency notices by email, and, upon request of the filer, provide verification to the filer the Commission has received the submitted disclosure.

#### Effective Date

Except for Section 2, which becomes effective January 1, 2020, the act becomes effective upon becoming a law.

#### B. SECTION DIRECTORY:

**Section 1.** creates s. 112.31446, F.S., to require the Commission on Ethics to procure and test an electronic financial disclosure filing system by a date certain.

**Section 2.** amends s. 112.312, F.S., to revise a definition related to financial disclosure filing.

**Section 3.** amends s. 112.3144, F.S., to revise the FORM 6 financial disclosure filing statute and require certain forms be electronically filed by a date certain.

**Section 4.** amends s. 112.3145, F.S., to revise the FORM 1 financial disclosure filing statute and require certain forms be electronically filed by a date certain.

**Section 5.** amends s. 112.31455, F.S., to conform cross-references to changes made by the act.

**Section 6.** provides the bill is effective upon becoming a law, with exceptions.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill's requirement for the Commission to procure an electronic filing does not require an appropriation, as OLITS has sufficient carry forward funds to cover the expenditure. The estimated cost for the mandatory electronic financial disclosure filing system is \$2.22M to \$5M over three to four fiscal years (approximately \$740K to \$1.27M per year), depending on the amount of remediation that is necessary for the current Financial Disclosure Management System (FDMS) to accommodate electronic filing. This estimate was prepared by OLITS, which developed and maintains FDMS. This cost estimate is based on custom software development performed by OLITS with the assistance of four to seven staff augmentation contractors.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:



To the extent filers who currently file financial disclosure documents with local qualifying officers will instead file electronically with the Commission once the electronic financial disclosure filing system is operable, the bill may reduce expenditures by local qualifying officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 12, 2019, the Public Integrity & Ethics Committee adopted a strike-all amendment to PCB PIE 19-01 and subsequently reported the bill favorably. The strike-all amendment made the following revisions to the bill:

- Adjusted the following implementation deadlines:
  - Moved the date by which the Commission is required to procure and test an electronic filing system from January 1, 2021, to January 1, 2022;
  - Moved the date by which FORM 6 filers must file electronically from May 1, 2021, to January 1, 2022;
  - Moved the date by which FORM 1 filers must file electronically from May 1, 2022, to January 1, 2023;
  - Moved the date by which the Commission must send certain notifications to filers by e-mail from January 1, 2020, to January 1, 2022, for FORM 6 filers and to January 1, 2023, for FORM 1 filers.
  - Moved the date by which FORM 1 filers would no longer be able to
- Removed the requirement the electronic filing system allow an attorney or CPA to file the disclosure on behalf of the client. Instead the strike-all amendment revises this provision to require the electronic filing system to allow the attorney or CPA to complete the disclosure.
- Revised provisions relating to the Commission's handling of personally sensitive information, such as social security numbers, bank account numbers, etc. The strike-all amendment provides that if a public officer, candidate, employee, or other person voluntarily provides certain personally sensitive information, the filer may submit a written request to have information subject to a public records exemption redacted from the disclosure.