

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/HB 7021 PCB PIE 19-01 Financial Disclosure
SPONSOR(S): State Affairs Committee and Public Integrity & Ethics Committee, Altman
TIED BILLS: CS/HB 7023 **IDEN./SIM. BILLS:** CS/CS/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	20 Y, 0 N	Moore	Williamson

FINAL HOUSE FLOOR ACTION: **GOVERNOR'S ACTION:** Approved
117 Y's 0 N's

SUMMARY ANALYSIS

CS/HB 7021 passed the House on April 17, 2019, and subsequently passed the Senate on April 24, 2019. 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 specified in the bill. For example, the bill requires the electronic financial disclosure filing system to allow disclosures to be completed and submitted online and to be accessible and searchable for the public.

Filers required to file a full and public disclosure of financial interests (Form 6) with the Commission will be required to file their forms electronically beginning January 1, 2022, while filers required to file a statement of financial interests (Form 1) with the Commission will be required to file electronically beginning January 1, 2023. However, this electronic filing requirement is not applicable to candidates running for an office subject to the Form 6 or Form 1 filing requirement.

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 provide proof of 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, 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 was approved by the Governor on June 7, 2019, ch. 2019-97, L.O.F., and became effective on that date, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7021z2.PIE.DOCX

DATE: 6/17/2019

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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).¹ 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).² Other public officers, candidates, and public employees may be required to file a Form 6 as determined by law.³

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 the mayor); Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and board members of 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 in a sworn statement his or her net worth, each separate source of income in excess of \$1,000, and each asset and liability in excess of \$1,000.⁴ To show income, the filer may provide a copy of his or her most recent federal income tax return.⁵ These values are to be calculated as of December 31 of the preceding year.⁶ 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 \$1,500.⁷

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 1.⁸

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, unless the person takes another public position for which a Form 6 is required within the 60-day period or is otherwise required to file a Form 6.

¹ FLA. CONST., art. II, s. (8)(a); ss. 112.3144 and 112.3145, F.S.

² FLA CONST., art. II, ss. 8(a) and (i)(2); s. 112.3144, F.S.

³ FLA CONST., art. II, s. 8(a)

⁴ FLA. CONST., art. II, s. 8(i)1.

⁵ Id.

⁶ Rule 34-8.004, F.A.C.

⁷ S. 112.3144(5)(e), F.S.

⁸ S. 112.3144(2), F.S.

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.⁹

For calendar year 2018, there were 1,398 individuals required to file Form 6.¹⁰

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.¹¹ State officers subject to the Form 1 filing requirement file with the Commission.¹²

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).¹³ State employees subject to the Form 1 filing requirement file with the Commission.¹⁴

Examples of local government 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.¹⁵ Local government officers subject to the Form 1 filing requirement file with their local supervisor of elections.¹⁶

Examples of local government 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, or a municipal clerk; community college president; and purchasing agent with authority to make any purchase over \$20,000 (CATEGORY ONE).¹⁷ Local government officers subject to the Form 1 filing requirement file with their local supervisor of elections.¹⁸

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), intangible personal property, liabilities, and interests in specified

⁹ S. 112.3144(7), F.S.

¹⁰ Florida Commission on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2018*, at 20, available at <http://www.ethics.state.fl.us/Documents/Publications/2018%20Annual%20Report.pdf?cp=201938>.

¹¹ S. 112.3145(1)(c), F.S.

¹² S. 112.3145(2)(c), F.S.

¹³ S. 112.3145(1)(b), F.S.

¹⁴ S. 112.3145(2)(c), F.S.

¹⁵ S. 112.3145(1)(a), F.S.

¹⁶ S. 112.3145(2)(c), F.S.

¹⁷ S. 112.3145(1)(a), F.S.

¹⁸ S. 112.3145(2)(c), F.S.

businesses.¹⁹ 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 \$1,500.²⁰

A candidate for an office subject to the Form 1 filing requirement must file a Form 1 with his or her qualifying papers.²¹ 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.²² If the candidate qualifies after the annual Form 1 filing deadline, the candidate may file a copy of the Form 1 with the qualifying officer.²³

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.²⁴ 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 is otherwise required to file a Form 1 or Form 6.²⁵

For calendar year 2018, there were 36,787 individuals required to file Form 1.²⁶ Of these, 13,975 were state level Form 1 filers, while 22,812 individuals were local level Form 1 filers.²⁷

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.²⁸ This disclosure is known as the Form 2. According to the Commission, there were 55 Form 2s filed with the Commission during calendar year 2018.

Public Records Exemptions for Personally Sensitive Information

Under Florida law, certain personally sensitive information held by an agency²⁹ is protected from public disclosure. For example, social security numbers held by an agency are confidential and exempt³⁰ from

¹⁹ S. 112.3145(3), F.S.

²⁰ S. 112.3145(7)(c), F.S.

²¹ S. 112.3145(2)(a), F.S.

²² Id.

²³ Id.

²⁴ S. 112.3145(2)(b), F.S.

²⁵ Id.

²⁶ Florida Commission on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2018*, at 20, available at <http://www.ethics.state.fl.us/Documents/Publications/2018%20Annual%20Report.pdf?cp=201938>.

²⁷ Id.

²⁸ Section 112.3145(5), F.S.

²⁹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

³⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

public record requirements,³¹ while bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from public record requirements.³²

Because the Commission is considered an agency for purposes of Florida's public records laws, 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. According to the Commission, personally sensitive information is often inadvertently disclosed because it is 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 such information. In addition, financial account numbers may be inadvertently disclosed in copies of account statements accompanying a Form 6.

Electronic Financial Disclosure

In 2015, the Commission submitted a proposal to legislative leaders for a mandatory electronic financial disclosure filing system.³³ The proposal was submitted in accordance with a 2013 law that required the Commission to develop a proposal for an electronic filing system for Form 6 filers that included the following requirements:

- providing for access through the Internet;
- making filings available and searchable through the Internet;
- preventing unauthorized access to the system;
- providing a method for an attorney or certified public accountant (CPA) 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;
- addressing whether additional statutory or rulemaking authority is necessary for implementation of the system;
- contemplating alternative filing procedures in the event the system becomes inoperable;
- providing an emailed receipt verifying filing; and

addressing the feasibility of subjecting those who file the less detailed Form 1 to the electronic financial disclosure filing requirement.³⁴

Effect of Changes

Electronic Financial Disclosure Filing System – Section 1

The bill requires the Commission to procure and test a mandatory electronic filing system by January 1, 2022. It is anticipated that 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 does not plan to competitively procure the system, as it is a legislative entity and not subject to the requirements of procurement laws that apply to executive branch entities. Filers who file the Form 6, final Form 6, or any amendments thereto with the Commission must file electronically by January 1, 2022. Those who file the Form 1, final Form 1, and any amendments thereto with the Commission must file electronically by January 1, 2023.

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

³¹ S. 119.071(5)(a)5., F.S.

³² S. 119.071(5)(b), F.S.

³³ A copy of the proposal is on file with the House of Representatives, Public Integrity & Ethics Committee.

³⁴ S. 112.31445, F.S.

- provide for access through the Internet for the completion and submission of Form 6s, Form 1s, and other required forms;
- 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 CPA 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.

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 Commission Chair determines that the electronic filing system is inoperable, the Commission Chair must extend the filing deadline for submission of the disclosures or statements by the same period of time for which the system was inoperable. In addition, if the Governor declares a state of emergency that prevents a person who resides in an area included in the state of emergency from submitting his or her statement or disclosure electronically, the Commission Chair must extend the filing deadline by 90 days for persons who reside in such areas.

To assist the electronic financial disclosure filing process, the bill requires each unit of government to assign an e-mail account to any of its officers, members, or employees who must file a financial disclosure form with the Commission. The bill requires each filer to provide the e-mail account address to the Commission 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 period, the bill revises the definition of the term ‘disclosure period’ to mean a calendar year rather than 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., to be filed with the Commission must be filed electronically. However, this electronic filing requirement is not applicable to candidates running for an office subject to the Form 6 filing requirement. These individuals will continue to file with their qualifying officer. Form 6 filers who are required to file with the Commission will be required to electronically sign their disclosure, under penalty of perjury, declaring the information stated in the disclosure is true.

Beginning January 1, 2022, the bill eliminates the ability of Form 6 filers to submit a copy of their most recent income tax return along with their disclosure and prohibits a filer from 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 includes such information in his or her filing, the information may be made available for public inspection and copying unless the filer requests redaction. The bill specifies that the Commission is not liable for the release of social security numbers or bank account, debit, charge, or credit card numbers included in a filing if the filer has not requested redaction of the information. However, the bill requires the Commission to redact this information as well as any other personal or account information that is protected legally from disclosure under state or federal law 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 e-mail 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 must remind filers of the filing deadline, send delinquency notices by e-mail, and, upon request of the filer, provide verification to the filer that 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., to be filed with the Commission must be filed electronically. However, this electronic filing requirement is not applicable to candidates running for an office subject to the Form 1 filing requirement. These individuals will continue to file with their qualifying officer. Form 1 filers who are required to file with the Commission will be required to sign electronically 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).

Beginning January 1, 2023, the bill eliminates the ability of Form 1 filers to report using a comparative threshold based on a percentage value and prohibits a filer from 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 includes such information in his or her filing, the information may be made available for public inspection and copying unless the filer requests redaction. The bill specifies that the Commission is not liable for the release of social security numbers or bank account, debit, charge, or credit card numbers included in a filing if the filer has not requested redaction of the information. However, the bill requires the Commission to redact this information as well as any other personal or account information that is legally protected from disclosure under state or federal law 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 e-mail 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 e-mail, and, upon request of the filer, provide verification to the filer that 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The 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 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 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.