

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7023      PCB PIE 19-02      Pub. Rec./Financial Disclosure  
**SPONSOR(S):** Public Integrity & Ethics Committee, Altman  
**TIED BILLS:** HB 7021      **IDEN./SIM. BILLS:** SB 7042

| REFERENCE  | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Public Integrity & Ethics Committee               | 17 Y, 0 N | Kiner   | Rubottom                                 |
| 1) Oversight, Transparency & Public Management<br>Subcommittee | 10 Y, 0 N | Moore   | Harrington                               |
| 2) State Affairs Committee                                     |           |         |  |

### SUMMARY ANALYSIS

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: a full and public disclosure of financial interests and a statement of financial interests. The financial disclosure filing process is overseen by the Florida Commission on Ethics (commission) with the assistance of local qualifying officers.

House Bill 7021 (2019), to which this bill is linked, modernizes and streamlines the financial disclosure filing process by providing for mandatory electronic filing of financial disclosure. To accomplish this, the bill requires the commission to procure and test an electronic financial disclosure filing system by January 1, 2022. The bill requires the commission to provide each filer a secure log-in to the electronic filing system.

This bill creates a public records exemption for all passwords held by the commission for the purpose of allowing access to the electronic financial disclosure filing system, as well as information entered into the system for the purposes of making the disclosure. Once information entered into the system is submitted to the commission or filed with a qualifying officer, the information loses its exempt status and will be available to the public.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill will have no fiscal impact on state or local governments.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain information held or received by the commission; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

###### Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>2</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- protect trade or business secrets.<sup>6</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>7</sup>

###### Financial Disclosure

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: a full and public disclosure of financial interests (Form 6) and a statement of financial interests (Form 1).<sup>8</sup> The financial disclosure filing process is overseen by the Florida Commission on Ethics (commission) with the assistance of local qualifying officers.

The Florida Constitution and general law require all elected constitutional officers, and candidates for such offices, to file a Form 6.<sup>9</sup> Other public officers, candidates, and public employees may be required to file a Form 6 as determined by law.<sup>10</sup> The Form 6 requires the filer to disclose his or her net worth,

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> S. 119.15, F.S.

<sup>6</sup> S. 119.15(6)(b), F.S.

<sup>7</sup> S. 119.15(3), F.S.

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

<sup>9</sup> FLA CONST., art. II, ss. 8(a) and (i)(2); s. 112.3144, F.S.

<sup>10</sup> FLA CONST., art. II, s. 8(a)

each separate source of income in excess of \$1,000, and each asset and liability in excess of \$1,000.<sup>11</sup> For calendar year 2018, there were 1,398 individuals required to file a Form 6.<sup>12</sup>

The Form 1 requires less detail than the Form 6 and is filed by certain state and local officers and employees. 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 businesses.<sup>13</sup> Filers are allowed to report information using either a comparative threshold based on a percentage value or an absolute dollar value. For calendar year 2018, there were 36,787 individuals required to file a Form 1.<sup>14</sup> Of these, 13,975 were state level Form 1 filers, while 22,812 individuals were local level Form 1 filers.<sup>15</sup>

#### House Bill 7021 (2019)

House Bill 7021 (2019), to which this bill is linked, modernizes and streamlines the financial disclosure filing process by providing for mandatory electronic filing of financial disclosure. To accomplish this, the bill requires the commission to procure and test an electronic financial disclosure filing system by January 1, 2022. The bill requires the commission to provide each filer a secure log-in to the electronic filing system.

#### Electronic Filing of Campaign Finance Reports – Public Records Exemption

Current law requires certain campaign finance reports to be filed electronically with the Department of State, Division of Elections, through an electronic filing system.<sup>16</sup> To prevent unauthorized access to the electronic filing system, all user identifications and passwords held by the Department of State for the purpose of electronic campaign finance reporting are confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution.<sup>17</sup>

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

The bill, which is linked to the passage of HB 7021, creates a public records exemption for all passwords held by the commission for the purpose of allowing access to the electronic financial disclosure filing system, as well as information entered into the system for the purpose of making the disclosure. Such information may include draft information or personally sensitive information that has been entered into the system inadvertently and is not intended to be included in the submitted disclosure. Once information entered into the system is submitted to the commission or filed with a qualifying officer, the information loses its exempt status and will be available to the public.

The bill provides a statement of public necessity as required by the Florida Constitution. This statement acknowledges the public interest in having access to financial disclosure information, but also emphasizes the Legislature's finding that publication of passwords and other personally sensitive information may subject the filer to identity theft, financial harm, or other adverse impacts.

#### **B. SECTION DIRECTORY:**

**Section 1.** amends s. 112.31446, F.S., as created by HB 7021 (2019), to provide a public records exemption for passwords held by the commission for the purpose of allowing access to the electronic

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<sup>11</sup> FLA CONST., art. II, s. 8(i)1.

<sup>12</sup> 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>.

<sup>13</sup> S. 112.3145(3), F.S.

<sup>14</sup> 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>.

<sup>15</sup> *Id.*

<sup>16</sup> S. 106.0705(2)(a), F.S.

<sup>17</sup> S. 106.0706, F.S.

financial disclosure filing system, as well as other information entered for purposes of making the disclosure.

**Section 2.** provides a public necessity statement as required by the Florida Constitution.

**Section 3.** provides an effective date of the same date that HB 7021 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a minimal impact on state agencies because staff responsible for complying with public record requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a minimal impact on local governments because staff responsible for complying with public record requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of local governments.

### 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. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for all passwords held by the commission for the purpose of allowing access to the electronic financial disclosure filing system, as well as information entered into the system for the purposes of making the disclosure. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.