

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SPB 7040
INTRODUCER: Ethics and Elections Committee
SUBJECT: Financial Disclosure
DATE: February 15, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Mitchell</u>	<u>Roberts</u>	_____	EE Submitted as Comm. Bill/Fav

I. Summary:

SPB 7040 requires the Commission on Ethics (Commission) to procure and test an electronic filing system by January 1, 2022. The system must:

- Provide access through the internet for the completion and submission of disclosures of financial interests (CE Form 6) and statements of financial interests (CE Form 1);
- Upload submitted information to the Commission;
- Allow for a procedure to make filings available in a format that is accessible by an individual using standard Internet-browsing software;
- Issue a verification or receipt that the Commission has received the submitted disclosure or statement;
- Provide security that prevents unauthorized access to the electronic filing system's functions or data; and
- Provide a method for an attorney or a certified public accountant to complete the disclosure or statement and certify that:
 - he or she prepared it in accordance with s. 112.3144, Florida Statutes (F.S.), or s. 112.3145, F.S., and the instructions for completing and filing the disclosure or statement; and
 - the information on the disclosure or statement is true and correct.

The filer must sign the form and submit it.

The bill establishes January 1, 2022 as the date after which all submissions of CE Form 6 must be made to the Commission and accomplished electronically. After January 1, 2023, all submissions of CE Form 1 must be made to the Commission and accomplished electronically. Submission of paper forms will be discontinued. The Commission will provide notice and other communications to filers by email message. All disclosures must be for the calendar year, not the taxable year. Local officers will no longer submit financial statements to supervisors of elections. Beginning with required electronic submission of CE Form 1, filers must use the dollar value threshold method of reporting. The percent in excess of income or value method (comparative, or percentage, threshold) will no longer be in use.

II. Present Situation:

Financial Disclosure

Florida ethics laws provide for two tiers of financial disclosure:

- Full and public disclosure of financial interests (CE Form 6); and
- Statement of financial interests (CE Form 1).¹ The financial disclosure filing process is overseen by the Commission on Ethics (Commission) with the assistance of local qualifying officers and supervisors of elections.

Full and Public Disclosure of Financial Interests (CE Form 6)

Currently, all elected constitutional officers, candidates for such offices, and statewide elected officers are required by Art. II, s. 8 of the State Constitution, to file a full and public disclosure of their financial interests (CE Form 6) annually. The annual full and public disclosure is also required of any other public officers, candidates, and employees as determined by law.² Officers subject to either the constitutional or statutory requirement to file the CE 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;
- Jacksonville City Council members (including mayor);
- The 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 343 or 348, F.S., or any other general law.

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

² For example, statutory law provides that members of expressway, transportation, bridge, or toll authorities are required to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. Section 348.0003(4)(c), F.S.

The CE 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 \$1,000.³ To show income, the filer may provide a copy of his or her most recent federal income tax return.⁴ These values are to be calculated as of December 31 of the preceding year.⁵ The CE Form 6 must be sworn⁶ and is due July 1. A grace period is provided until September 1 of each year.

A candidate for an office subject to the CE Form 6 filing requirement must file a CE 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 CE Form 6 filing requirement, the qualifying officer must forward an electronic copy of the CE Form 6 to the Commission by July 1.⁷

General law also requires an individual subject to the CE Form 6 filing requirement to file a final disclosure statement within 60 days after leaving his or her public position.⁸ 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 person takes another public position for which a CE Form 6 is required within the 60-day period, or if the person is otherwise required to file a CE Form 6.⁹ For calendar year 2018, there were 1,398 individuals required to file CE Form 6.¹⁰

Statement of Financial Interests (CE Form 1)

Persons seeking nomination or election to a state or local elective office, state officers, local officers, and specified state employees are required to file an annual statement of financial interests (CE Form 1).¹¹ CE Form 1 requires less detail than the CE Form 6. Examples of state officers required to file the CE 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.¹²

State officers subject to the CE Form 1 filing requirement file with the Commission on Ethics.¹³

Examples of state employees required to file the CE Form 1 include:

- The public counsel;

³ FLA. CONST., art. II, s. 8(i)1.

⁴ *Id.*

⁵ Fla. Admin. Code R. 34-8.004 (2019)

⁶ FLA. CONST., art. II, s. 8(i)1.

⁷ Section 112.3144(2), F.S.

⁸ Section 112.3144(7), F.S.

⁹ *Id.*

¹⁰ 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.

¹¹ Section 112.3145(2)(a) and (b), F.S.

¹² Section 112.3145(1)(c), F.S.

¹³ Section 112.3145(2)(c), F.S.

- 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).¹⁴

State employees subject to the CE Form 1 filing requirement file with the Commission on Ethics.¹⁵

Examples of local officers required to file the CE 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.¹⁶

Local officers subject to the CE Form 1 filing requirement file with their local supervisor of elections.¹⁷

Examples of local employees required to file the CE 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;
- A community college president; and
- A purchasing agent with authority to make any purchase over \$20,000 (CATEGORY ONE).¹⁸

Local officers subject to the CE Form 1 filing requirement file with their local supervisor of elections.¹⁹

Those who are required to file a statement of financial interests pursuant to s. 112.3145, F.S., are required to disclose primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified

¹⁴ Section 112.3145(1)(b), F.S.

¹⁵ Section 112.3145(2)(c), F.S.

¹⁶ Section 112.3145(1)(a), F.S.

¹⁷ Section 112.3145(2)(c), F.S.

¹⁸ Section 112.3145(1)(a), F.S.

¹⁹ Section 112.3145(2)(c), F.S.

businesses.²⁰ The law permits a filer to report the required interests based upon one of two thresholds. First, the filer may calculate whether an interest is required to be reported based upon whether that interest exceeds a specified percentage of his or her net worth. This is referred to as the “comparative (percentage) threshold.” Alternatively, the filer may determine whether an interest is reported if the interest exceeds a specified dollar value. This is referred to as the “dollar value threshold.” Because the law permits a filer to choose which threshold he or she is going to use, the CE Form 1 promulgated by the Commission requires a filer to identify the threshold used by checking a box. The statute does not expressly require this designation on the CE Form 1. The CE Form 1 is due July 1. A grace period is provided until September 1 of each year.

A candidate for an office subject to the CE Form 1 filing requirement must file a CE Form 1 with his or her qualifying papers.²¹ If the candidate qualifies prior to the annual CE Form 1 filing deadline, the CE 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 CE Form 1 filing deadline, the candidate must file a copy of the CE Form 1 with the qualifying officer.²³ General law also requires an individual subject to the CE 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 CE Form 1 or CE Form 6 is required within the 60-day period, or if the person is otherwise required to file a CE Form 1 or CE Form 6.²⁵ For calendar year 2018, there were 36,787 individuals required to file CE Form 1.²⁶ Of these, 13,975 were state level CE Form 1 filers, while 22,812 individuals were local level CE Form 1 filers.²⁷

Commission Forms and Depositories of Forms

The Commission has promulgated forms by which a filer may amend his or her full public disclosure of financial interests (CE Form 6X) or statement of financial interests (CE Form 1X). The Commission has also promulgated disclosure forms required of a public officer or employee upon leaving office or public employment. Those forms are the final full and public disclosure of financial interests (CE Form 6F) and the final statement of financial interests (CE Form 1F). There is no specific form by which to amend a final full and public disclosure of financial interests or a final statement of financial interests.

The Commission serves as the depository for financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing

²⁰ Section 112.3145(3), F.S.

²¹ Section 112.3145(2)(a), F.S.

²² *Id.*

²³ *Id.*

²⁴ Section 112.3145(2)(b), F.S.

²⁵ *Id.*

²⁶ 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.

²⁷ *Id.*

notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of \$25 per day for failure to timely file. The automatic fine is capped at \$1,500. Neither the Commission nor supervisors of elections are required to examine the financial disclosure filings.

If a filer is uncertain about whether he or she is required to disclose information, the filer may contact the Commission for guidance. Usually, the Commission's staff can answer simple questions by telephone or letter. In some circumstances, staff may not be able to provide such informal guidance. The Commission's staff will usually provide the filer the "safe harbor" advice to disclose the information or advise the filer to seek a formal opinion from the Commission at its next available meeting. Upon receipt of the guidance, the filer must include the information on their original form or, if necessary, file an amendment form. A member of the public can file a complaint with the Commission alleging that the person failed to disclose information which they were legally obligated to disclose. That complaint follows the same procedure as any complaint alleging a violation of one of the standards of conduct in the Code of Ethics. In the event that the Commission finds the filer in violation, he or she is subject to the penalties in s. 112.317, F.S.

Electronic Financial Disclosure

In 2013, the Legislature passed CS/SB 2. The bill created s. 112.31445, F.S., which required the Commission to scan all CE Form 6 filings and make them available in an online searchable database beginning with the 2012 filing year. The bill also required the Commission, by December 1, 2015, to prepare a proposal for submission to the President of the Senate and the Speaker of the House for the creation of an online financial disclosure filings system. The system would be similar to the system used by candidates, political committees, and others pursuant to the campaign financing requirements of ch. 106, F.S. At a minimum, the proposal was required to:

- Mandate an online filing system for CE Form 6 filers;
- Provide a secure method that prevents unauthorized access to electronic filing system functions;
- Permit the filer, or his or her CPA, to file via the internet portal;
- Permit a CPA to prepare and electronically sign a financial disclosure form to indicate that it was completed in compliance with the applicable financial disclosure law and the instructions on the financial disclosure form;
- Require that the filings in the database be accessible to the public;
- Describe any necessary statutory or rule authority changes;
- Provide for an alternative filing method in case the filing system is inoperable;
- Provide for a receipt to be obtained verifying that the officer has filed his or her form; and
- Address the feasibility of subjecting those who file the less detailed statement of financial interests to the electronic financial disclosure filing requirement.

Following the statutory guidelines, the Commission on Ethics submitted its report in 2015, including a proposal to legislative leaders for a mandatory electronic filing system.²⁸

²⁸ A copy of the proposal is on file with the Senate Committee on Ethics and Elections.

III. Effect of Proposed Changes:

Electronic Financial Disclosure Filing System

The bill requires the Commission to procure and test a mandatory electronic filing system by January 1, 2022. Filers who file the full and public disclosure of financial interests (CE Form 6), final full and public disclosure of financial interests (CE Form 6F), or any amendments thereto, must file electronically by January 1, 2022. Those who file the statement of financial interests (CE Form 1), final statement of financial interests (CE Form 1F), and any amendments thereto, must file electronically by January 1, 2023.

The electronic filing system must, at a minimum:

- Provide for access through the Internet for the completion and submission of CE Form 6, CE Form 1, and other required forms;
- Facilitate uploading of submitted information to the Commission using software 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 complete the disclosure or statement, to certify that he or she prepared the form in accordance with provisions of law and the instructions for completing the disclosure or statement and that, upon his or her reasonable knowledge and belief, the form is true and correct. The filer must sign the form and submit it.

The bill requires the Commission to provide each filer a secure log-in to the electronic filing system. If the Governor declares the electronic filing system to be inoperable, the bill requires the Commission to accept submissions of disclosures of financial interests or statements of financial interests through other methods as specified by order of the Governor.

To assist the electronic financial disclosure filing process, the bill requires each unit of government to assign an electronic mail account to its officers, members, or employees who must file a form with the Commission. 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 filing requirements, deadlines, and any applicable fines for non-compliance with the filing requirement.

The estimated cost to procure and test the mandatory electronic filing system is \$1.9 million. This figure is based on the proposal submitted by the Commission in 2015 and may vary from the cost of implementation of this bill. The figure does not include staff costs for the Commission on Ethics and Office of Legislative Information Technology Services.

Revision to the Disclosure Period

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 specify that it is a calendar year, and no longer includes the option of considering it as a taxable year. This change is effective January 1, 2020.

Revisions to FORM 6 Filing Process

Beginning January 1, 2022, CE Form 6, CE Form 6F, 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 also applicable to candidates running for an office who are also subject to the CE Form 6 filing requirement. However these individuals will still file with their qualifying officer until the electronic filing system is in use. FORM 6 filers will be required to electronically sign their disclosure, under penalty of perjury, declaring that the information stated in the disclosure is true.

Upon becoming law, the bill eliminates the ability of CE 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 from providing, in any filing or submission, any of the following information:

- A federal income tax return or a copy thereof;
- Social security numbers;
- Bank, mortgage, or brokerage account numbers;
- Debit, charge, or credit card numbers;
- Personal identification numbers;
- Taxpayer identification numbers; or
- Any other personal or account information that is legally protected from disclosure under state of federal law.

If any of the above information is submitted by the filer, the bill provides that it shall not be subject to any confidentiality or public records exemptions found in the general exemptions from inspection or copying of public records.²⁹ The Commission must redact a filer’s social security number; bank, mortgage, or brokerage account number; debit, charge, or credit card number; or any other personal or account information that is legally protected from disclosure under state or federal law upon written notification from the filer of its inadvertent inclusion. The notice from 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 and send delinquency notices by email. Upon the request of the filer, the Commission must provide verification to the filer that the Commission has received the

²⁹ Section 119.071, F.S.

submitted disclosure. Also beginning January 1, 2022, a written declaration, as provided by verification of documents requirements,³⁰ accompanied by an electronic signature satisfies the requirement that the disclosure be sworn.

Revisions to FORM 1 Filing Process

Beginning January 1, 2023, CE Form 1, CE Form 1F, any amendments thereto, quarterly client disclosures (CE 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 who are also subject to the CE Form 1 filing requirement. However, these individuals will still file with their qualifying officer until the electronic filing system is in use. CE Form 1 filers will be required to electronically sign their disclosure, under penalty of perjury, declaring that the information stated in the disclosure is true.

The bill reduces the number of individuals subject to the CE Form 1 filing requirement by removing compensation claims judges, including the Deputy Chief Judge, who are required to file a CE Form 6. By recommendation of the Commission, the bill also removes assistant bureau chiefs from the CE Form 1 filing requirement. Finally, the bill increases the purchasing power threshold that would subject a state employee who is a business manager or purchasing agent to the CE 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 from providing, in any filing or submission, any of the following information:

- Federal income tax returns;
- Social security numbers;
- Bank, mortgage, or brokerage account numbers;
- Debit, charge, or credit card numbers;
- Personal identification numbers;
- Taxpayer identification numbers; or
- Any other personal or account information that is legally protected from disclosure under state of federal law.

If any of the above information is submitted by the filer, the bill provides that it shall not be subject to any confidentiality or public records exemptions found in the general exemptions from inspection or copying of public records.³¹ The Commission must redact a filer's social security number; bank, mortgage, or brokerage account number; debit, charge, or credit card number; or any other personal or account information that is legally protected from disclosure under state or federal law upon written notification from the filer of its inadvertent inclusion. The notice from the filer must specify the information inadvertently included and the specific section or sections of the disclosure in which it was included.

³⁰ Section 92.525(2), F.S.

³¹ Section 119.071, F.S.

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 is required to remind filers of the filing deadline and send delinquency notices by email. Upon the request of the filer, the Commission must provide verification to the filer that the Commission has received the submitted disclosure. Also beginning January 1, 2023, a written declaration, as provided by verification of documents requirements,³² accompanied by an electronic signature satisfies the requirement that the disclosure be sworn.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates an electronic filing system for financial disclosures and requires the Commission to provide filers a secure log-in to the system. Use of the system by filers contemplates draft input of information and data to the forms an unlimited number of times before the submission of a final form. The integrity of the system would fail if passwords used to access the system or information and data in draft, unfinalized form were subject to availability as public records. The bill contemplates that this information should be exempt from public records requirements and these exemptions are the subject of a travelling companion bill, SPB 7042. Once a form is submitted on the electronic filing system, the information and data contained therein are not exempt from public records requirements.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

³² Section 92.525(2), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Commission will likely be dependent upon an increased appropriation in order to accomplish the procurement, testing, and activation of an electronic filing system. In its 2015 report, the Commission estimated a cost of \$1.9 million to procure and test the mandatory electronic filing system. This figure may vary from the cost of implementation of this bill. The figure does not include staff costs for the Commission on Ethics or the Office of Legislative Information Technology Services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.31446 of the Florida Statutes.

This bill substantially amends sections 112.312, 112.3144, and 112.3145 of the Florida Statutes.

This bill makes technical amendments to section 112.31455 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.