

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 7005 PCB EEG 24-03 OGSR/Financial Disclosure  
**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee; Holcomb  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 7012

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**FINAL HOUSE FLOOR ACTION:** 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 7005 passed the House on January 24, 2024, and subsequently passed the Senate on February 1, 2024.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Code of Ethics for Public Officers and Employees establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially. The Commission on Ethics (Commission) is an independent commission that, in part, maintains financial disclosure filings of public officers, candidates for public office, and certain public employees.

The State Constitution requires elected constitutional officers, candidates for such offices, and statewide elected officers to file a "full and public disclosure of their financial interests." Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law. Individuals filing a full and public disclosure use the Commission's CE Form 6 (Form 6). Current law also requires a less detailed disclosure of financial interests using the Commission's CE Form 1 (Form 1) for certain local officers, including certain officers holding elected positions in political subdivisions of the state, as well as specified appointed officers. Other persons filing Form 1 include specified state officers and employees as well as persons seeking to qualify as candidates for state or local office.

In 2015, the Commission began the process of transitioning from a paper-based filing system for financial disclosures to an electronic filing system. Form 6 filers began filing electronically as of January 1, 2023, and Form 1 began using the electronic filing system as of January 1, 2024.

The bill saves from repeal the public record exemptions for all secure login credentials 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 prior to submission for the purpose of making the disclosure. The exemptions will repeal on October 2, 2024, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

The bill was approved by the Governor on March 22, 2024, ch. 2024-40, L.O.F., and will become effective on October 1, 2024.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act provides that a public record or public meeting 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 governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### The Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)<sup>5</sup> establishes ethical standards for public officials and is intended to "ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law."<sup>6</sup> The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics (Commission).<sup>7</sup>

##### Commission on Ethics

The State Constitution requires the creation of an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within jurisdiction of the judicial qualifications commission.<sup>8</sup> The Commission was

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> See Pt. III, Ch. 112, F.S.; see also Art. II, s. 8(h)(1), FLA. CONST.

<sup>6</sup> Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited March 12, 2024).

<sup>7</sup> See Pt. III, Ch. 112, F.S.

<sup>8</sup> Article II, s. 8(g), FLA. CONST.

created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.<sup>9</sup> In addition to its constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials.<sup>10</sup>
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws.<sup>11</sup>
- Administers the executive branch lobbying registration and reporting law.<sup>12</sup>
- Maintains financial disclosure filings of constitutional officers and state officers and employees.<sup>13</sup>
- Administers automatic fines for public officers and employees who fail to timely file their required annual financial disclosure.<sup>14</sup>

### Disclosure of Financial Interests

The State Constitution requires elected constitutional officers, candidates for such offices, and statewide elected officers to file a “full and public disclosure of their financial interests.”<sup>15</sup> Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.<sup>16</sup>

The term “full and public disclosure of financial interests” means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.<sup>17</sup> The disclosure must be accompanied by either a copy of the filer’s most recent federal income tax return or a sworn statement that identifies each separate source and amount of income that exceeds \$1,000.<sup>18</sup> The Commission has created by rule CE Form 6 (Form 6) to be used to make the required full and public financial disclosure.<sup>19</sup>

Currently, individuals holding the following positions must file Form 6:<sup>20</sup>

- Governor.
- Lieutenant Governor.
- Cabinet members.
- Legislators.
- State attorneys.
- Public defenders.
- Clerks of circuit court.
- Sheriffs.
- Tax collectors.
- Property appraisers.
- Supervisors of elections.
- County commissioners.

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<sup>9</sup> Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited March 12, 2024); see also s. 112.320, F.S.

<sup>10</sup> Section 112.322(3)(a), F.S.

<sup>11</sup> Section 112.322(2)(b), F.S.

<sup>12</sup> Sections 112.3215 and 112.32155, F.S.

<sup>13</sup> Section 112.3144, F.S.

<sup>14</sup> Section 112.31455, F.S.; see also Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited March 12, 2024).

<sup>15</sup> Article II, s. 8(a), FLA. CONST.

<sup>16</sup> See s. 112.3144(1), F.S.

<sup>17</sup> Article II, s. 8(j)(1), FLA. CONST.

<sup>18</sup> *Id.*; see also s. 112.3144, F.S.

<sup>19</sup> Section 112.3144(8), F.S.; see also r. 34-7.010, F.A.C.

<sup>20</sup> Rule 34-8.003, F.A.C.; see also Commission on Ethics, *Filing Information*, available at [https://www.ethics.state.fl.us/Documents/Forms/Form1.html#form\\_6](https://www.ethics.state.fl.us/Documents/Forms/Form1.html#form_6) (last visited March 12, 2024).

- Mayors and elected members of a municipal governing body.
- Elected superintendents of schools.
- District school board members.
- Jacksonville City Council members, including the mayor.
- Judges of compensation claims.
- Duval County Superintendent of Schools.
- Florida Housing Finance Corporation board members.
- Each member of a large-hub commercial service airport.
- Each member of an expressway authority, a transportation authority (except the Jacksonville Transportation Authority), a bridge authority, or a toll authority created pursuant to chapter 343, F.S., or chapter 348, F.S., or any other general law.

Reporting individuals must file Form 6 annually with the Commission by 11:59 p.m. on July 1.<sup>21</sup> Additionally, candidates for a constitutional office must make a full and public disclosure of their financial interests at the time of qualifying.

Current law requires a less detailed disclosure of financial interests using the Commission's CE Form 1 (Form 1) for certain local officers, including certain officers holding elected positions in political subdivisions of the state, as well as specified appointed officers.<sup>22</sup> Other persons filing Form 1 include specified state officers and employees as well as persons seeking to qualify as candidates for state or local office.<sup>23</sup> Form 1 requires individuals to disclose their primary sources of income, other than their public position, secondary sources of income, real property, intangible personal property, liabilities, and interests in specific businesses.<sup>24</sup>

Although no specific dollar values of incomes, property, or liabilities are required to be reported, the filer must report which assets or liabilities exceed certain dollar thresholds.<sup>25</sup> Form 1 filers must disclose all sources of income in excess of \$2,500, excluding public salary, all sources of income from a business entity that the filers had a material interest in where their gross income was in excess of \$5,000 and in excess of 10 percent of the business' gross income. Form 1 filers must also disclose any property, except for their residence or vacation home, in which the person owns more than 5 percent of the value of the property, as well as any intangible property in excess of \$10,000 and any liability in excess of \$10,000.<sup>26</sup> Form 1 must be filed annually with the Commission by 11:59 p.m. on July 1.<sup>27</sup>

#### Electronic Financial Disclosure

In 2015, the Commission began the process of transitioning from a paper-based filing system for financial disclosures to an electronic filing system.<sup>28</sup> That system was procured and testing began in 2022.<sup>29</sup> Form 6 filers began filing electronically as of January 1, 2023,<sup>30</sup> and Form 1 filers began using the electronic filing system as of January 1, 2024.<sup>31</sup>

#### Public Record Exemptions under Review

In 2019, the Legislature created two public record exemptions to facilitate the use of the electronic financial disclosure system.<sup>32</sup> The first exemption protected all secure login credentials held by the Commission for the purpose of allowing access to the electronic financial disclosure filing system. The

<sup>21</sup> Section 112.3144(8)(d), F.S.

<sup>22</sup> Section 112.3145, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 112.3145(3), F.S.

<sup>26</sup> Section 112.3145(3)(b), F.S.

<sup>27</sup> Section 112.3145(2)(b), F.S.

<sup>28</sup> Section 112.31445, F.S.

<sup>29</sup> Section 112.31446(2), F.S.

<sup>30</sup> Section 112.3144(8)(b)2., F.S.

<sup>31</sup> Section 112.3145(2)(e), F.S.

<sup>32</sup> Section 112.31446(6), F.S.

second exemption protected information entered into the system prior to submission for the purpose of making the disclosure.<sup>33</sup> Once information entered into the system is submitted to the Commission or filed with a qualifying officer, the information loses its exempt<sup>34</sup> status and becomes public.<sup>35</sup>

The 2019 public necessity statement<sup>36</sup> provides that:

The Legislature finds that the public's need for access to information included in the full and public disclosures of financial interests or statements of financial interests filed by reporting individuals be balanced with the filer's interest in safeguarding personally sensitive information. The Legislature further finds that the unintentional publication of such information may subject the filer to identity theft, financial harm, or other adverse impacts.<sup>37</sup>

Pursuant to the OGSR Act, the exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.

During the 2023 interim, House and Senate staff met with Commission staff regarding the public record exemptions under review. Commission staff emphasized the importance of the exemptions as it protects secure login credentials to the electronic filing system itself, as well as personally sensitive information that may subject the filer to identity theft, financial harm, or other adverse impacts if it was not protected. As such, Commission staff recommended the exemptions be reenacted as is.

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the public record exemptions for all secure login credentials used to access the electronic financial disclosure filing system, as well as information entered into the system for the purpose of making the disclosure prior to submission.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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<sup>33</sup> Section 112.31446(6)(a), F.S.

<sup>34</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att’y Gen. Fla. 04- 09 (2004)*.

<sup>35</sup> Section 112.31446(6)(b), F.S.

<sup>36</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>37</sup> Chapter 2019-40, L.O.F.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.