

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 510

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Brodeur

SUBJECT: Financial Disclosures for Elected Local Officers

DATE: February 11, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rey</u>	<u>Roberts</u>	<u>EE</u>	<b>Fav/CS</b>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Rey</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 510 requires the following local officers to file full and public disclosure of financial interests pursuant to the Florida Constitution:<sup>1</sup>

- Mayors.
- City Commissioners.
- Elected members of a city council; town council; village council; or other governing body of a city, town, or village.
- City, county, town, or village managers.

The bill revises the definition of “local officers” to conform to the changes proposed in the bill.

The bill requires members of the Commission on Ethics (Commission) and the Elections Commission to file full and public disclosure of financial interests pursuant to the Florida Constitution.

The bill resolves an inconsistency between the Code of Ethics and the Election Code by clarifying that an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement who has filed his or her annual financial disclosure electronically may submit a copy of the disclosure filed with the Commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies.

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<sup>1</sup> Fla. Const., art. II, s. 8(a) (2021).

Starting on January 1, 2023, full and public disclosure of financial interests must be filed electronically with the Commission. Statements of financial interests must be filed electronically starting on January 1, 2024. The Commission must post a notice on the website instructing filers on the timing of when electronic filings will be accepted.

Filers will be allowed to include attachments or other supporting documentation when filing a disclosure with the Commission.

The bill authorizes the Commission to adopt emergency rules to implement the provisions of the bill.

The bill allows the Commission to dismiss *de minimis* complaints alleging inadvertent and unintentional errors in financial disclosures.

The bill is effective upon becoming law. However, changes related to the transition to electronic filing of Form 6 Disclosures, Form 1 Disclosures, and the requirement of local officers to file a Form 6 with Commission are scheduled to begin on January 1, 2023.

## II. Present Situation:

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

The Florida Constitution requires all elected constitutional officers, candidates for such offices, and statewide elected officers to file a full and public disclosure of their financial interests.<sup>2</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>3</sup>

Pursuant to the State Constitution, and until changed by law, 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>4</sup> The disclosure must be accompanied by a sworn statement with this information.<sup>5</sup> Beginning January 1, 2022, filers may not use a federal income tax return for the purposes of reporting income.<sup>6</sup> Pursuant to general law, the Commission on Ethics (Commission) has created by rule CE Form 6 to be used to make the required full and public financial disclosure.<sup>7</sup>

According to the Commission, and as articulated in the form, individuals holding the following positions must file CE Form 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; county commissioners; elected superintendents of schools; district school board members; Jacksonville City Council members (including the mayor); compensation

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<sup>2</sup> Fla. Const., art. II, ss. 8(a) and 8(i)(2) (2021).

<sup>3</sup> Fla. Const., art. II, s. 8(a) (2021).

<sup>4</sup> Fla. Const., art. II, s. 8(i)(1) (2021).

<sup>5</sup> Section 112.3144, F.S. (2021)

<sup>6</sup> *Id.*

<sup>7</sup> Rule 34-8.002, F.A.C.

claims judges; 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 ch. 348 or 343, F.S., or any other general law.<sup>8</sup>

Reporting individuals are required to file CE Form 6 annually with the Commission by July 1.<sup>9</sup> Additionally, candidates for a constitutional office are required to make a full and public disclosure of their financial interests at the time of qualifying.<sup>10</sup>

Beginning January 1, 2022, all disclosures filed with the Commission must be filed electronically through an electronic filing system that is created and maintained by the Commission as provided in s. 112.31446, Florida Statutes.<sup>11</sup>

### **Statement of Financial Interests (CE Form 1)**

While elected local officers<sup>12</sup> may have the same spending power as county commissioners and other public officers that are required to file CE Form 6, state law only requires local officers to file CE Form 1, which is less detailed form of financial disclosure.<sup>13</sup> Elected local officers, municipal officers, and candidates for such offices, must file this form at the time of qualifying and annually by July 1.<sup>14</sup>

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 businesses.<sup>15</sup> 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.” 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 the 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.<sup>16</sup>

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.<sup>17</sup> 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

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<sup>8</sup> Rule 34-8.003, F.A.C., [http://www.ethics.state.fl.us/Documents/Forms/Form1.html#form\\_6](http://www.ethics.state.fl.us/Documents/Forms/Form1.html#form_6) (last accessed on 11/19/2021).

<sup>9</sup> Rule 34-8.002, F.A.C.

<sup>10</sup> Section 99.061(5), F.S. (2021).

<sup>11</sup> Section 112.3144, F.S. (2021).

<sup>12</sup> Section 112.3145(1) (2021).

<sup>13</sup> Section 112.3145(3), F.S. (2021); *see also* Rule 34-8.202, F.A.C.

<sup>14</sup> Rule 34-8.202, F.A.C.

<sup>15</sup> Section 112.3145(3), F.S. (2021).

<sup>16</sup> Section 112.3145(8)(c), F.S. (2021).

<sup>17</sup> Section 112.3145(2)(a), F.S. (2021).

annual disclosure requirement.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</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 CE Form 1 or CE Form 6 is required within the 60-day period, or if the person is otherwise required to file CE Form 1.<sup>21</sup>

Beginning January 1, 2022, all statements filed with the Commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446, F.S.<sup>22</sup>

### **Candidate Qualifications Respecting Financial Disclosures**

Under the Election Code, at the time of qualifying for office, each candidate for a constitutional office must file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation, and a candidate for any other office, including local elective office, must file a statement of financial interests.<sup>23</sup> When a candidate has qualified for office prior to the deadline to file an annual financial disclosure, the disclosure filed with the candidate's qualifying papers is deemed to satisfy the annual disclosure requirement.<sup>24</sup>

Beginning in January 1, 2022, under the Code of Ethics, an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement who has filed his or her annual disclosure electronically, may submit a copy of the disclosure filed with the Commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies.<sup>25</sup> A candidate not subject to an annual filing requirement does not file with the Commission, but may complete and print the appropriate disclosure form to file with the officer before whom he or she qualifies.<sup>26</sup>

Under the Elections Code, in order for a candidate to be qualified, the filing officer must receive the full and public disclosure or statement of financial interests.<sup>27</sup> This provision is inconsistent with the verification or receipt provisions in the Code of Ethics. If the filing officer receives qualifying papers during the qualifying period prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of any missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying.<sup>28</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Section 112.3145(2)(b), F.S. (2021).

<sup>21</sup> *Id.*

<sup>22</sup> Section 112.3145(2)(3), F.S. (2021).

<sup>23</sup> Section 99.061, F.S. (2021).

<sup>24</sup> Sections 112.3144(3), 112.3145(2)(a), F.S. (2021).

<sup>25</sup> Sections 112.3144(4), 112.3145(2)(c), F.S. (2021).

<sup>26</sup> Sections 112.3144(4), 112.3145(2)(c), F.S. (2021).

<sup>27</sup> Section 99.061(7)(a)5, F.S. (2021).

<sup>28</sup> Section 99.061(7)(b), F.S. (2021).

### Procedures on Complaints of Violations

Section 112.324, F.S., authorizes the Commission to investigate alleged violations of the ethics code upon a written complaint executed on a form prescribed by the Commission and signed under oath or affirmation by any person, or upon receipt of a written referral of a possible violation from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney.<sup>29</sup> The Commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation alleged is a *de minimis* violation attributable to inadvertent or unintentional error.<sup>30</sup> The Commission is not authorized to dismiss complaints alleging *de minimis* violations pursuant to ss. 112.3144 or 112.3145, F.S.<sup>31</sup>

### III. Effect of Proposed Changes:

The bill adds candidates qualifying for constitutional or other elective office subject to annual CE Form 6 filing requirement to the list of those that must file CE Form 6 prior to running for the office. It clarifies in the Elections Code that candidates may submit a verification or receipt of electronic filing if they have filed an annual financial disclosure electronically with the Commission.

The bill delays the date that all full and public disclosures must be filed electronically with the Commission to January 1, 2023. The bill requires the Commission to only accept full and public disclosures filed in paper through December 31, 2022. The bill also requires the Commission to post a notice on its website informing filers that paper forms must be used for full and public disclosures through December 31, 2022. The notice may not be removed until January 1, 2023.

The bill requires the Commission to accept federal income tax returns, financial statements, and other forms or attachments filed with the disclosures for the purposes of reporting income.

Beginning on January 1, 2023, the bill requires the following local officers to file the more detailed CE Form 6 annually: mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village, as well as members of the Commission and the Election Commission.

The bill revises the definition of “local officers” to conform to the changes proposed in the bill.

The bill delays the requirement to file statements of financial interests electronically with the Commission to January 1, 2024. The Commission can only accept a statement of financial interests submitted in paper form through December 31, 2023. The bill also requires the Commission to post a notice on its website informing filers that paper forms must be used for filing a statement of financial interests through December 31, 2023. The notice may not be removed until January 1, 2024.

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<sup>29</sup> Section 112.324(1)(b), F.S., (2021).

<sup>30</sup> Section 112.324(11), F.S. (2021), a *de minimis* violation is any violation that is unintentional and not material in nature.

<sup>31</sup> *Id.*

The bill authorizes the Commission to dismiss any complaint or referral relating to financial disclosures filed pursuant to ss. 112.3144 or 112.3145, F.S., if it determines the violation alleged is a *de minimis* violation attributable to inadvertent or unintentional error.

The bill directs the Commission to post a notice on its website instructing filers to redact personal identification information in their filings.

The bill authorizes the Commission to adopt emergency rules to implement the provisions of the bill. The emergency rules adopted are effective for six months after adoption and may be renewed during the pendency of permanent rules addressing the subject of the emergency rules.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village managers to file the more detailed CE Form 6 in lieu of the currently required CE 1. The expense to the Commission associated with mailing these

individuals a CE Form 6 instead of a CE Form 1 is indeterminate, but likely insignificant and absorbable within current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 99.061, 112.31446, 112.3144, 112.3145, and 112.324 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Rules on February 10, 2022:**

- Allows filers to continue using their federal income tax returns as a part of their financial disclosures.
- Delays the requirement to file disclosures electronically by one year.
- Maintains the current staggered implementation timelines with CE Form 6 filers beginning to use the electronic filing system January 1, 2023 and CE Form 1 filers beginning January 1, 2024.
- Requires the Commission to publish a notice on their forms instructing filers to redact their filings to remove personal identification information.
- Requires members of the Ethics Commission and Elections Commission to file a Form 6.
- Clarifies in the Election Code that candidates may submit a verification or receipt of electronic filing to the Department of State if they have filed an annual financial disclosure electronically with the Commission.
- Authorizes the Commission adopt emergency rules to implement the provisions of the bill. The emergency rules are effective for six months.

**CS by Ethics and Elections on November 30, 2021:**

- The CS excludes mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village managers from the term “local officer” as used in s. 112.3145(2)(b), F.S., which addresses their obligation to file a CE Form 1. The aforementioned “local officers” must still comply with the other obligations in s. 112.3145, F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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