

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: SB 774

INTRODUCER: Senator Brodeur

SUBJECT: Financial Disclosures for Local Officers

DATE: March 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cleary</u>	<u>Roberts</u>	<u>EE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 774 requires specified local officers to file a more detailed financial disclosure than that which they are currently required to file.

The bill takes effect July 1, 2023.

II. Present Situation:

Commission on Ethics

The Commission on Ethics (Commission) was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.¹ The Florida constitution and state law designate the Commission as the independent commission provided for in s. 8(g), Art. II of the Florida Constitution.² Constitutional duties of the Commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.³ In addition to constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;⁴
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁵
- Administers the Executive Branch Lobbying Registration and Reporting Law;⁶

¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1., available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited March 10, 2023); *see also* s. 112.320, F.S.

² Section (8)(j)(3), art. II, Fla. Const.; s. 112.320, F.S.

³ Section (8)(g), art. II., Fla. Const.

⁴ Section 112.322(3)(a), F.S.

⁵ Section 112.322(2)(b), F.S.

⁶ Sections 112.3215, 112.32155, F.S.

- Maintains financial disclosure filings of constitutional officers and state officers and employees;⁷ and
- Administers automatic fines for public officers and employees who fail to timely file a required annual financial disclosure.⁸

The Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)⁹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their officers for private gain other than compensation provided by law.¹⁰ The Code of Ethics addresses various issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics, among others.¹¹

Disclosure of Financial Interests

Full and Public Disclosure (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.¹² 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.¹³

Under the Florida Constitution, the term “full and public disclosure of financial interests” means the reporting individual must disclose his or her net worth and the value for each asset and liability in excess of \$1,000.¹⁴ The disclosure must be accompanied by either a sworn statement that identifies each separate source and amount of income that exceeds \$1,000 or a copy of the reporting individual’s most recent federal income tax return.¹⁵

Pursuant to general law, the Commission has created by rule CE Form 6 (Form 6), which is used to make the required full and public financial disclosure.¹⁶ Reporting individuals are required to file a Form 6 annually with the Commission by July 1 through the Commission’s electronic filing system.¹⁷

Individuals holding the following positions must presently file a Form 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts;

⁷ Section 112.3144, F.S.

⁸ Section 112.3144, F.S.; s. 112.3145, F.S.; s. 112.31455, F.S.

⁹ See pt. III. Ch. 112, F.S.

¹⁰ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1., available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited March 10, 2023)

¹¹ See pt. III. 112, F.S.

¹² Section 8(a), art. II, Fla. Const.; see ss. 112.3144(1)(b), 112.3145, F.S.

¹³ *Id.*

¹⁴ Section (8)(j)(1), art. II, Fla. Const.

¹⁵ See 112.3144(6)(c) and (7)(a), F.S. (Beginning January 1, 2023, the Commission may not accept federal income tax returns for proof of income)

¹⁶ Section 112.3144(8), F.S.; see R. 34-8.002, F.A.C.

¹⁷ Section (8)(j)(1), art. II, Fla. Const.; see s. 112.3144(2), F.S.

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 claims judges; Duval County superintendent of schools; Florida Housing Finance Corporation Board Members; Florida Prepaid College Board Members; and members of each expressway authority, transportation authority (except Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to ch. 348 or 343, F.S., or any other general law.¹⁸

Candidates for office who are not already required to file a Form 6 must file their Form 6 with the election office in which they file their qualifying papers at the time they qualify.¹⁹ A candidate who is an incumbent running for the same office or who holds another position currently requiring the annual filing of a Form 6 and who qualifies as a candidate after he or she has filed a Form 6 with the Commission may file a copy of the Form 6, verification or receipt of the filing of the Form 6, with the qualifying officer.²⁰

The Form 6 requires filers to report their net worth, assets, and liabilities.²¹ The filer must report the specific identification and value of each asset which exceeds \$1,000 in value and provide the name and addresses for the creditor for each liability which exceeds \$1,000 in amount and its amount, and must submit a statement of the value of the reporting person's net worth as of December 31 of the preceding year or a more current date.²²

Statement of Financial Interests (Form 1)

In addition to provisions governing the Form 6, current law provides for a less detailed disclosure of financial interests using the Commission's CE Form 1 (Form 1).²³ A Form 1 must be filed by a large group of local officers, including all officers holding elected positions in any political subdivision of the state, other than counties, and specified appointed officers.²⁴ Other persons required to file a Form 1 include specified state officers and employees and persons seeking to qualify as candidates for these specified state or local office.²⁵ Currently, 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 are required to file a Form 1.²⁶

Form 1 requires filers to disclose specified information related to sources of income, real property; intangible personal property, liabilities, and interests in specified businesses.²⁷

¹⁸ Section (8)(j)(1), art. II, Fla. Const.; see s. 112.3144, F.S.; see R. 34-8.003, F.A.C.

¹⁹ Sections 99.061(5), 99.061(7)(a)5., F.S.

²⁰ Section 112.3144(4), F.S.; s. 99.061(7)(a)(5), F.S. (Currently, unlike the Code of Ethics under s. 112.3144(4), F.S., the Election Code under s. 99.061(7)(a)(5), F.S. only allows the filing of a copy of the full and public disclosure at the time of qualifying.)

²¹ See s. (8)(j), art. II, Fla. Const.; s. 112.3144(5),(6), F.S.; R. 34-8.004, F.A.C.

²² *Id.*

²³ See s. 112.3145, F.S.; R. 34-8.202, F.A.C.

²⁴ See s. 112.3145, F.S.; ss. 99.061(5) and 99.061(7)(a)(5), F.S.; R. 34.8.202, F.A.C.

²⁵ *Id.*; see Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 16-18., available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited March 10, 2023).

²⁶ See s. 112.3145(1), F.S.; R. 34.8.202, F.A.C.

²⁷ Section 112.3145, F.S.

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.²⁸ 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 the filer had a material interest in where their gross income was in excess of \$5,000 and in excess of 10% of the businesses gross income; any property, except for their residence or vacation home, in which the person owns more than 5% of the value of the property; any intangible personal property in excess of \$10,000; and any liability in excess of \$10,000.²⁹ A Form 1 must be filed annually with the Commission by July 1, 2023.³⁰

Currently, a local officer³¹ must file a Form 1 within 30 days of appointment or employment and then annually by July 1 of each year with the supervisor of election in the county in which he or she permanently resides.³² Currently, specified state employees³³ and state officers³⁴ are required to file a Form 1 with the Commission within 30 days of appointment or employment and then annually by July 1 of each year.³⁵ Candidates for local elective office who were not previously required to file an annual financial disclosure are required to file their Form 1 with the qualifying officer at the time of qualifying.³⁶

Requirements for Form 6 and Form 1

All persons required to file a Form 6 and Form 1 must disclose interests in specified businesses granted a privilege to operate in the state of Florida.³⁷ All Form 6 and Form 1 filers also must file quarterly reports naming clients represented for a fee before agencies at the filer's level of government.³⁸ Certain Form 6 and Form 1 filers must certify their completion of any required ethics training on their respective financial disclosure form.³⁹ General law also requires an individual subject to filing Form 6 or Form 1 to file a final disclosure statement within 60 days after leaving his or her public position.⁴⁰

Any person required to File a Form 6 or Form 1, whose name is on the Commission's list, and to whom notice has been sent, but fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500.⁴¹ However, this limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline has passed.⁴² The Commission is required to promulgate rules for determining the amount of the

²⁸ See s. 112.3145(3)(a)(b), F.S. (Beginning January 1, 2023, filers may only use the threshold based on dollar value when filing their Form 1.)

²⁹ Section 112.3145(3)(b), F.S.

³⁰ Section 112.3145(2)(b), F.S.

³¹ As defined in s. 112.3145(1)(a), F.S.

³² Section 112.3145(2)(b), F.S.

³³ As defined in s. 112.3145(1)(b), F.S.

³⁴ Not required to file Form 6 as defined in s. 112.3145(1)(c), F.S.

³⁵ Section 112.3145(2)(b), F.S.

³⁶ Section 112.3145(2)(d), F.S.

³⁷ Section 112.3145(7), F.S. (Lists specific entities including banks, insurance companies, cemetery companies, public utilities and others.)

³⁸ Section 112.3145(6), F.S.

³⁹ See s. 112.3142, F.S.; s. 112.3144(1)(a), F.S.; s. 112.3145(5), F.S.

⁴⁰ Section 112.3144(10), F.S.; s. 112.3145(2)(b), F.S.

⁴¹ Section 112.3145(8)(g), F.S.

⁴² *Id.*

fine for a late filing,⁴³ an appeal process, procedures for grounds for waiving the fine based on unusual circumstances, and notice requirements.⁴⁴

III. Effect of Proposed Changes:

Section 1. Amends s. 112.3144(1), F.S., by adding a new paragraph (d) to subsection (1). The new paragraph (d) requires certain local officers, who are currently required to file a Form 1 financial disclosure statement annually, to now file a Form 6 financial disclosure.

Specifically, the bill requires the following local officers to file the Form 6 financial disclosure annually:

- 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.

Section 2. Amends s. 112.3145(1)(a), F.S., by changing the definition of the term “local officer” to expressly exclude from that definition mayors; city council commissioners; elected members of a city council, town council, or village council, or any other governing body of a city, town, or village; or city, county, town, or village managers. This change is necessary because “local officers”⁴⁵ are required to file a Form 1 financial disclosure. Removing these officers from the definition of “local officer” removes these office holders from having to file a Form 1 financial disclosure annually, ensuring that the above listed local office holders only have to make one financial disclosure annually.

Section 2 also amends s. 112.3145(3), F.S., by striking, “[a]ny person holding one or more of the following positions; mayor, county or city manager.” This deletion makes subsection (3) consistent with the changes made to subsection (1)(a).

Section 3. Provides an effective date for this act of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill imposes additional financial disclosures on certain officers of local government, but the burden on the governments themselves does not appear to reach the threshold required to be affected by s. 18, Art. VII, Fla. Const.

B. Public Records/Open Meetings Issues:

None.

⁴³ See s. 112.3145(8)(g)1-3, F.S. (Form 1); s. 112.3144(8)(f)1-3, F.S. (Form 6); R. 34-8.011(3), F.A.C.; R. 34-8.210(2), F.A.C.

⁴⁴ See R. 34-8.015, F.A.C.; R. 34-8.215, F.A.C.

⁴⁵ Defined under s. 112.3145(1)(a), F.S.

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 imposes additional financial disclosures on certain officers of local government that will create an indeterminate but most likely insignificant impact. These new Form 6 filers will increase the number of Form 6 disclosures filed with the Commission through the Commission's electronic filing system, which is now active. This increase in the number of Form 6 filings may increase the amount of time and resources that Commission staff requires to review, redact, and publish such disclosures and may require some programming changes to the electronic filing system for these specified local officers to now file the Form 6 on the electronic filing system. However, with all Form 1 filers soon being required to file their Form 1 disclosures solely with the Commission through the electronic filing system, and with the Commission actively preparing for these increased disclosures and changes to the electronic system, any changes to the process required by adding these specified local offices is most likely negligible.⁴⁶

VI. Technical Deficiencies:

The bill currently changes the definition of "local officer" in s. 112.3145(1)(a)1., F.S., to exclude certain specified officers from the definition. However, that subparagraph relates to persons elected to offices. City, county, town, or village managers, listed as a subset of the local officers excluded from the definition of "local officer" in this bill, are not elected officials. The Legislature may wish to consider eliminating the change in definition of "local officer" and

⁴⁶ See Sections 94-95, ch. 2022-157, Laws of Florida (Based on the fiscal year 2022-23 implementing bill, all Form 1 filers are required to file their Form 1 financial disclosures with the Commission through the Commission's electronic filing system beginning January 1, 2024, but this bill is set to expire on July 1, 2023.)

instead providing language under s. 112.3145(2)(b), F.S., exempting the local officers specified in s. 112.3144(1)(d), F.S. from having to file a Form 1.

VII. Related Issues:

The bill's current language uses terminology and language such as village, city, and town, to define the type of specified local officers included under the bill's coverage. These descriptive terms are not consistent with the terms used under Florida's Constitution or current statutes. To make the language of the bill more consistent with current law, the Legislature may wish to instead use "municipal" or "municipality," as applicable.

As currently drafted, the act will take effect on July 1, 2023. The Legislature may wish to provide a later effective date, such as January 1, 2024, because disclosure requirements are based on the calendar year. Having an implementation date of January 1 will allow for the smooth implementation of the proposed legislation.⁴⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3144 and 112.3145.

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.

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

⁴⁷ The Florida Commission on Ethics in its Agency analysis of HB 37 (similar bill), recommends an effective date of January 1, 2024, because disclosure requirements are based on the calendar year, having an implementation date of January 1 will allow for the smooth implementation of the proposed legislation. See Agency Bill Analysis for Bill HB 37, Conducted by Florida Commission Ethics, available at <http://abar.laspbs.state.fl.us/ABaR/Document.aspx?id=30117&yr=2023> (last viewed March 10, 2023)