

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee	17 Y, 0 N	Kiner	Rubottom
1) Oversight, Transparency & Public Management Subcommittee	10 Y, 0 N	Moore	Harrington
2) State Affairs Committee	20 Y, 0 N	Moore	Williamson

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

SUMMARY ANALYSIS

CS/HB 7023 passed the House on April 17, 2019, and subsequently passed the Senate on April 24, 2019. The bill is linked to CS/HB 7021, which passed the House on April 17, 2019, and subsequently passed the Senate on April 24, 2019. The bill creates a public records exemption 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 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 for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. 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.

This bill was approved by the Governor on June 14, 2019, ch. 2019-40, L.O.F., and will become effective on the same date CS/HB 7021 becomes effective.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² 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.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

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 Act⁵ 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.⁶

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.⁷

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).⁸ 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 6.⁹ Other public officers, candidates, and public employees may be required to file a Form 6 as determined by law.¹⁰ The 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 \$1,000.¹¹ For calendar year 2018, there were 1,398 individuals required to file a Form 6.¹²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ S. 119.15, F.S.

⁶ S. 119.15(6)(b), F.S.

⁷ S. 119.15(3), F.S.

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

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

¹⁰ FLA CONST., art. II, s. 8(a)

¹¹ FLA CONST., art. II, s. 8(i)1.

¹² 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>.

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.¹³ 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 1.¹⁴ Of these, 13,975 were state level Form 1 filers, while 22,812 individuals were local level Form 1 filers.¹⁵

CS/HB 7021 (2019)

CS/HB 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.

Effect of Changes

The bill, which is linked to the passage of CS/HB 7021, creates a public records exemption 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 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 is available to the public.

The bill provides for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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 secure login credentials and other personally sensitive information may subject the filer to identity theft, financial harm, or other adverse impacts.

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 the Commission because staff responsible for complying with public record requests may require training related to the creation of the public record

¹³ S. 112.3145(3), F.S.

¹⁴ 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>.

¹⁵ *Id.*

exemption. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of the Commission.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.