

Proposal for Electronic Filing of Financial Disclosure



By the
State of Florida
Commission on Ethics



Stanley M. Weston

Chair

Matthew F. Carlucci

Vice Chair

Michelle Anchors

Michael Cox

I. Martin Ford

Tom Freeman

Wiley Horton

Susan Horovitz Maurer

Linda McKee Robison

Virilindia Doss

Executive Director

C. Christopher Anderson, III

General Counsel/

Deputy Executive Director

State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

(850) 488-7864 Phone

(850) 488-3077 (FAX)

www.ethics.state.fl.us

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

"A Public Office is a Public Trust"

Honorable Andy Gardiner, President
The Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399

Honorable Steve Crisafulli, Speaker
The Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399

Honorable President Gardiner and Speaker Crisafulli,

Enclosed for your consideration is the Florida Commission on Ethics' proposal for a mandatory electronic filing system for financial disclosure, as called for by Section 112.31445, Florida Statutes. This work product represents an asserted effort by the Commission, with the invaluable assistance of the Office of Legislative Information Technology Services, to arrive at a system which would be streamlined, efficient, user-friendly, and informative to the public. Our goals have been to design a system that would help users avoid mistakes, and would provide information to the public as rapidly and in as useful a format as possible.

Moving to e-filing will require a great deal more work, and a number of changes to existing law, but will result in a system that takes Florida to the next level in public access. The Commission hopes you will find this proposal informative.

Sincerely,


Stanley M. Weston, Chair
Florida Commission on Ethics


Virilindia Doss, Executive Director
Florida Commission on Ethics

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Purpose

Section 112.31445, Florida Statutes, requires that the Commission "submit a proposal to the President of the Senate and the Speaker of the House of Representatives for a mandatory electronic filing system" for reporting full and public disclosure of financial interests filed pursuant to Article II, Section 8, Florida Constitution, or Section 112.3144, Florida Statutes. Pursuant to sec. 112.31445, the system proposed must provide for a secure, Internet-accessible mechanism through which filers can complete and submit their full and public disclosure of financial interests, it must allow an attorney or Certified Public Accountant (CPA) to sign the disclosure form to indicate that he or she prepared the form in accordance with Section 112.3144, Florida Statutes, and must issue an e-mail receipt to the filer. The statute also requires that the disclosure, once filed, be searchable, requires the Commission to provide for an alternate filing procedure in the event the electronic filing system is inoperable, requires the Commission to address whether additional statutory or rulemaking authority is necessary for implementation of the system, and requires that the Commission determine the feasibility and necessity of including statements of financial interests filed pursuant to Section 112.3145, Florida Statutes in the electronic system.

This report responds to the Legislature's mandate.

Goals

The goals for an online financial disclosure system should be ease of use for the filer, immediate information to the public, and efficiency for the agency. Such a system should also facilitate timely filing and reduce the occurrence of common filer errors.

In arriving at this proposal, the Commission has reviewed the entire financial disclosure scheme, and the proposal envisions not just a system that replicates existing practices, but improves upon them for better transparency, utility, and efficiency.

Executive Summary

This proposal contemplates a system through which, as of January 1, 2019, persons who file Full and Public Disclosure of Financial Interests (Form 6) would do so electronically. No paper forms would exist, and no paper filings would be permitted, after that date. For persons who file Statements of Financial Interests (Form 1), the system would go live January 1, 2020, and all filers would make their disclosures with the Commission on Ethics. Agency disclosure coordinators would be able to update their lists of persons required to file, as well as name, address, and email address changes, in real time. Filers would receive email notices to make their disclosures, with continuous reminders as the filing deadline approaches. Filers would be able to log on, see any of their past electronically-filed disclosures, complete their disclosures and submit them, and obtain a receipt. Full and Public Disclosures of Financial Interests would be posted to the Commission's website immediately, and candidates would be able to access the appropriate form and complete and print it for inclusion with their qualifying papers.

There are a number of obstacles to accomplishing all this: doing so would require significant changes to, and streamlining of, the financial disclosure laws, as well as a substantial investment of time and resources of the Commission and the Office of Legislative Information Technology Services (OLITS). It will be necessary to update the Commission's Financial Disclosure Management System to support e-filing, and OLITS' current estimate is that the cost of this modernization combined with the work necessary for e-filing would amount to 1.9 million

dollars. This figure does not include the staff costs of OLITS or the Commission, which, understanding the complexity of the project, are expected to be substantial.

Current Situation

Florida has a complex system for disclosure of financial interests, involving multiple types of disclosure and varying deadlines for filing, and places to file. There are two tiers of disclosure. The more detailed Full and Public Disclosure of Financial Interests (Form 6) is required of Constitutional officers, such as the Governor and Cabinet, members of the Legislature, and County Commission members. In 2014, 1,405 persons other than judges were required to file Full and Public Disclosure of Financial Interests.¹ Persons required to make Full and Public Disclosure of Financial Interests file with the Commission, unless they are also candidates for a position requiring the same disclosure. In that case, they file the Form 6 with their qualifying papers, and it is forwarded to the Commission by the qualifying officer.² All Form 6 filers must file their annual disclosures on or before July 1 of each year. Although judges are not required by law to file disclosure, they nevertheless file Form 6s with the Commission, which has historically accepted them.³ In 2014, 1,182 active and senior judges were required to file; bringing the total number of Form 6s to be filed with the Commission to 2,587.

The less comprehensive Statement of Financial Interests (Form 1) is required for other officials,⁴ and is also due July 1. Some Form 1 filers—such as state employees—file their disclosure with the Commission. Others—such as city council members and other local officers and employees—file with their Supervisors of Elections. In 2014, 13,572 people were required to file Form 1 disclosure with the Commission, while another 22,022 filed with the Supervisors.⁵

The law also requires Form 1 filers to file a disclosure for the previous year within 30 days of employment or appointment,⁶ requires *all* filers to file a final disclosure within 60 days of leaving office,⁷ and provides for filers to be able to amend a Form 1 or Form 6.⁸ Specific forms have been developed for these purposes.⁹ The law requires that filers be able to have their Certified Public Accountant or attorney complete their forms for them,¹⁰ for a "grace period" extending to September 1 for annual disclosure,¹¹ and for automatic fines to accrue at a rate of \$25 per day—to a maximum of \$1,500, for persons who have not filed by the end of the grace period.¹²

Although it is not the repository for all the disclosures filed, the Commission is charged with administering the financial disclosure program. Critical to this process are the 1,654 financial disclosure "coordinators"—or contact persons—at each state and local agency. These coordinators annually provide the Commission with a list of persons at their agencies required to make disclosure.¹³ The coordinators also must ensure that outgoing officials are removed from the lists, that new officials are added, and that the lists contain correct address information for each filer. Based on the information from the coordinators, the Commission and the Supervisors of Elections fulfill their statutorily-mandated responsibilities:

- **May 1:** Commission must prepare a current list of the names and addresses of, and the offices or positions held by, every state officer, local officer, and specified employee.¹⁴
- **May 15:** Commission must provide Supervisors of Elections a current mailing list of all local officers required to file with such Supervisor.¹⁵
- **June 1:** Commission must mail out Form 6s, and Form 1s to those persons required to file with the Commission,¹⁶ and Supervisors must mail Form 1s to those individuals required to file with them.
- **July 1:** Disclosures are due, either to the Commission (all Form 6 filers and state Form 1 filers) or to the local Supervisor of Elections (all local Form 1 filers).¹⁷

- **July 31:** Commission and Supervisors of Elections send certified-mail notices to filers who have not yet filed, informing them that their disclosures are delinquent.¹⁸
- **September 1:** "Grace period" during which all filers may submit their disclosures without penalty, ends. After September 1, delinquent filers are fined \$25 per day, up to a maximum of \$1,500.¹⁹

The Commission is required to post all Form 6s—except for those filed by judges—on its website.²⁰ Certain information, such as social security and bank account numbers, is confidential by law²¹ and cannot be released. Therefore, Commission staff must review every Form 6 before posting it to the website. In 2014, this required the review of 1,405 forms and their attachments. Because Form 6 filers are permitted by law to attach a copy of their tax returns in lieu of listing their income, thousands of pages of documents must be examined in the redaction process—a tedious, labor-intensive, and time-consuming exercise. Because of the necessity of this review, the documents cannot be posted immediately and the other work of the Commission slows considerably.

The Ethics Commission tracks, stores, and manages filer information through the Financial Disclosure Management System (FDMS). This system is 10 years old and was not designed for the demands that additional responsibilities assigned the Commission have placed on it. In early 2014, the Office of Legislative Information Technology Services (OLITS) recommended that the system undergo a modernization, and in July of that year the Commission requested, and authorized the expenditure of, funds for that purpose. However, the effort has been placed on hold due to lack of funding. If online filing is enacted, the enhancements will have to be made in concert with that effort.

Challenges

As is readily apparent from the foregoing, the disclosure process is multilayered and intricate. An electronic filing system must accommodate a variety of actors and scenarios, including, but not limited to:

- Officials serving in positions with an annual filing requirement;
- Persons qualifying for public office who otherwise have no filing requirement;
- Officials qualifying for public office who have an annual filing requirement which is the same as the requirement for the office they seek;
- Officials qualifying for public office who have an annual filing requirement which is *different from* the requirement for the office they seek;
- Officials seeking to amend a previously filed disclosure;
- Officials seeking to file the disclosure required within 30 days of appointment or employment;
- Officials seeking to file the disclosure required within 60 days of leaving public service;
- Officials who have left public service, but have not filed all the disclosures required while they were in public service; and,
- Officials who have left public service and no longer have a filing requirement, but need to amend a disclosure that they filed while in public service.

Other significant challenges to developing an e-filing system are:

Maintaining confidentiality of information to which filers have a right to confidentiality, and preventing filers from supplying confidential information not required to be disclosed.

Prevention of duplicative filings for the same disclosure period.

Allowing candidates who already hold office or otherwise have a filing requirement to submit their disclosures, while preventing those candidates with no filing requirement from doing so.

Allowing the form to be sent back and forth between the filer and his or her CPA or attorney any number of times.

Coordinator error: Failure by the coordinator to provide accurate, up-to-date information will result in the system's inability to recognize the filer. Failure to provide a current and accurate e-mail address will result in an inability to contact the filer.

Filer error: The law is confusing to many people, and filers often file the wrong form, do not understand that the disclosure period covers the prior year, misstate or do not remember what positions they hold, do not know what their financial interests are, include unsolicited confidential information, or fail to read or do not understand the form instructions. The system will need to aid the filer in submitting the correct form, and help him or her avoid errors or omissions.

Implementation of an online system will be a dramatic shift for the Commission, for coordinators, and for filers. Initiation of a new, technology-reliant means of doing business carries with it the potential for large-scale problems in implementation. The initial launch of the Affordable Healthcare Act sign-up process is a good example, but Florida has also seen its share of problems with such changes: the Department of Economic Opportunity's online unemployment claims system was initially plagued with problems,²² a change by Citizens Insurance in its policy numbers resulted in failure of premium payments to be credited to insureds,²³ and issues with online testing that the Commissioner of the Department of Education called "absolutely unacceptable," lead math tests to be scrapped.²⁴ Moving from the current system to e-filing will be a major undertaking. Given the volume of users, the intricacy of the disclosure laws, and the dramatic nature of the change, it is imperative that adequate time be allowed to build—and most important, to test, and test repeatedly—the system.

System Overview

Accessing the System and the Forms

Initial Access

Information about filers is currently managed through the Commission's Financial Disclosure Manage System (FDMS). As noted, this system is 10 years old, and has experienced many modifications as the Commission's responsibilities have grown—at this point, it is in need of a serious modernization, and such modernization will be critical if it is to accommodate the addition of an electronic filing system. OLITS estimates that modernizing FDMS and building and testing an e-filing system will take 18-24 months. Assuming legislation is enacted in the 2016 session, the system will be ready for coordinators by the summer of 2018, and for Form 6 filers on January 1, 2019. This rollout timeframe will allow coordinators to provide filers' email

addresses and update other information through fall of 2018 so that on January 1, 2019, filers will be able to e-file their 2018 Full and Public Disclosure of Financial Interests. A January 1 start date for filers is necessary to avoid a period in which paper and electronic filings overlap, and will allow those who need to file disclosure early in the year to do so.

As system recognition of the filer is vital, the system must have accurate and up-to-date information about the filer. Thus, when new officers or employees join an agency, it will be imperative that the agency coordinator obtain the necessary information to be entered into the system, including the filer's email address and whether he or she has filed disclosure before.

Whether the individual has filed disclosure in the past will be important, because it will impact the filer's username, and the username will be the mechanism by which the system recognizes the filer. All filers currently are assigned a Personal Identification (PID) number. If the person has filed disclosure in the past, the username will be the previously-assigned PID number. Thus, the official's current and previous filing information will be linked and the potential for filing the wrong form—or multiple, duplicative, forms—will be reduced. If the person has never made disclosure, a new PID will be generated, and it will serve as the official's username.

The filer will use this username and password to access the e-filing system. When the individual logs for the first time, he or she will be prompted to change the password and complete security questions required for username/password recovery. A law change will be necessary to exclude the passwords from the ambit of the public records laws. The system will direct the filer to the forms which the Commission's records indicate are appropriate, and will provide corresponding instructions and information concerning any outstanding fines. The following speak with more specificity to handling of the most common filer scenarios.

Persons with an existing filing requirement

This section will apply to those who already have a filing requirement when the online system debuts. In most cases this will mean persons with a requirement to file annual disclosure, but it could also mean those who need to file the disclosure required within 30 days of appointment or employment, or the final disclosure required within 60 days of leaving a position.

The role of the agency coordinators in this process cannot be overstated. It is now, and will continue to be, the coordinators' responsibility to update the information related to filers in their agencies—the system's ability to recognize the filer and its ability to direct him or her to the appropriate forms depends on the accuracy of this information. The FDMS modernization will allow coordinators to do this in real time. Through a proposed law change, they will be required to certify, by February 1 of each year, the accuracy of the information they have provided for the disclosure period—January 1 through December 31 of the preceding year, so that the Commission can have a date certain when preparing its own list of all filers.

In May, after the Commission has completed its list, the system will send an email to every filer, reminding the filer of his or her filing requirement and deadline. The system will continue to send reminders until the filing requirement is met.

When the filer logs in, the system will direct him or her to the applicable financial disclosure form, based on the information contained in the system. If, for example, the individual is a Form 6 filer, he or she will be allowed to submit and print the Form 6 for that year, a Form 6F (Final Full and Public Disclosure of Financial Interests) if he or she has left office, and a Form 6X to correct or amend any previously-filed Form 6 or 6F. Filers will only be able to submit *one* disclosure for any given disclosure period, but will be able to submit an unlimited number Form 6Xs to amend an earlier form.

Persons leaving office

Persons who have left public service may still need to access the system—either to file disclosure for the preceding year,²⁵ to file for a year they missed, to file a final disclosure, or to file an amendment to a prior year's disclosure. Such an individual will already have a username and password, and can use them to make these disclosures electronically.

Once the user has fulfilled his or her filing requirements, *and* the agency coordinator has removed the user's name from the list of persons required to file annual disclosure, the only form the filer will be able to electronically submit will be the 6X—used for correcting a prior year's form. Filer information will be retained for at least 10 years, longer if the official has an unpaid fine.²⁶ Until that time, an official who has a username and password will have the ability to sign onto the e-filing system and use it to electronically submit any form applicable to him or her.

Candidates

Candidates pose a special challenge in an e-filing system, because some candidates—for example, incumbents—already have a filing requirement, while others do not; some candidates may have a filing requirement which differs from the filing requirement of the office they seek (for example, a county commissioner who leaves office to run for a city council seat), and some may have left public service without completing all the forms they were required to file. All candidates must be able to provide the disclosure applicable to the office they seek to their qualifying officer, while candidates who have no requirement to file disclosure other than the disclosure they file with their qualifying papers should not be permitted to submit a disclosure to the Commission.

Candidates with no filing requirement

Article II, Section 8 requires candidates for elective constitutional offices to file Full and Public Disclosure of Financial Interests with their qualifying officers,²⁷ but candidacy for public office does not itself require filing disclosure with the Commission on Ethics. This section speaks to those candidates who have no filing requirement other than that of furnishing disclosure with their qualifying papers. These candidates must be able to access, complete, and print a disclosure form, but should not be allowed to submit the disclosure to the Commission.

Because the system may have no information on a user who has no filing requirement, a series of questions or instructions will be necessary so the system can ascertain what the user wants to do and direct him or her to the appropriate form. For such users, the system will generate a username readily distinguishable from the PIDs used for persons with an existing filing requirement, and the candidate will be able to complete and print the disclosure in the manner previously described. The user will only be able to print the disclosure, and will not have the option of submitting it to the Commission. The system will store the information—as well as the candidate's username and password—for one year, so that the candidate can access the form and work on it during that time. If the candidate is elected, he or she will then be treated as a new public officer: the agency coordinator will add the newly-elected officer to the list of persons required to file, and he or she will receive a PID/username and password, as previously outlined.

Candidates who have no current filing requirement, but who have one or more unmet previous filing requirements

Some candidates may have left public service without having filed all the disclosures required of them. These individuals will still have a PID/username and password, and will be

able to access the system to submit any missing forms and to complete and print any form needed for qualifying.

Candidates who have a current filing requirement

Many candidates, such as incumbents running for re-election, will have a current filing requirement. Under existing law, the qualifying officers forward to the Commission the disclosure form of any candidate who also has an annual filing requirement, and the Commission then redacts the disclosure and posts the redacted filing online.²⁸ With e-filing, there will be no need for the qualifying officers to forward disclosures to the Commission. Candidates with a current filing requirement will electronically submit their disclosures to the Commission and print a copy to file with their qualifying papers.

Candidates with a filing requirement different from that of the office they seek

Some candidates might have a current filing requirement that is *different* from the disclosure they must file with their qualifying papers. For example, if a county commissioner who must annually file Form 6 runs for city council, he or she must file a Form 1 at qualifying. These individuals will be able to complete and submit the disclosure required by their current position, while also being able to complete—and print only—the disclosure required for qualifying.

Completing the Disclosure

When users log on, they will be able to see the information the Commission's records reflect as to their name, address, position title, email address, filing requirement, and fines. They can update certain of their information (name, address, position title, email address), but will be directed to contact their coordinator if other information is incorrect—for example, if they are no

longer an officer or employee of that organization. They will have access to the appropriate disclosure forms and instructions, and the ability to view their previous forms.

Filers will complete the form section-by-section and can save their work and come back to it or return to previous sections, and the filer's work will be saved if he or she mistakenly closes out of system altogether. The system will be programmed to automatically time a filer out after a certain period of inactivity.

Filers will have access to the instructions at all times, and will be alerted to the instructions when they move to a new section. Filers will also be alerted when they have left a section blank, and will be unable to submit forms with blank sections.

After completing the final section, the filer will be able to save and print the form. Forms printed at this point will be marked "Draft." Filers can also submit the form and print the final copy. Various alerts will show when the filer hits "submit," such as that once the form is submitted it can only be amended by a 6X, and that he or she should not include confidential information, such as social security and bank account numbers. The filer will also be able to notify the Commission if he or she has an exemption from Chapter 119 for particular information. The filer can then confirm that he or she wants to submit the form.

Once the filer submits his or her disclosure, the system will send a message to the filer's email address, describing the type of form submitted, and date and time of submission. The filer will be precluded from submitting that form again for the same year. Any attempt to do so will be met with an alert that the form has already been submitted, and with instructions for amending a previously-submitted form.²⁹

Special Issues

Attorney/CPA Completion

The law gives filers the option of allowing an attorney or certified public accountant ("preparer") to complete their financial disclosure forms. If an attorney or CPA prepares a form, he or she must sign the form, certifying that to his or her reasonable knowledge and belief, it is correct. This signature is in addition to the filer's signature, which is required on all disclosures.

These provisions require that the system allow for the form to be sent back and forth between the filer and the preparer and also allow for signatures from both parties, with the form ultimately being submitted by the filer. The filer will be able to send the form to the preparer at any stage in its completion. When the filer selects that option, the system will request the email address of the attorney or CPA, and will send an email notifying the preparer of the availability of the form and providing a username and temporary password to allow the preparer to access the form. The username and password will be unique to each form, meaning that if the preparer is called upon by multiple filers to complete their respective forms, a separate username and password will exist for each. The filer will receive a notification that the form has been sent to the preparer.

The preparer will complete the form, electronically sign it, and return it to the filer. The preparer can print a copy of the form, which will be marked "draft." Once the preparer returns the form to the filer the preparer will be automatically logged out of the system, and the username and password given to the attorney or CPA to complete the form will become inoperative.

Once the attorney or accountant returns the form to the filer, the filer will not be able to make changes. If the filer is satisfied, he or she can sign the disclosure and submit it. If the filer

is not satisfied, he or she can re-submit the form to the preparer. If the filer selects this option, the process starts again, with a new username/password for the preparer. This cyclical practice is necessary to assure that neither the filer nor the preparer add or change information on the disclosure without the other's knowledge.

If at any time the filer decides to discontinue the services of the attorney or CPA, he or she can deselect the option. All previously-entered information will be removed from the form and it will be returned to the filer's control. The preparer's password will be rendered inoperative.

Inclusion of Confidential Information

The primary obstacle to the Commission's immediately posting financial disclosure forms is the necessity of redacting confidential information. Social security, bank account, and credit card numbers are confidential under Florida law³⁰ and cannot be released by the Commission. Despite the fact that none of this information is required to be reported, and that filers are warned in the form instructions not to include such information, filers not only routinely fail to redact social security numbers from the tax returns they are permitted to attach in lieu of listing income, they often affirmatively *write in* account numbers on the forms themselves.

The form and all attachments thereto constitute the disclosure, and the Commission must preserve the original disclosure as a public record and cannot delete any information in the original document.³¹ Therefore, the Commission cannot redact a form and then consider that document to be the original public record. Redactions in a pdf (Portable Document File) are permanent and cannot be "lifted," but redactions in a tiff (Tagged Image Format File) *can* later be "lifted" by a Commission staff member with "Administrator" software privileges. Currently, staff must scan the paper document as a tiff, then redact any confidential or chapter 119-exempt

information. A second staff member checks to ensure the redaction is complete, and the file is converted into a pdf that can be posted to the website. The original tiff and the redacted pdf copy are preserved. The Form 6 disclosures forwarded from the qualifying officers are received as pdf. For these, the Commission must convert the pdf to a tiff, and go through the same redaction and re-conversion process in order to post the disclosure on the website. This time and labor-intensive process not only results in the Commission maintaining two copies of every redacted document, but delays public access to the disclosures.

Virtually this same process will be necessary with online filing. The pdf is the most common tool for scanned documents, and when filers submit a tax return in pdf form, the Commission will have to convert the pdf to a tiff to perform the redactions, then convert the redacted copy back to a pdf for posting.

To achieve the goal of posting the form to the website at the moment the filer submits it, two law changes will need to be made: elimination of the option to file a tax return in lieu of listing income, and elimination of confidentiality for persons who voluntarily enter social security and account numbers onto the form itself.

With respect to the tax return, Article II, Section 8, Florida Constitution, provides that "until changed by law" persons filing full and public disclosure of financial interests have the option of either identifying each separate source and amount of income over \$1,000 or attaching their federal income tax return. In addition to foreclosing the ability to immediately make the disclosures available to the public because of the need to redact, attaching documents to an online "form" creates a number of practical problems:

- The filer will need the knowledge, skill, and equipment to scan and upload the tax return. Not all officials share the same level of technological sophistication, and problems with the submission, format, and visual quality and readability of the scanned document can be anticipated.

- Allowing filers to scan and upload tax returns will mean they will have the ability to scan and upload documents *other than* tax returns. Filers may then feel at liberty to complete all the entries on the form with a "see attached," and upload any documents they like, whether they disclose the desired information or not. The public is then left to sift through this information to try and identify assets, income, liabilities, etc.
- Searches on documents submitted by filers will be unreliable. The quality of the scan and the format of the document (for example, handwritten as opposed to typewritten) may mean the document cannot be searched at all.

Eliminating the option of filing a tax return could alleviate these concerns as well as the redaction bottleneck, and because it appears the Constitution allows the definition of "full and public disclosure of financial interests" to be "changed by law," the Legislature has the apparent ability to do so. Such an approach would also present the information to the public in a more straightforward way, and would be more informative than a tax return with respect to some types of income—for example rent or secondary sources of income—the sources of which must be revealed if completing the form, but are not necessarily revealed in a tax return.

While eliminating the tax return option would reduce the delay in posting disclosure forms to the website, it would not remove it altogether. Forms would still have to be reviewed to make sure a filer has not included his or her social security, bank account, or credit card numbers on the disclosure form itself. To enable the immediate posting of a form to the website as soon as it is entered, the law will need to be changed to reflect that when such information is voluntarily entered by a filer it loses its confidentiality.

It should be noted that there is certain information—typically the filer's home address—that may be required by law to be disclosed and may also be subject to some confidentiality. For example, Form 6 filers must identify assets worth more than \$1,000, which will usually include the filer's home. If the filer is a former law enforcement officer or other statutorily listed person, he or she is entitled to have the confidentiality of a home address maintained upon written

request.³² These are relatively uncommon circumstances, and flagging such disclosures for review is not anticipated to cause serious delay in posting to the website. In addition, OLITS is still exploring creation of a mechanism whereby a filer can be queried as to whether an entry is a home address and whether he or she is subject to an exemption from ch. 119, and if the answer is in the affirmative, block that information from public view.

Requirement of a Sworn Document

The Constitution requires that the Full and Public Disclosure of Financial Interests be "sworn," and while electronic notarization is technologically and legally possible,³³ for many filers it will not be feasible, and it would add an additional layer of complexity to an already complicated e-filing system. To enable e-filing, the law would need to be changed to define "sworn," in this context, as a statement that "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true" followed by the filer's electronic signature. The law should be clear that this "self-verification" applies only in the context of financial disclosure, because "sworn" statements and statements "under oath" are required in various other contexts,³⁴ in which there may be policy reasons to continue to require the solemnity of a physical swearing before a notary or other officer authorized to administer oaths.

Search function

Section 112.31445(3)(b) requires the Commission on Ethics address the establishment of "a procedure to make filings available in a searchable format that is accessible by an individual using standard web-browsing software." Forms will be searchable by name, organization, and county, and the goal is to allow the public to also be able to search for terms within the online form. This search may not return 100% of the information the searcher is interested in: one filer might disclose "Bank of America stock," while another reports "shares, Bank Am.," and a third,

"BOA stock." A search for "America" would only turn up the first. Because of the breadth of assets that might be held by filers, drop-down lists would not be feasible, but OLITS is continuing to investigate mechanisms for improving search scope and reliability.

As discussed earlier, searches of tax returns or other documents attached to disclosures, even if possible, would be very unreliable. Although programs exist which can search pdf files, so much is dependent upon the quality of the original document and the manner in which it is submitted that no representation could be made as to the ability to search such documents.

System Failure

Section 112.31445(3)(f) requires the Commission on Ethics to "address whether additional statutory or rulemaking authority is necessary for implementation of the system, and must include, at a minimum, the following elements: alternate filing procedures to be used in the event that the commission's electronic filing system is inoperable . . ."

Once the move to an online filing system is made, there will be no ability to revert to a paper system on a short-term basis. The number of preparatory steps—form creation, review by the Joint Administrative Procedures Committee, and mailing of forms—precludes that. A statutory change giving authority to the Commission Chair to extend the filing deadline by up to 90 days in the event of system failure would provide ample time for correction of any malfunction and allow filers to file electronically with minimal disruption.

Form 1 Filers

Once the system is built and has been tested and used by Form 6 filers, there is no reason not to eventually add the 35,594 persons who file Form 1. Although only 13,572 of those individuals currently file their forms with the Commission—the balance filing with the Supervisors of Elections—it serves no purpose to have persons filing in different places. For that

reason, as of January 1, 2020, all forms would be filed with the Commission, and the Supervisors of Elections would no longer have any responsibilities with respect to disclosure.

Law and Rule Changes

Significant changes to current law are needed to make e-filing a reality. The law will have to make the system mandatory and establish mechanisms, such as a requirement that officials provide e-mail addresses, to implement it. In addition, simplification and streamlining of the system is advisable to reduce confusion and error on the part of the filer. An appendix with suggested changes in the law, as well as the reasons for the changes, is attached. The Commission's administrative rules will have to be significantly rewritten to accommodate the changes as well; however, at this point, it is impossible to anticipate what changes would be required.

Conclusion

Electronic filing can assist the filer and make it more difficult for him or her to overlook something that should be reported, and it can aid the public in finding information. If the Commission no longer has to review every document for confidential information before the form is posted to the website, e-filing can also reduce the time lag in posting disclosures from a matter of days to immediate. However, e-filing will not "automate" disclosure. Filers will still have to locate and compile their own financial information, determine the nature of their interests in assets and liabilities, perform their own calculations, and read the instructions for themselves. Further, as the system will be geared to filers' e-mail addresses, failure of a filer to provide notice when an email address changes will completely undermine system functionality. Electronic filing will require a significant commitment of financial and human resources. This proposal addresses what would be required in order to make such a system work, in the event policy-makers determine such a commitment of resources is justified by the return.

¹ 2014 Annual Report of the Florida Commission on Ethics.

² Pursuant to Section 112.3144(2), Florida Statutes, when an individual who has a requirement to make financial disclosure qualifies for re-election or election to another office, he or she need only file the disclosure with the qualifying officer. The qualifying officer must then forward a copy of the disclosure to the Commission.

³ Although not required to do so by law, judges are required by Canon 6 of the Code of Judicial Conduct to file Full and Public Disclosure of Financial Interests. The law is inconsistent with respect to Judges of Compensation Claims: Section 112.3145(1)(b)1, Florida Statutes, requires only that they file a Statement of Financial Interests, while Section 440.442, Florida Statutes, requires that they comport with the Code of Judicial Conduct. In practice, the Judges of Compensation Claims file Full and Public Disclosure of Financial Interests.

⁴ These include, but are not limited to: Public counsel created by chapter 350; assistant state attorneys and public defenders; criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel; full-time state employees who serve as counsel or assistant counsel to any state agency; administrative law judges and hearing officers; any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions; the State Surgeon General; each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council, unless otherwise provided; the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division, or any person having the power normally conferred upon such persons, by whatever title; superintendents or institute directors of state mental health institutes established for training and research in the mental health field, or wardens or directors of any major state institution or facility established for corrections, training, treatment, or rehabilitation; business managers; purchasing agents having the power to make any purchase exceeding the threshold amount provided for in section. 287.017 for CATEGORY ONE; finance and accounting directors; personnel officers or grants coordinators for any state agency; any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions; each employee of the Commission on Ethics; appointed members of each board, commission, authority, or council having statewide jurisdiction, excluding members of advisory bodies; members of the Board of Governors of the State University System or a state university board of trustees; the Chancellor and Vice Chancellors of the State University System, and the president of a state university; and members of the judicial nominating commission for any district court of appeal or any judicial circuit. At the local level: every person elected to office in any political subdivision of the state, and every person appointed to fill a vacancy for an unexpired term in such an elective office; appointed members of the governing bodies of political subdivisions; members of community college or junior college district boards of trustees; members of boards having the power to enforce local code provisions; members of planning or zoning boards, boards of adjustment, boards of appeals, community redevelopment agency boards, or other boards having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards; members of pension or retirement boards having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; mayors; county or city managers or chief administrative employees of a county, municipality, or other political subdivision; county or municipal attorneys; finance directors of a county, municipality, or other political subdivision; chief county or municipal building code inspectors; county or municipal water resources coordinators; county or municipal pollution control directors; county or municipal environmental control directors; county or municipal administrators with power to grant or deny land development permits; chiefs of police; fire chiefs; municipal clerks; district school superintendents; community college presidents; district medical examiners; purchasing agents having the authority to make any purchase exceeding the threshold amount provided for in section 287.017 for CATEGORY ONE, on behalf of any political subdivision of the state or any entity thereof; and any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

⁵ 2014 Annual Report of the Commission on Ethics.

⁶ Section 112.3145(2)(b), Florida Statutes.

⁷ Sections 112.3144(7) and 112.3145(2)(b), Florida Statutes.

⁸ Sections 112.3144(8) and (10), and 112.3145(10) and (12), Florida Statutes.

⁹ Form 6F and Form 1F must be filed within 60 days of the filer's leaving public office or employment, unless the filer accepts another position within that 60-day window requiring them to file the same form as in their previous position, or if a former Form 1 filer is required to submit a Form 6 in his new position. Form 6X and Form 1X are used to amend previously filed Form 6s or Form 1s; a filer may submit as many as is necessary to make alterations to a Form 6 or Form 1.

¹⁰ Sections 112.3144(9) and 112.4135(11), Florida Statutes.

¹¹ Sections 112.3144(5)(c) and 112.3145(7)(c), Florida Statutes.

¹² Sections 112.3144(5)(e) and 112.3145(7)(c), Florida Statutes.

¹³ Sections 112.3144(5)(a) and 112.3145(7)(a)1, Florida Statutes.

¹⁴ Sections 112.3144(5)(a) and 112.3145(7)(a)1, Florida Statutes.

¹⁵ Section 112.3145(7)(a)2, Florida Statutes.

¹⁶ Sections 112.3144(5)(b) and 112.3145(7)(b), Florida Statutes.

¹⁷ Article II, Section 8, Florida Constitution; Section 112.3145(2)(b), Florida Statutes.

¹⁸ Sections 112.3144(5)(c) and 112.3145(7)(c), Florida Statutes.

¹⁹ Sections 112.3144(5)(e) and 112.3145(7)(c), Florida Statutes.

²⁰ Section 112.3144(2), Florida Statutes.

²¹ Section 119.071(5)(a)5 and 119.071(5)(b), Florida Statutes.

²² Florida Can't Explain Botched Launch of Unemployment Benefits Website
<http://www.tampabay.com/news/business/floridas-unemployment-benefits-website-was-not-ready-for-launch-and-state/2164594>

²³ Payment Snafus Plague Switch in Nearly 600,000 Citizens Policy Numbers
<http://www.mypalmbeachpost.com/news/business/payment-snafus-plague-switch-in-nearly-600000-citi/nmKHW/#4058d2c3.3592531.735738>

²⁴ Online Testing System Fails Again; Angry State Official Calls Glitches "Unacceptable"
<http://www.tampabay.com/news/education/testing/school-testing-suspended-across-florida-as-computer-problems-resurface/2226226>

²⁵ For example, a county commissioner leaving office on March 10, 2016 will have to file a Form 6 covering the calendar year 2015, and will have to file a Form 6F for the period January 1, 2016 through March 10, 2016.

²⁶ The statute of limitations for recovery of fines is 20 years. Section 112.3145(4), Florida Statutes.

²⁷ At the state level, the Department of State serves as the qualifying officer. At the local level, the Supervisors of Elections and municipal clerks serve as qualifying officers.

²⁸ Section 112.3144(2), Florida Statutes.

²⁹ The same alert will occur if a filer attempts to file multiple 6F forms.

³⁰ Section 119.071(5), Florida Statutes.

³¹ AGO 05-37.

³² Section 119.071(4)(d)3, Florida Statutes.

³³ Section 117.021, Florida Statutes—Electronic notarization.

³⁴ For example, complaints of breach of the public trust must be filed under oath. Section 112.324, Florida Statutes.

APPENDIX

- A Section 112.3145, Florida Statutes
- B Draft changes to Section 112.312, Florida Statutes
- C Draft changes to Section 112.3144, Florida Statutes
- D Draft changes to Section 112.3145, Florida Statutes
- E Draft changes to Section 112.326, Florida Statutes
- F Draft changes to Section 119.071, Florida Statutes
- G Enabling legislation for ch. 119 exemption in Section 112.3144
- H Enabling legislation for ch. 119 exemption in Section 112.3145

112.31445 Electronic filing system; full and public disclosure of financial interests.—

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting full and public disclosure of financial interests or any other form that is required pursuant to s. 112.3144.

(2) Beginning with the 2012 filing year, all full and public disclosures of financial interests filed with the commission pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 must be scanned and made publicly available by the commission through a searchable Internet database.

(3) By December 1, 2015, the commission shall submit a proposal to the President of the Senate and the Speaker of the House of Representatives for a mandatory electronic filing system. The proposal must, at a minimum:

(a) Provide for access through the Internet.

(b) Establish a procedure to make filings available in a searchable format that is accessible by an individual using standard web-browsing software.

(c) Provide for direct completion of the full and public disclosure of financial interests forms as well as upload such information using software approved by the commission.

(d) Provide a secure method that prevents unauthorized access to electronic filing system functions.

(e) Provide a method for an attorney or certified public accountant licensed in this state to sign the disclosure form to indicate that he or she prepared the form in accordance with s. 112.3144 and the instructions for completing and filing the disclosure form and that, upon his or her reasonable knowledge and belief, the form is true and correct.

(f) Address whether additional statutory or rulemaking authority is necessary for implementation of the system, and must include, at a minimum, the following elements: alternate filing procedures to be used in the event that the commission's electronic filing system is inoperable, issuance of an electronic receipt via electronic mail indicating and verifying to the individual who submitted the full and public disclosure of financial interests form that the form has been filed, and a determination of the feasibility and necessity of including statements of financial interests filed pursuant to s. 112.3145 in the proposed system.

History.—s. 8, ch. 2013-36.

112.312 Definitions.

(10) "Disclosure period" means the ~~taxable~~ calendar year ~~for the person or business entity, whether based on a calendar or fiscal year,~~ immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed. In the case of a final disclosure, the "disclosure period" is January 1 of the person's last year in office or employment until his or her last day of employment.¹

(19) "Person or business entities provided a grant or privilege to operate" ~~includes~~ means state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies, mortgage companies, credit unions, small loan companies, alcoholic beverage licensees, pari-mutuel wagering companies, utility companies, and entities controlled by the Public Service Commission or granted a franchise to operate by either a city or county government.²

¹ This change will alleviate confusion and ensure that all disclosures cover the same time period.

² The existing language suggests that there could be other businesses, which are not listed in the statute, but which filers would have to report. This change would provide certainty to filers.

112.3144 Full and public disclosure of financial interests.—

(1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics. Additionally, ~~beginning January 1, 2015,~~ an officer who is required to complete annual ethics training pursuant to s. 112.3142 must certify on his or her full and public disclosure of financial interests that he or she has completed the required training.

(2) Beginning January 1, 2019, full and public disclosure of financial interests, as well as amendments thereto and final full and public disclosure of financial interests must be filed electronically through a system created and maintained by the Commission on Ethics. Each unit of government shall make an electronic mail account available upon request of any of its officers or members for this purpose.¹ All persons required to file full and public disclosure of financial interests must provide an electronic mail address for this purpose, and shall inform the Commission immediately of any change in their electronic mail address.² Persons given a secure sign-on to the electronic filing system are responsible for protecting such from disclosure and are responsible for all filings using such credentials, unless they have notified the division that their credentials have been compromised.³

~~(23) A person who is required, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of financial interests and who has filed a full and public disclosure of financial interests for any calendar or fiscal year shall not be required to file a statement of financial interests pursuant to s. 112.3145(2) and (3) for the same year or for any part thereof notwithstanding any requirement of this part. If an incumbent in an elective office has filed the full and public disclosure of financial interests to qualify for election to the same office or if a candidate for office holds another office subject to the annual filing requirement, the qualifying officer shall forward an electronic copy of the full and public disclosure of financial interests to the commission no later than July 1. The electronic copy of the full and public disclosure of financial interests satisfies the annual disclosure requirement of this section.⁴ A candidate who does not qualify until after the annual full and public disclosure of financial interests has been filed pursuant to this section shall file a copy of his or her disclosure with the officer before whom he or she qualifies.~~

~~(34) For purposes of full and public disclosure under s. 8(a), Art. II of the State Constitution, the following items, if not held for investment purposes and if valued at over \$1,000 in the aggregate, may be reported in a lump sum and identified as "household goods and personal effects":~~

- ~~(a) Jewelry;~~
- ~~(b) Collections of stamps, guns, and numismatic properties;~~
- ~~(c) Art objects;~~

- (d) Household equipment and furnishings;
- (e) Clothing;
- (f) Other household items; and
- (g) Vehicles, including air and watercraft,⁵ for personal use.

(45)(a) With respect to reporting, on forms prescribed under this section, assets valued in excess of \$1,000 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual's legal percentage of ownership in the property. However, assets that are held jointly, with right of survivorship, must be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership which is equal to the reporting individual's interest in the capital or equity of the partnership.

(b)1. With respect to reporting liabilities valued in excess of \$1,000 on forms prescribed under this section for which the reporting individual is jointly and severally liable, the amount reported shall be based on the reporting individual's percentage of liability rather than the total amount of the liability. However, liability for a debt that is secured by property owned by the reporting individual but that is held jointly, with right of survivorship, must be reported at 100 percent of the total amount owed.

~~2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in subparagraph 1.~~⁶

(c) With respect to reporting income, on forms prescribed by this section, each separate source and amount of income which exceeds \$1,000 must be identified.⁷

(6) The commission shall not request, and no public officer or employee shall provide, in his or her statement of financial interests, any social security number, bank, mortgage, or brokerage account number, debit, charge, or credit card number, Personal Identification Number, or taxpayer identification number. In the event a public officer or employee voluntarily provides such information, it shall not be subject to any confidentiality or public records exemption found in s. 119.071(a)5 or 119.071(b).⁸

~~(57) The electronic forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics. Effective January 1, 2019, the commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:~~

(a) Not later than May 1 of each year, the commission shall prepare a current list of the names, ~~and~~ addresses, and electronic mail addresses of, and the offices held by, every person required to file full and public disclosure annually by s. 8, Art. II of the State Constitution, or other state law. In compiling the list, the commission shall be assisted by each unit of government in providing to the commission,

not later than February 1, at the request of the commission the name, address, ~~electronic mail address,~~ and name of the office held by each public official within the respective unit of government as of December 31 of the preceding year.⁹

(b) Not later than 30 days before July 1 of each year, the commission shall send notice of the requirement to file ~~mail a copy of the form prescribed for compliance with~~ full and public disclosure and a notice of the filing deadline via electronic mail to each person on the mailing list.

(c) Not later than 30 days after July 1 of each year, the commission shall determine which persons on the mailing list have failed to file full and public disclosure and shall send delinquency notices by ~~certified~~ electronic mail to such persons. Each notice shall state that a grace period is in effect until September 1 of the current year.¹⁰

(d) Statements must be ~~filed~~ received by the Commission not later than 5 p.m. of the due date. The Commission shall provide a receipt via electronic mail verifying to the individual who submitted the full and public disclosure of financial interests form that the form has been filed. For purposes of this section, a written declaration pursuant to sec. 92.525(2) and accompanied by an electronic signature shall satisfy the requirement that the full and public disclosure of financial interests be sworn.¹¹ ~~However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner.~~¹²

(e) All passwords held by the Commission pursuant to this section are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

1. Information entered in the electronic system for purposes of making financial disclosure is exempt from s. 119.07 (1) and s. 24(a), Art. I of the State Constitution.

2. Information entered in the electronic filing system is no longer exempt once the disclosure is submitted, or in the case of a candidate, filed with a qualifying officer, whichever occurs first.¹³

(~~e~~f) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 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 and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the mailing list

and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. ~~The rule must provide for and make specific the following:~~

~~1. The amount of the fine due is based upon the earliest of the following:~~

~~a. When a statement is actually received by the office.~~

~~b. When the statement is postmarked.~~

~~c. When the certificate of mailing is dated.~~

~~d. When the receipt from an established courier company is dated.¹⁴~~

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. Such fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys shall be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be ~~made in writing and received by the Commission~~¹⁵ within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. Failure to monitor an electronic mail account shall not constitute an unusual circumstance, and failure of notice shall not be considered an unusual circumstance if the person has not notified the Commission of a change in his or her electronic mail address.¹⁶

(fg) Any person subject to the annual filing of full and public disclosure under s. 8, Art. II of the State Constitution, or other state law, whose name is not on the commission's mailing list of persons required to file full and public disclosure is not subject to the fines or penalties provided in this part for failure to file full and public disclosure in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(gh) The notification requirements and fines of this subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and fines of this subsection do not apply to the final filing provided for in subsection (79).

(Hi) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

(68) If a person holding public office or public employment fails or refuses to file a full and public disclosure of financial interests for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324 (4), if the commission determines that the person willfully failed to file a full and public disclosure of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment. The commission shall forward its recommendation as provided in s. 112.324.¹⁷

(79) Each person required to file full and public disclosure of financial interests shall electronically file a final disclosure statement within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under s. 8, Art. II of the State Constitution, or is otherwise required to file full and public disclosure for the final disclosure period. The head of the agency of each person required to file full and public disclosure for the final disclosure period shall notify such persons of their obligation to file the final disclosure and may designate a person to be responsible for the notification requirements of this subsection.

(810)(a) The commission shall treat an amendment to a full and public disclosure of financial interests which is filed before September 1 of the year in which the disclosure is due as part of the original filing, regardless of whether a complaint has been filed. If a complaint alleges only an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an amendment to the full and public disclosure of financial interests correcting any errors. If the filer does not file an amendment to the full and public disclosure of financial interests within 30 days

after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.

(b) For purposes of the final full and public disclosure of financial interests, the commission shall treat an ~~new~~ amendment to a final full and public disclosure of financial interests as part of the original filing if filed within 60 days after the original filing, regardless of whether a complaint has been filed. If, more than 60 days after a final full and public disclosure of financial interests is filed, a complaint is filed alleging a complete omission of any information required to be disclosed by this section, the commission may immediately follow the complaint procedures in s. 112.324. However, if the complaint alleges an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint, other than notifying the filer of the complaint. The filer must be given 30 days to file an ~~new~~ amendment to the final full and public disclosure of financial interests correcting any errors. If the filer does not file an ~~new~~ amendment to the final full and public disclosure of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.¹⁸

(c) For purposes of this section, an error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest. However, failure to certify completion of annual ethics training required under s. 112.3142 does not constitute an immaterial, inconsequential, or de minimis error or omission.

(911)(a) An individual required to file a disclosure pursuant to this section may have the disclosure prepared by an attorney in good standing with The Florida Bar or by a certified public accountant licensed under chapter 473. After preparing a disclosure form, the attorney or certified public accountant must sign the form indicating that he or she prepared the form in accordance with this section and the instructions for completing and filing the disclosure forms and that, upon his or her reasonable knowledge and belief, the disclosure is true and correct. If a complaint is filed alleging a failure to disclose information required by this section, the commission shall determine whether the information was disclosed to the attorney or certified public accountant. The failure of the attorney or certified public accountant to accurately transcribe information provided by the individual required to file is not a violation of this section.

(b) An elected officer or candidate who chooses to use an attorney or a certified public accountant to prepare his or her disclosure may pay for the services of the attorney or certified public accountant from funds in an office account created pursuant to s. 106.141 or, during a year that the individual qualifies for election to public office, the candidate's campaign depository pursuant to s. 106.021.

(4012) The commission shall adopt rules and forms specifying how a person who is required to file full and public disclosure of financial interests may amend his or her disclosure statement to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

Effective date: 01/01/19

¹ Not all public officers and employees have access to a computer. If they do not, their agencies should provide an email account for them.

² An e-filing system will only be as good as the accuracy of the filer's information. A current email address is critical to the operation of the system.

³ Necessary so that the filer is accountable for the information submitted.

⁴ No longer necessary. Forms will go directly to the Commission, with the official printing a copy to file with his or her qualifying papers.

⁵ This is not required for e-filing, but would be a useful clarification.

⁶ This change is not required for e-filing, but would delete an extremely confusing provision.

⁷ This eliminates the option of filing a tax return. Attaching materials such as tax returns to the e-filed document reduces the reliability of searches, increases potential for filer error, and slows down availability of the filing to the public.

⁸ Filers will be able to enter free text in most of the form fields. This means, for example, that even though the form doesn't ask for a bank account number, it would be *possible* to type one in. This change makes it the filer's responsibility if that information is revealed when the form is posted on the website.

⁹ This gives the agency coordinators a date certain by which to have their lists to the Commission. Although coordinators will be able to update their lists in real time, there must be date certain after which the Commission can rely on the information provided in compiling its own list.

¹⁰ If the system is to be electronic, it does not make sense to go back to paper for the delinquency notice. In addition, despite the implication of its name, certified mail is not always reliable or swift. The filer will receive repeated e-mail reminders to make his or her disclosure.

¹¹ Article II, Section 8, Florida Constitution requires that the full and public disclosure of financial interests be "sworn." While electronic notarizations exist, they are not feasible in a practical sense. This change would allow self-verification of the disclosure, and is imperative for an e-filing system.

¹² Five o'clock is preferable to midnight because it allows filers who have questions or problems in submission to get assistance during regular working hours.

¹³ Keeping the filer's password and the draft information exempt is necessary to prevent fraud and identity theft. The language is based on sec. 106.0706.

¹⁴ No longer necessary.

¹⁵ Clarifies the form and due date for the request for an appeal.

¹⁶ Filers who change email addresses without notifying the Commission should not later be heard to claim that they did not get notice.

¹⁷ This is not required for e-filing, but clarifies the course to be taken by the Commission after a finding of willfulness.

¹⁸ E-filing is contemplated to allow filers to file only *one* disclosure per each disclosure period, to eliminate multiple filings covering the same time period, which are confusing and duplicative. However, filers will be able to file an unlimited number of amendments to that disclosure.

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(a) "Local officer" means:

1. Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

a. The governing body of the political subdivision, if appointed;

b. A community college or junior college district board of trustees;

c. A board having the power to enforce local code provisions;

d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;

e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or

~~f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.¹~~

3. Any person holding one or more of the following positions: mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent; community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, on behalf of any political subdivision of the state or any entity thereof.

(b) "Specified state employee" means:

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1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a criminal conflict and civil regional counsel, an assistant criminal conflict and civil regional counsel, a full-time state employee who serves as counsel or assistant counsel to any state agency, ~~the Deputy Chief Judge of Compensation Claims, a judge of compensation claims,~~² an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. The State Surgeon General or each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and ~~assistant bureau chief~~³ of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for ~~CATEGORY ONE~~ TWO,⁴ finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

(c) "State officer" means:

1. Any elected public officer, excluding those elected to the United States Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. An appointed member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body.

3. A member of the Board of Governors of the State University System or a state university board of trustees, the Chancellor and Vice Chancellors of the State University System, and the president of a state university.

4. A member of the judicial nominating commission for any district court of appeal or any judicial circuit.

(2)(a) A person seeking nomination or election to a state or local elective office shall file a statement of financial interests together with, and at the same time he or she files, qualifying papers. ~~When a candidate has qualified for office prior to the deadline to file an annual statement of financial interests, the statement of financial interests that is filed with the candidate's qualifying papers shall be deemed to satisfy the annual disclosure requirement of this section. The qualifying officer must record that the statement of financial interests was timely filed. However, if a A candidate does not qualify until after the annual statement of financial interests has been filed, the candidate may shall file a copy of his or her statement with the qualifying officer.~~⁵

(b) ~~E~~each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment or, in the case of a specified state employee, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first.

(c) Beginning January 1, 2020, all statements of financial interests, final statements of financial interest, and amendments thereto shall be filed electronically ~~State officers and specified state employees shall file their statements of financial interests with the Commission on Ethics. Local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside. Local officers who do not permanently reside in any county in the state shall file their statements of financial interests with the supervisor of elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.~~⁶ Each unit of government shall make an electronic mail account available upon request of any of its officers or members for this purpose.⁷ All persons required to file disclosure of financial interests shall inform the Commission immediately of any change in their electronic mail address.⁸ Persons given a secure

sign-on to the electronic filing system are responsible for protecting such from disclosure and are responsible for all filings using such credentials, unless they have notified the division that their credentials have been compromised.⁹

(3) The statement of financial interests for state officers, specified state employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure in a particular category, in which case that section of the statement shall be marked "not applicable."¹⁰ Otherwise, the statement of financial interests shall include, ~~at the filer's option, either:~~

~~(a)1. All sources of income in excess of 5 percent of the gross income received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;~~

~~2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received an amount which was in excess of 10 percent of his or her gross income during the disclosure period and which exceeds \$1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;~~

~~3. The location or description of real property in this state, except for residences and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of 10 percent of such person's total assets. For the purposes of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and~~

~~4. Every individual liability that equals more than the reporting person's net worth; or¹¹~~

~~(b)1. All sources of gross income in excess of \$2,500 received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;¹²~~

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received gross income exceeding \$5,000 during the disclosure period. The period for computing the

gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. The location or description of real property in this state, except for residence and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of \$10,000. For the purpose of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and

4. Every liability in excess of \$10,000.

~~A person filing a statement of financial interests shall indicate on the statement whether he or she is using the method specified in paragraph (a) or paragraph (b).~~

~~(4) The commission shall not request, and no public officer or employee shall provide, in his or her statement of financial interests, any social security number, bank, mortgage, or brokerage account number, debit, charge, or credit card number, Personal Identification Number, or taxpayer identification number. In the event a public officer or employee voluntarily provides such information, it shall not be subject to any confidentiality or public records exemptions found in 119.071(a)5 or 119.071(b).¹³~~

~~(4) Beginning January 1, 2015, a~~An officer who is required to complete annual ethics training pursuant to s. 112.3142 must certify on his or her statement of financial interests that he or she has completed the required training.

(5) Each elected constitutional officer, state officer, local officer, and specified state employee shall file a quarterly report of the names of clients represented for a fee or commission, except for appearances in ministerial matters, before agencies at his or her level of government. For the purposes of this part, agencies of government shall be classified as state-level agencies or agencies below state level. Each local officer shall file such report with the supervisor of elections of the county in which the officer is principally employed or is a resident. Each state officer, elected constitutional officer, and specified state employee shall file such report with the commission. The report shall be filed only when a reportable representation is made during the calendar quarter and shall be filed no later than the last day of each calendar quarter, for the previous calendar quarter. Representation before any agency shall be deemed to include representation by such officer or specified state employee or by any partner or associate of the professional firm of which he or she is a member and of which he or she has actual knowledge. For the purposes of this subsection, the term "representation before any agency" does not include appearances before any court or the Deputy Chief Judge of Compensation Claims or judges of compensation claims or representations on behalf of one's agency in one's official capacity.

Such term does not include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency or a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

(6) Each elected constitutional officer and each candidate for such office, any other public officer required pursuant to s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests, and each state officer, local officer, specified state employee, and candidate for elective public office who is or was during the disclosure period an officer, director, partner, proprietor, or agent, other than a resident agent solely for service of process, of, or owns or owned during the disclosure period a material interest in, any business entity which is granted a privilege to operate in this state shall disclose such facts as a part of the disclosure form filed pursuant to s. 8, Art. II of the State Constitution or this section, as applicable. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest.

~~(7) Forms for compliance with the disclosure requirements of Effective January 1, 2020, the disclosure of financial interests required by this section, as well as amendments thereto and final disclosures of financial interests shall be made by electronic filing with the Commission on Ethics, and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:~~

~~(a)1. Not later than May 1 of each year, the commission shall prepare a current list of the names, and addresses, and electronic mail addresses of, and the offices or positions held by, every state officer, local officer, and specified employee. In compiling the list, the commission shall be assisted by each unit of government in providing to the commission, not later than February 1, at the request of the commission, the name, address, electronic mail address, and name of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government as of December 31 of the preceding year.~~

~~2. Not later than May 15 of each year, the commission shall provide each supervisor of elections with a current mailing list of all local officers required to file with such supervisor of elections.~~

~~(b) Not later than 30 days before July 1 of each year, the commission and each supervisor of elections, as appropriate, shall send notice of the requirement to file mail a copy of the form~~

prescribed for compliance with subsection (3) and a notice of all applicable disclosure forms and filing deadlines via electronic mail to each person required to file a statement of financial interests.

(c) Not later than 30 days after July 1 of each year, the commission ~~and each supervisor of elections~~ shall determine which persons required to file a statement of financial interests ~~in their respective offices~~ have failed to do so and shall send delinquency notices by ~~certified~~ electronic mail, return receipt requested, to these persons. Each notice shall state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; ~~for notices sent by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency;~~ and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317.

~~(d) No later than November 15 of each year, the supervisor of elections in each county shall certify to the commission a list of the names and addresses of, and the offices or positions held by, all persons who have failed to timely file the required statements of financial interests. The certification must include the earliest of the dates described in subparagraph (f)1. The certification shall be on a form prescribed by the commission and shall indicate whether the supervisor of elections has provided the disclosure forms and notice as required by this subsection to all persons named on the delinquency list.~~

~~(ed) Statements must be filed received by the Commission not later than 5 p.m. of the due date. The Commission shall provide a receipt via electronic mail verifying to the individual who submitted the full and public disclosure of financial interests form that the form has been filed.¹⁴ However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner.~~

~~(e) All passwords held by the Commission pursuant to this section are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

~~1. Information entered in the electronic system for purposes of making financial disclosure is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

2. Information entered in the electronic filing system is no longer exempt once the disclosure is submitted, or in the case of a candidate, filed with a qualifying officer, whichever occurs first.¹⁵

(fg) Any person who is required to file a statement of financial interests and whose name is on the commission's mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however, this \$1,500 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 and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and procedures by which each person whose name is on the mailing list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. ~~The rule must provide for and make specific the following:~~

~~1. The amount of the fine due is based upon the earliest of the following:~~

~~a. When a statement is actually received by the office.~~

~~b. When the statement is postmarked.~~

~~c. When the certificate of mailing is dated.~~

~~d. When the receipt from an established courier company is dated.~~

~~2. For a specified state employee or a state officer, u~~Upon receipt of the disclosure statement by the commission or upon accrual of the maximum penalty, whichever occurs first, ~~and for a local officer upon receipt by the commission of the certification from the local officer's supervisor of elections pursuant to paragraph (d),~~ the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. The fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys are to be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be made in writing and received by the Commission¹⁶ within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. Failure to monitor an electronic mail account shall not constitute an unusual circumstance, and failure of notice shall not be considered an unusual circumstance if the person has not notified the Commission of a change in his or her electronic mail address.¹⁷

(gh) Any state officer, local officer, or specified employee whose name is not on the mailing list of persons required to file an annual statement of financial interests is not subject to the penalties provided in s. 112.317 or the fine provided in this section for failure to timely file a statement of financial interests in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(hi) The notification requirements and fines of this subsection do not apply to candidates or to the first or final filing required of any state officer, specified employee, or local officer as provided in paragraph (2)(b).

(ij) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such a fine to a collection agent as provided in s. 17.20.

(8)(a) The appointing official or body shall notify each newly appointed local officer, state officer, or specified state employee, not later than the date of appointment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The agency head of each employing agency shall notify each newly employed local officer or specified state employee, not later than the day of employment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The appointing official or body or employing agency head may designate a person to be responsible for the notification requirements of this paragraph.

(b) The agency head of the agency of each local officer, state officer, or specified state employee who is required to file a statement of financial interests for the final disclosure period shall notify such persons of their obligation to file the final disclosure and may designate a person to be responsible for the notification requirements of this paragraph.

(c) If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that

the officer or employee be removed from his or her public office or public employment. The commission shall forward its recommendation as provided in s. 112.324.¹⁸

(9) A public officer who has filed a disclosure for any calendar or fiscal year shall not be required to file a second disclosure for the same year or any part thereof, notwithstanding any requirement of this act, except that any public officer who qualifies as a candidate for public office shall file a copy of the disclosure with the officer before whom he or she qualifies as a candidate at the time of qualification.

(10)(a) The commission shall treat an ~~amendment to an~~ amendment to an annual statement of financial interests which is filed before September 1 of the year in which the statement is due as part of the original filing, regardless of whether a complaint has been filed. If a complaint alleges only an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an ~~amendment to the~~ amendment to the statement of financial interests correcting any errors. If the filer does not file an ~~amendment to the~~ amendment to the statement of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.

(b) For purposes of the final statement of financial interests, the commission shall treat ~~a new an~~ amendment to a final statement of financial interests as part of the original filing, if filed within 60 days of the original filing regardless of whether a complaint has been filed. If, more than 60 days after a final statement of financial interests is filed, a complaint is filed alleging a complete omission of any information required to be disclosed by this section, the commission may immediately follow the complaint procedures in s. 112.324. However, if the complaint alleges an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an ~~new~~ amendment to the final statement of financial interests correcting any errors. If the filer does not file an ~~new~~ amendment to the final statement of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.¹⁹

(c) For purposes of this section, an error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest. However, failure to certify completion of annual ethics training required under s. 112.3142 does not constitute an immaterial, inconsequential, or de minimis error or omission.

(11)(a) An individual required to file a disclosure pursuant to this section may have the disclosure prepared by an attorney in good standing with The Florida Bar or by a certified public accountant licensed under chapter 473. After preparing a disclosure form, the attorney or certified public accountant must sign the form indicating that he or she prepared the form in accordance with this

section and the instructions for completing and filing the disclosure forms and that, upon his or her reasonable knowledge and belief, the disclosure is true and correct. If a complaint is filed alleging a failure to disclose information required by this section, the commission shall determine whether the information was disclosed to the attorney or certified public accountant. The failure of the attorney or certified public accountant to accurately transcribe information provided by the individual who is required to file the disclosure does not constitute a violation of this section.

(b) An elected officer or candidate who chooses to use an attorney or a certified public accountant to prepare his or her disclosure may pay for the services of the attorney or certified public accountant from funds in an office account created pursuant to s. 106.141 or, during a year that the individual qualifies for election to public office, the candidate's campaign depository pursuant to s. 106.021.

(12) The commission shall adopt rules and forms specifying how a state officer, local officer, or specified state employee may amend his or her statement of financial interests to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

Effective date: January 1, 2019

¹ A law change in sec. 112.326 is recommended such that local government entities requiring disclosures for various boards will create and retain those disclosures locally.

² Pursuant to sec. 440.442, judges of compensation claims must comport with the Code of Judicial Conduct, which requires filing Full and Public Disclosure of Financial Interests, rather than the Statement of Financial Interests.

³ Assistant bureau chiefs have little authority, and there is virtually no demand for their disclosure forms from the public. Eliminating them from the list of persons required to file would streamline the system.

⁴ Pursuant to Section 287.017, Category One is purchasing authority of \$20,000, Category Two is \$35,000. Raising the purchasing category would streamline the system.

⁵ Current language is no longer necessary, as candidates will electronically submit their disclosures and print a copy for their qualifying officers.

⁶ This will remove responsibility from Supervisors of Elections and centralize the locus of filing with the Commission.

⁷ Not all public officers and employees have access to a computer. If they do not, their agencies should provide an email account for them.

⁸ An e-filing system will only be as good as the accuracy of the filer's information. A current email address is critical to the operation of the system.

⁹ Necessary so that the filer is accountable for the information submitted.

¹⁰ If a filer leaves a section blank, it's unclear whether he or she had nothing to report, or just overlooked that section. E-filing will be set up to force individuals to address each filing requirement.

¹¹ The option of "percentage" vs. "dollar value" is confusing to filers and the public, is error-prone, and usually results in less-informative disclosures. Eliminating this option will streamline the process and facilitate e-filing.

¹² If the filer includes all the information, there is no need to demand that they provide it in a particular order.

¹³ Filers will be able to enter free text in most of the form fields. This means, for example, that even though the form doesn't ask for a bank account number, it would be *possible* to type one in. This change makes it the filer's responsibility if that information is entered and then revealed when the form is posted on the website.

¹⁴ Five o'clock is preferable to midnight to allow filers who have questions or problems in submission to get assistance during regular working hours.

¹⁵ Keeping the filer's password and the draft information exempt is necessary to prevent fraud and identity theft. The language is based on sec. 106.0706.

¹⁶ Clarifies the form and due date for the request for an appeal.

¹⁷ Filers who change email addresses without notifying the Commission should not later be heard to claim that they did not receive notice.

¹⁸ This is not necessary for e-filing, but clarifies the course to be taken by the Commission after a finding of willfulness.

¹⁹ E-filing is contemplated to allow filers to file only *one* disclosure per each disclosure period. However, the filer would be able to file an unlimited number of amendments to that disclosure. This is to eliminate multiple filings covering the same time period, which are confusing and duplicative.

112.326 Additional requirements by political subdivisions and agencies not prohibited.—Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part.

(1) The appointing authority of a local government board or the enabling legislation, ordinance, or resolution creating the board may require that members of that board make disclosure of their financial interests. Forms for such disclosure shall be created and retained by the appointing authority or the local government entity enacting the enabling legislation, ordinance, or resolution.ⁱ

ⁱ When local government entities create boards, they can require the members thereof to file disclosure, no matter what the responsibilities of the board are. With this change, state law would govern who files disclosure with the Commission; while local entities could still mandate disclosure from members of the boards they create, they would be responsible for maintaining that disclosure.

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless voluntarily entered in a financial disclosure filed pursuant to Article II, Sec. 8, or sec. 112.3144 or 112.3145. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:

a. The disclosure of the social security number is expressly required by federal or state law or a court order.

b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7.a. For purposes of this subsection, the term:

(l) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. It does not include the display or bulk sale of social security

numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless voluntarily entered in a financial disclosure filed pursuant to Article II, Sec. 8, or sec. 112.3144 or 112.3145. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.