

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/SB 2642

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Posey

SUBJECT: Public Officers/Disclosures

DATE: April 25, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Bill 2642 creates an electronic filing system for financial disclosure, gift disclosure, and honoraria disclosure statements that are filed with the Florida Commission on Ethics (hereinafter, "commission") pursuant to s. 112.3144, s. 112.3145, s. 112.3148, and s. 112.3149, F.S. The bill proposes the creation of an internet-based system that would be accessible using standard web-browsing software and would allow for the direct entry of information. The commission would have the authority to make rules regarding this system which, at least, must provide for an alternate filing procedure if the electronic system is not functioning, an electronic receipt for the filer indicating the date and time when a statement is filed pursuant to one of the sections stated above, and for the collection of information if needed to issue an electronic receipt. When the electronic receipt issued by the electronic filing system is dated.

The bill provides an effective date of January 1, 2008.

The bill amends ss. 112.3144 and 112.3145 and creates s. 112.3152, of the Florida Statutes.

## II. Present Situation:

Florida's first Code of Ethics for state employees and non-judicial officers originated in a 1968 revision to the Florida Constitution. By constitutional initiative in 1976, Florida adopted the "Sunshine Amendment" which mandated additional ethical requirements for government. From this amendment to the constitution, the Florida Commission on Ethics was formed for the purpose of investigating public officers and employees regarding any violations of the public

trust.<sup>1</sup> The goals of Florida's Code of Ethics, which is currently located in chapter 112, part III of the Florida Statutes, are

to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.<sup>2</sup>

In order to achieve these goals, Florida's Code of Ethics requires public officers and employees along with candidates to disclose their financial interests. "The disclosure process serves to remind officials of their obligation to put the public interest above personal considerations. It also helps citizens to monitor the considerations of those who spend their tax dollars and participate in public policy decisions or administration."<sup>3</sup>

Section 8, Art. II, of the Florida Constitution states that "[a]ll elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests." This provision is codified by statute in section 112.3144, F.S., which requires these officers to file financial disclosure forms annually by July 1<sup>st</sup>.<sup>4</sup> The commission assembles a list of individuals who must file a financial disclosure statement.<sup>5</sup> The commission mails a notice to these individuals along with the form that must be filed.<sup>6</sup> Failure to timely file a disclosure statement pursuant to s. 112.3144, F.S., results in a fine of \$25 per day up to a maximum amount of \$1500. However, a civil penalty in addition to these fines may be imposed if the statement is more than 60 days late and a complaint is filed in accordance with s. 112.324, F.S.<sup>7</sup>

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest. This form is also filed annually and is due July 1<sup>st</sup>.<sup>8</sup> The commission compiles a separate list of individuals who must file this statement, and it provides a list of local officers to the supervisors of elections who also must file this statement.<sup>9</sup> A notice and a copy of the form that must be filed are mailed to the applicable individuals by either the commission or the supervisors.<sup>10</sup> Failure to timely file a disclosure statement pursuant to this section results in a fine of \$25 per day up to a maximum amount of \$1500. Furthermore, the penalties of s. 112.317, F.S., may apply.<sup>11</sup>

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<sup>1</sup> FLORIDA COMMISSION ON ETHICS, GUIDE TO THE SUNSHINE AMENDMENT AND CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES, pg. 1 (2005).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at pg. 14.

<sup>4</sup> Section 112.3144 (4)(c), (d), F.S.

<sup>5</sup> Section 112.3144(4)(a), F.S.

<sup>6</sup> Section 112.3144(4)(b), F.S.

<sup>7</sup> Section 112.3144(4)(e), F.S.

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

<sup>9</sup> Section 112.3145(6)(a), F.S.

<sup>10</sup> Section 112.3145(6)(b), F.S.

<sup>11</sup> Section 112.3145(6)(c), F.S.

Section 112.3148, F.S., requires a donor to file a quarterly report with the commission regarding gifts made during the preceding calendar quarter that have a value over \$25, but not over \$100, with exceptions.<sup>12</sup> This statute also requires reporting individuals and procurement employees who receive from governmental entities gifts that have a value in excess of \$100 to file an annual report with their financial disclosure statement that details each gift received.<sup>13</sup> Furthermore, reporting individuals and procurement employees must also file a quarterly report with the commission providing information about gifts that have a value in excess of \$100 and are received by the individual or employee. This quarterly report is given under oath and is only filed when the individual or employee has received gifts during the calendar quarter.<sup>14</sup>

Section 112.3149, F.S., allows certain entities to provide expenses relating to honorarium events to reporting individuals and procurement employees.<sup>15</sup> When this occurs, the individual or employee must file an annual disclosure statement revealing these expenses. The annual statement is due July 1<sup>st</sup> and is filed with the financial disclosure statement required by either the constitution or s. 112.3145, F.S.<sup>16</sup>

### III. Effect of Proposed Changes:

#### Section 1. Electronic Filing System (creating section 112.3152, F.S.)

Senate Bill 2642 authorizes the commission to create an online, electronic filing system for financial disclosure, gift disclosure, and honoraria disclosure statements that are filed with the commission. The proposed language provides that the electronic filing system will be an Internet system that will record and report public information filed with the commission. Therefore, anyone who files financial disclosure, gift disclosure, and honoraria disclosure statements *with the commission*<sup>17</sup> must file these statements by using the electronic filing system. The system must:

- Provide Internet accessibility for anyone using standard web-browsing software,
- Provide for the direct entry of information, and
- Prevent unauthorized access to the electronic filing system's functions.

The proposed language gives the commission the option of allowing the system to provide for the upload of information from software they may certify in the future as a companion to the electronic filing system. The bill also gives the commission the ability to make rules for the administration of the electronic filing system which must at least:

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<sup>12</sup> Section 112.3148(5)(b), F.S.

<sup>13</sup> Section 112.3148(6)(d), F.S.

<sup>14</sup> Section 112.3148(8), F.S.

<sup>15</sup> Section 112.3149(5), F.S.

<sup>16</sup> Section 112.3149(6), F.S.

<sup>17</sup> The electronic filing system only applies to forms that must be filed with the commission. If an individual files a disclosure form referenced by SB 2642 with an entity other than the commission, then the individual will not file the form electronically, but will use the current statutory paper method of filing the form.

- Provide for alternate filing procedures if the electronic filing system is not functioning,
- Issue an electronic receipt to the individual submitting the statement which provides verification that the statement was filed and the date and time at which the filing occurred, and
- If necessary, provide for the collection of information to issue an electronic receipt.

The bill also requires the commission to make all statements and reports filed electronically pursuant to this newly created section Internet available and accessible in an easily understood format.

The bill provides that statements which are filed by electronic means must be completed and filed by midnight of the due date designated in statute. If these reports are not filed by midnight of the due date, the statements are deemed late filed and subject to the current penalty provisions applicable to these statements.

Attachments filed as part of or in conjunction with the statements or reports filed electronically pursuant to this section must be filed not later than 5 p.m. of the due date. A statement will not be timely regardless of when filed with the commission unless all required attachments are timely filed.

Furthermore, the proposed language mandates that statements filed electronically and in accordance with s. 112.3144 and s. 112.3148(8), F.S., are filed under oath. The proposed language also makes clear that individuals who file statements electronically are still subject to the penalty provisions of s. 112.317, F.S., and the requirements of ss. 112.3144, 112.3145, 112.3148, and 112.3149, F.S.

The bill provides that individuals are responsible for protecting their sign-on information and are responsible for any filings that are made using this information unless they have advised the commission that this information has been compromised.

## **Section 2.**

The proposed language amends s. 112.3144, F.S., by requiring that statements filed in accordance with this section must be filed using the electronic filing system. The bill also removes language that would require the commission to distribute forms for the filing of financial disclosures since the disclosure statements will be filed electronically.

The amount of a fine that is issued for failing to timely file a statement or report that is filed electronically pursuant to s. 112.3144, F.S., will be based upon the earliest of the following:

- When the statement is actually received by the commission, or
- When the electronic receipt issued by the electronic filing system is dated.

The amount of fine that is issued for failing to timely file attachments as part of or in conjunction with the statements or reports filed electronically pursuant to s. 112.3152, F.S.:

- When the attachment is actually received by the office.
- When the attachment is postmarked.
- When the certificate of mailing is dated.
- When the receipt from an established courier company is dated.

**Section 3.**

The proposed language also amends s. 112.3145, F.S., by requiring that statements filed with the commission pursuant to this section must be filed using the electronic filing system. The bill removes the requirement that the commission distribute forms for the filing of disclosure statements because the statements will be filed using the electronic filing system.

The amount of a fine that is issued for failing to timely file a statement with the commission pursuant to s. 112.3145, F.S., will be based upon the earliest of the following:

- When the statement is actually received by the commission, or
- When the electronic receipt issued by the electronic filing system is dated.
- For attachments filed as part of or in conjunction with the statements or reports filed electronically pursuant to s. 112.3152 and all other statements:
  - When a statement or attachment is actually received by the office; or
  - When the statement or attachment is postmarked.

**Section 4.**

The bill provides an effective date of January 1, 2008.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

This bill is linked to Senate Bill 2612, a public records bill associated with the electronic filing of financial disclosure, gift disclosure, and honoraria disclosure statements that exempts passwords, user identifications, and draft reports, statements, files, or records stored in the electronic filing system, until the report or statement has been submitted as filed.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost to create and operate the Internet-based electronic filing system required by Senate Bill 2642 for at least five years has been estimated to be over \$2,500,000. However, the actual cost of this system could vary substantially based on a range of factors that might be encountered during the development process. It is unclear whether the commission could administer the system without increasing its current staffing levels.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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