

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 631 Pub. Rec./Estate Inventories and Accountings
SPONSOR(S): Civil Justice & Courts Policy Committee and Hukill
TIED BILLS: HB 599 **IDEN./SIM. BILLS:** CS/SB 1400

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	8 Y, 0 N, As CS	DeZego	De La Paz
2)	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, an inventory or amended or supplementary inventory of a decedent's estate is exempt from public records requirements with the exception that the inventory is subject to inspection by specific persons.

This bill provides a public record exemption for estate accountings as well as inventories and accountings that are filed with the clerk of court in a probate proceeding in connection with the spousal elective share procedure. This bill provides that only specific persons may inspect or copy the inventories and accountings. In addition, the bill provides for retroactive application of the public record exemption.

In accordance with s. 119.15, F.S., this exemption will stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature. The effective date of this bill is linked to the passage of HB 599, which provides multiple changes to the probate code and the administration of estates.

This bill does not appear to have an impact on state or local government revenues or expenditures.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.

Sunset Review

The Open Government Sunset Review Act² provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. Furthermore, the Open Government Sunset Review Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:³

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

³ Section 119.15(6), F.S.

- exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Effect of Bill

Current Law

A personal representative must file a verified inventory of the decedent's estate property.⁴ The inventory must be listed with reasonable detail and include an estimated fair market value for each item at the date of the decedent's death. Currently, an inventory or amended or supplementary inventory of a decedent's estate is exempt from public inspection with the exception that the inventory is subject to inspection, unless otherwise ordered by the court for good cause shown, by the clerk of the court, the clerk's representative, the personal representative, the personal representative's attorney, and any other interested persons.

Proposed Changes

This bill provides that any inventory or accounting of an estate that is filed with the clerk of the court in conjunction with the administration of an estate, or that deals with the elective share of a surviving spouse,⁵ is confidential and exempt from public records requirements. The inventory or accounting must be disclosed, by the custodian only, for inspection or copying:

- To the personal representative;
- To the personal representative's attorney;
- To an interested person as defined in s. 731.201, F.S.⁶; or
- By a court order for good cause.

This bill applies retroactively to exempt any inventory or accounting of an estate.

In addition, this bill provides a public necessity statement which provides that public disclosure of estate inventories and accountings would make financial information of the decedent public and would cause undue harm to the heirs of the decedent or beneficiaries of the decedent's estate.

This bill provides for future review and repeal of the exemptions pursuant to the Open Government Sunset Review Act. In accordance with s. 119.15, F.S., this exemption will stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

The effective date of this bill is linked to the passage of HB 599, which provides numerous changes to the probate code and the administration of estates.

B. SECTION DIRECTORY:

Section 1 amends s. 733.604, F.S., relating to public records exemptions for inventories and accountings.

Section 2 provides a public necessity statement.

⁴ Section 733.604, F.S.

⁵ See Part II of ch. 732, F.S.,

⁶ An "interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. For example, in any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate is an interested person.

Section 3 provides an effective date of July 1, 2009, if HB 599 or similar legislation is adopted in the same legislative session or an extension of session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Therefore, this bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Civil Justice & Courts Policy Committee adopted one amendment to this bill which deleted an unnecessary reference to part V of ch. 732, F.S. The bill was then reported favorably. This analysis is drafted to the bill as amended.