

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7101 PCB GVOPS 14-04 OGSR/Inventory of Estate or Elective Estate and Accounting in Estate Proceeding

**SPONSOR(S):** Government Operations Subcommittee, Combee

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	16 Y, 0 N	Williamson	Camechis

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt from public record requirements. The confidential and exempt inventory or accounting may be disclosed for inspection or copying in certain instances.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.<sup>4</sup> A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.<sup>5</sup> A person who does not live in Florida may qualify as a personal representative if certain requirements are met.<sup>6</sup>

##### Inventory of Property of an Estate

A personal representative of an estate is required to file an inventory of the property in an estate within 60 days after issuance of letters of administration of the estate.<sup>7</sup> The inventory must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.<sup>8</sup>

The personal representative must file a verified amended or supplementary inventory if he or she learns that property was not included in the original inventory or learns that the estimated value or description was erroneous or misleading.<sup>9</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 733.302, F.S.

<sup>5</sup> Section 733.303(1), F.S.

<sup>6</sup> See s. 733.304, F.S.

<sup>7</sup> Section 733.604(1)(a), F.S.; Florida Probate Rule 5.340(1).

<sup>8</sup> *Id.*

<sup>9</sup> Section 733.604(2), F.S.

A beneficiary may make a written request for:

- An explanation from the personal representative regarding how the inventory value was determined; or
- A copy of the appraisal if an appraisal was obtained.<sup>10</sup>

### Accountings of an Estate

The Florida Probate Rules provide requirements for the contents of and accounting standards for a fiduciary accounting in a probate proceeding. The fiduciary accounting must include:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration; and
- A schedule of assets at the end of the accounting period.<sup>11</sup>

The accounting must be verified by the fiduciary filing the accounting.<sup>12</sup>

### Elective Share

The surviving spouse of a decedent who lives in Florida has the right to a share of the elective estate of the decedent.<sup>13</sup> The elective share is an amount equal to 30 percent of the elective estate.<sup>14</sup>

### Public Record Exemption under Review

Current law provides a public record exemption for inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt<sup>15</sup> from public record requirements.<sup>16</sup> Current law provides for retroactive application<sup>17</sup> of the public record exemption under review.<sup>18</sup>

Such inventory or accounting may be disclosed for inspection or copying:

- To the personal representative or the personal representative's attorney;
- To an interested person;<sup>19</sup> or
- By court order upon a showing of good cause.<sup>20</sup>

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<sup>10</sup> Section 733.604(3), F.S.

<sup>11</sup> Florida Probate Rule 5.346(a).

<sup>12</sup> Florida Probate Rule 5.346(d).

<sup>13</sup> Section 732.201, F.S.

<sup>14</sup> Section 732.2065, F.S.; *see s. 732.2035, F.S.*, for a discussion of property entering into the elective estate; *see also s. 732.2055, F.S.*, for a discussion of the valuation of the elective estate.

<sup>15</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62* (August 1, 1985).

<sup>16</sup> Section 733.604(2)(b)1.-3., F.S.

<sup>17</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>18</sup> Section 733.604(2)(b)5., F.S.

<sup>19</sup> Section 731.201(23), F.S., defines "interested person" to mean

[A]ny person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

<sup>20</sup> Section 733.604(2)(b)4., F.S.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>21</sup>

During the 2013 interim, subcommittee staff met with representatives from the Office of the State Courts and the Real Property, Probate, and Trust Law Section of The Florida Bar as part of the Open Government Sunset Review process. The representatives recommended reenactment of the public record exemption due to the sensitive financial information that is contained in such inventories and accountings.<sup>22</sup>

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for an inventory of an estate or elective estate, or an accounting in an estate proceeding. It also clarifies that the public record exemption applies to such accounting when it is filed with the clerk of court.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 733.604, F.S., to save from repeal the public record exemption for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding.

Section 2 provides an effective date of October 1, 2014.

## **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**

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<sup>21</sup> Section 733.604(2)(b)6. F.S.

<sup>22</sup> Meeting on October 15, 2013, with Eric Maclure, representing the Office of the State Courts, and Martha Edenfield, representing the Real Property, Probate, and Trust Section of The Florida Bar.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.