

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 702

INTRODUCER: Senator Lee

SUBJECT: Qualified Blind Trusts

DATE: March 25, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 702 repeals section 112.31425, Florida Statutes (F.S.). Under current law, the placement of assets and investments in a qualified blind trust by a public officer avoids conflicts of interest that might otherwise require that the interests be divested or that the public officer recuse himself or herself.

The bill repeals the statute that addresses qualified blind trusts, eliminating the operation and parameters of the described trust. Also repealed is the statutory determination that a public officer who holds a beneficial interest in a qualified blind trust does not have a statutorily prohibited conflict of interest with regard to matters pertaining to that interest.

The bill repeals language that provides that a public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income, but otherwise does not address requirements for financial disclosure reporting in the Florida Constitution<sup>1</sup> or elsewhere in chapter 112, F.S.<sup>2</sup>

## II. Present Situation:

### Enactment of Section 112.31425, F.S.

In 2013, the Legislature enacted a comprehensive ethics reform bill<sup>3</sup> that included, among many other provisions, the creation of a statute<sup>4</sup> that codifies a “qualified blind trust” as a mechanism

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<sup>1</sup> FLA. CONST. art. II, s. 8.

<sup>2</sup> See ss. 112.3144 and 112.3145, F.S.

<sup>3</sup> CS/SB 2 (2013 Reg. Session), Ch. 2013-36, s. 5, Laws of Fla.

<sup>4</sup> Section 112.31425, F.S.

for addressing conflicts of interest issues. Before the 2013 legislation, there was no provision of the Florida Statutes addressing the use of blind trusts by public officers.

Florida's Nineteenth Statewide Grand Jury convened in 2010 to investigate public corruption and develop recommendations for strengthening current laws. Noting that other states and the federal government have authorized the use of blind trusts by public officers, the grand jury recommended that Florida public officials use blind trusts to avoid conflicts of interest. The grand jury concluded that the use of blind trusts eliminates the appearance of impropriety for the policy decisions of public officials.<sup>5</sup> In its 2012 annual report, the Florida Commission on Ethics lent its support to the enactment of laws prescribing the use of blind trusts by Florida Cabinet members.<sup>6</sup> The enactment of s. 112.31425, F.S., in 2013 incorporated the recommendations of the Nineteenth Statewide Grand Jury and the Florida Commission on Ethics. The law was modeled after its federal counterpart.

### **Qualified Blind Trusts**

Florida's qualified blind trust statute contains a legislative finding "that if a public officer creates a trust and does not control the interests held by the trust, his or her official actions will not be influenced or appear to be influenced by private considerations."<sup>7</sup> The statute prescribes that "if a public officer holds a beneficial interest in a qualified blind trust as described in this section, he or she does not have a conflict of interest prohibited under s. 112.313(3) or (7), F.S., or a voting conflict of interest under s. 112.3143, F.S., with regard to matters pertaining to that interest."<sup>8</sup>

Under the statute, a public officer may create a qualified blind trust if it meets the following requirements:

- The appointed trustee must be a bank, trust company, or other institutional fiduciary, or an attorney, certified public accountant, broker, or investment advisor;
- The individual responsible for managing the trust may not be:
  - the public officer's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin, or the spouse of any such person;
  - an elected or appointed public officer or a public employee;
  - a person appointed to serve in an agency by the public officer or by a public officer or public employee supervised by the public officer; or
  - a business associate or principal of the public officer;<sup>9</sup>
- Assets in the trust must be free of any restrictions on their transfer or sale and the trust may not contain investments or assets the transfer of which without the public officer's knowledge is improbable or impractical;<sup>10</sup>

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<sup>5</sup> See 19<sup>th</sup> Statewide Grand Jury, Case No. SC 09-1910, First Interim Report, *A Study of Public Corruption in Florida & Recommended Solutions* 69-70 (December 29, 2010).

<sup>6</sup> Florida Commission on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2012*.

<sup>7</sup> Section 112.31425(1), F.S.

<sup>8</sup> Section 112.31425(2), F.S.

<sup>9</sup> Section 112.31425(6)(a), F.S.

<sup>10</sup> Section 112.31425(6)(b), F.S.

- The trust agreement must:
  - state that its purpose is to remove from the grantor control and knowledge of investment of trust assets so that conflicts of the grantor's interests are eliminated;
  - give the trustee complete discretion to manage the trust;
  - prohibit communication between the trustee and the public officer, or the person who has a beneficial interest in the trust, concerning the holdings or sources of income of the trust;
  - provide that the trust tax return is prepared by the trustee and that any information relating thereto is not disclosed to the public officer or to the person who has a beneficial interest;
  - permit the trustee to notify the public officer of the date of disposition and value at disposition of any original investment or interest in real property to the extent required by federal tax law; and
  - prohibit the trustee from disclosing to the public officer or the person who has a beneficial interest any information concerning replacement assets to the trust;<sup>11</sup> and
- The public officer must file with the Commission on Ethics within 5 business days after the trust agreement is executed a notice containing:
  - the date of execution of the agreement;
  - the name and address of the trustee;
  - acknowledgment by the trustee that he or she has agreed to serve as trustee;
  - a copy of the trust agreement or certification by the trustee that the trust meets all of the requirements of s. 112.31425, F.S.; and
  - a complete list of the assets placed in the trust that the public officer would be required to disclose pursuant to s. 112.3144, F.S., (Full and public disclosure of financial interests – Form 6) or s. 112.3145, F.S., (Disclosure of financial interests and clients represented before agencies – Form 1). s. 112.31425(6), F.S.<sup>12</sup>

A public officer may not attempt to influence or exercise any control over decisions regarding the management of assets in a qualified blind trust. Neither the public officer nor any person having a beneficial interest in the qualified blind trust may make any effort to obtain information with respect to the holdings of the trust.<sup>13</sup> A public officer or the person who has a beneficial interest may not have any direct or indirect communication with the trustee with respect to the trust, with limited exceptions.<sup>14</sup>

A public officer must report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure form, if the value is required to be disclosed. The public officer must also report the blind trust as a primary source of income on his or her financial disclosure forms and its amount, if the amount of income is required to be disclosed.<sup>15</sup> If the trust is revoked or if the covered public official learns of any replacement assets that have been added to the trust, the public official must file an amendment to his or her most recent financial disclosure statement to disclose the previously unreported pro rata share of the trust's interest in investments or income.<sup>16</sup>

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<sup>11</sup> Section 112.31425(6)(c), F.S.

<sup>12</sup> Section 112.31425(6)(d), F.S.

<sup>13</sup> Section 112.31425(3), F.S.

<sup>14</sup> Section 112.31425(4), F.S.

<sup>15</sup> Section 112.31425(5), F.S.

<sup>16</sup> Section 112.31425(7), F.S.

A public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income.<sup>17</sup>

### **Constitutional Challenge to Section 112.31425, F.S.**

In 2014, the constitutionality of s. 112.31425, F.S., was challenged. The petitioner sought a declaratory judgment that because the statute allows public officers to file financial disclosure statements without disclosing the value of individual assets contained within qualified blind trusts, it violates the requirement of full and public financial disclosure found in Article II, section 8 of the Florida Constitution. Upon appeal from a circuit court judgment finding the statute constitutional, the First District Court of Appeal vacated the declaratory judgment entered by the court because the petitioner failed to present a justiciable controversy. During the period of litigation, no public officer had created or reported a qualified blind trust in any required financial disclosure.<sup>18</sup>

### **Blind Trust Provisions for Federal Public Officials**

There is no federal statute which requires federal public officials to place assets into a blind trust upon election or while serving. However, the Ethics in Government Act of 1978 formally established “qualified blind trusts” that may be created by federal public officials on their own initiative to avoid potential conflict issues or to ease reporting burdens.<sup>19</sup> Qualified blind trusts simplify disclosure, which requires identification of the blind trust and overall income from it, as opposed to identification and income of all individual underlying assets and transactions.<sup>20</sup>

A member of Congress must disclose in his or her financial disclosure report the category of value of the total cash value of his or her interest in a qualified blind trust.<sup>21</sup> A member of Congress need not report the holdings of or the source of income from any of the holdings of a qualified blind trust, but must report the category of value of the amount of income received by him or her, his or her spouse, or any dependent child from the qualified blind trust.<sup>22</sup>

The requirements and limitations of a qualified blind trust under federal law are similar to Florida’s statute,<sup>23</sup> but with stricter oversight and enforcement provisions. The proposed blind trust instrument and the proposed trustee must be approved by the federal public official’s supervising ethics office.<sup>24</sup> In addition, the U.S. Attorney General may bring a civil action in United States district court against any individual who knowingly and willfully violates prohibitions against disclosure or solicitation of information. The court in which such an action is brought may assess a civil penalty in any amount up to \$10,000. The Attorney General may

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<sup>17</sup> Section 112.31425(5), F.S.

<sup>18</sup> *Apthorp v. Detzner*, 162 So. 3d 236 (Fla. 1<sup>st</sup> DCA 2015).

<sup>19</sup> Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824.

<sup>20</sup> 5 U.S.C. app. s. 102(f).

<sup>21</sup> 5 U.S.C. app. s. 102(a)(8).

<sup>22</sup> 5 U.S.C. app. s. 102(f)(2).

<sup>23</sup> Section 112.31425, F.S.

<sup>24</sup> 5 U.S.C. app. s. 102(f)(3).

also bring a civil action in United States district court against any individual who negligently violates prohibitions against disclosure or solicitation of information. In such case, a civil penalty may be assessed up to \$5,000.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** repeals section 112.31425, F.S., which permitted the placing of such assets and investments in a qualified blind trust to avoid a requirement that the interests be divested or that the public officer recuse himself or herself.

The bill repeals the statutory provision that addresses qualified blind trusts, eliminating the operation and parameters of the described trust. Also repealed is the statutory determination that a public officer who holds a beneficial interest in a qualified blind trust does not have a conflict of interest prohibited under section 112.313(3) or (7), F.S., (doing business with one's agency and conflicting employment or contractual relationship) or a voting conflict of interest under section 112.3143, F.S., with regard to matters pertaining to that interest.

The repeal of section 112.31425, F.S., removes language that requires a public officer who holds a beneficial interest in a qualified blind trust to:

- File a notice setting forth the following with the Commission on Ethics within 5 business days after the qualified blind trust agreement is executed:
  - the date the agreement was executed;
  - the name and address of the trustee;
  - an acknowledgment by the trustee that he or she has agreed to serve as trustee;
  - a copy of the trust agreement or a certification by the trustee that the trust meets all of the requirements of section 112.31425, F.S. (qualified blind trusts); and
  - a complete list of assets placed in the trust that the public officer would be required to disclose in a full and public disclosure of financial interests (CE Form 6) or a disclosure of financial interests (CE Form 1);
- Report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure forms and report the blind trust as a primary source of income and the amount of that income on his or her financial disclosure forms; and
- File an amendment to his or her most recent financial disclosure statement, if the trust is revoked or if the covered public official learns of any replacement assets that have been added to the trust, to disclose the previously unreported pro rata share of the trust's interest in investments or income.

The bill does not address the blind trust legal arrangement.

Section 8, Art. II of the Florida Constitution, requiring full and public disclosure of financial interests to mean reporting net worth and identifying each asset and liability in excess of \$1,000 and its value; section 112.3144, F.S., specifying the requirements for full and public disclosure of financial interests (CE Form 6); and section 112.3145, F.S., specifying the requirements for disclosure of financial interests (CE Form 1) are not affected by the bill.

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<sup>25</sup> 5 U.S.C. app. s. 102(f)(6).

The repeal of s. 112.31425, F.S. removes the provision that a public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income.

**Section 2** provides that the bill takes effect on January 1, 2020.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill repeals section 112.31425 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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