

**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 650

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Inventories of an Estate or Elective Estate

DATE: March 11, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Munroe	Cibula		<b>JU SPB 7018 as introduced</b>
1.	McVaney	McVaney	GO	<b>Pre-meeting</b>
2.			RC	

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**I. Summary:**

SB 650 removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws.

**II. Present Situation:**

The Florida Probate Code makes the following records filed in probate proceedings confidential and exempt from disclosure requirements under the public records laws:

- Estate inventories;
- Any inventory of an elective estate; and
- Any accounting of an estate.<sup>1</sup>

These exemptions will be repealed on October 2, 2014, unless they are reenacted by the Legislature.<sup>2</sup> In 2009, when the exemptions were enacted, the Legislature found that the exemptions were necessary because the “public disclosure of estate inventories and accountings . . . would produce undue harm to the heirs of the decedent or beneficiaries of the decedent’s estate.”<sup>3</sup>

**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

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<sup>1</sup> Section 733.604(1)(b), F.S.

<sup>2</sup> Chapter 2009-230, Laws of Fla.

<sup>3</sup> *Id.*

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>

### **Estate Inventories**

Within 60 days after issuance of letters of administration of an estate, a personal representative must file an inventory of the property of the estate.<sup>7</sup> The inventory of property 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 inventory may be disclosed only to the personal representative, the personal representative's attorney, other interested persons, or by court order upon a showing of good cause.<sup>9</sup> The personal representative must file a verified amended or supplementary inventory if he or she learns that property was left out of the original inventory or learns that the estimated value or description was erroneous or misleading.<sup>10</sup>

### **Elective Share of a Surviving Spouse**

Unless waived, a surviving spouse may elect to take the elective share of a decedent's estate instead of assets provided to a surviving spouse through the decedent's will. The elective share generally includes 30 percent of the fair market value of all assets subject to the administration of the estate except for real property not located in Florida.<sup>11</sup>

### **Estate Accountings**

The Florida Probate Rules specify requirements for the contents and accounting standards for a fiduciary accounting that must be verified and filed in a probate proceeding.<sup>12</sup> The content includes:

- 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.

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<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> Fla. Prob. R. 5.340; *see s. 733.604, F.S.* In general, a personal representative of an estate is appointed upon the filing of letters of administration with the court. *See 31 AM. JUR. 2D Executors and Administrators s. 237.* As a prerequisite to the issuance of letters of administration in a probate proceeding, the following pleadings and papers must be filed with the court: petition for administration, will (if any), proof of will (if applicable), order appointing personal representative, oath of the representative, any required bond, and designation of and acceptance by a resident agent, are filed. *See Henry P. Trawick, Jr., REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, 2010, s. 5:6 Issuance of letters of administration (2009-10 ed.).*

<sup>8</sup> Section 733.604(2), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 733.604(2), F.S.

<sup>11</sup> Section 732.2065, F.S.; *see Henry P. Trawick, Jr., Trawick, REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, s. 5:6 Elective Share (2009-10 ed.).*

<sup>12</sup> Fla. Prob. R. 5.346.

## Public Records Requirements

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>13</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>14</sup>

Only the Legislature may create an exemption to public records requirements.<sup>15</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>16</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>17</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>18</sup>

## Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>19</sup> provides for the systematic review of an exemption from the Public Records Act in the 5th year after its enactment. The act states that an exemption may be maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>20</sup>

An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.<sup>21</sup> An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>22</sup>

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<sup>13</sup> FLA. CONST. art. I, s. 24(a).

<sup>14</sup> *Id.*

<sup>15</sup> FLA. CONST. art. I, s. 24(c).

<sup>16</sup> FLA. CONST. art. I, s. 24(c).

<sup>17</sup> The bill, however, may contain multiple exemptions that relate to one subject.

<sup>18</sup> FLA. CONST. art. I, s. 24(c).

<sup>19</sup> Section 119.15, F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

The act also requires the Legislature in reviewing an exemption to consider several questions that go to the scope, public purpose, and necessity of the exemption.<sup>23</sup>

### **Exemptions Under Review**

During the interim before the 2014 Session, the staff of the Judiciary Committee reviewed the exemptions for estate inventories, inventories of elective estates, and estate accountings. The review was conducted by a series of questions to and responses from the Real Property, Probate, and Trust Law Section of The Florida Bar.

The questions that committee staff submitted to the section included:

- What specific records are affected by the exemptions?
- Who do the exemptions uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemptions?
- Can the information contained in the confidential records be readily obtained by alternative means?
- What is the continued necessity for the exemptions?
- Were any particular incidents the impetus for the creation of the exemptions? If yes, what type of information was disclosed, and how did the disclosure cause harm to another person? If no particular incidents were the impetus, please explain how the disclosure of the information could be used to harm another.
- Has anything changed since the exemptions were adopted which diminishes the need for their continued existence?
- Can an exemption be narrowed to disclose more information without affecting the identifiable purpose or goal of the exemption?
- Is there any reason to believe that the general public has a need to access the information protected by an exemption?

As a result of the review, committee staff found that a public purpose will be served by saving the exemptions from repeal.

### **III. Effect of Proposed Changes:**

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws.

The bill takes effect October 1, 2014.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>23</sup> Section 119.15(6)(a), F.S.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore, it does not require a two-thirds vote for final passage.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The continued existence of the public records exemptions reenacted by the bill may protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 733.604, 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.