

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6041 Qualified Blind Trusts
SPONSOR(S): Grant, J.
TIED BILLS: IDEN./SIM. **BILLS:** SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Toliver	Harrington
2) Public Integrity & Ethics Committee	15 Y, 1 N	Kiner	Rubottom
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law allows public officers to place assets and investments in a qualified blind trust to avoid conflicts of interest that might otherwise require that the interests be divested or that the public officer recuse himself or herself from certain decisions. A blind trust is a trust in which the beneficiary of the trust yields complete control of the trust to a trustee who has full discretion over the assets therein and in which the beneficiary is prohibited from being informed as to specific assets of the trust. A trust created by a public officer would need to meet specified statutory requirements to be a qualified blind trust, such as:

- Prohibit, in the trust agreement, any 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;
- Disclose the trustee, which must be a bank, trust company, or other institutional fiduciary, or an attorney, certified public accountant, broker, or investment advisor and may not be a family member or employee; and
- Fully disclose, pursuant to the current disclosure requirements for public officers, the contents of the trust prior to its initial formation.

The bill repeals the statute that creates and authorizes qualified blind trusts, eliminating the operation and parameters of the described trust. As such, the bill repeals 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 does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2013, the Legislature enacted a comprehensive ethics reform bill¹ that included, among many other provisions, the creation of a statute² that codifies a “qualified blind trust” as a mechanism 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. The law appears to be modeled after a similar federal law.³

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.”⁴ 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.”⁵

Under the statute, a public officer may create a qualified blind trust if the trust 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;⁶
- 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.⁷

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

¹ CS/SB 2 (2013); ch. 2013-36, L.O.F.

² Section 112.31425, F.S.

³ See 5 U.S.C. app. s. 102(f).

⁴ Section 112.31425(1), F.S.

⁵ Section 112.31425(2), F.S.

⁶ Section 112.31425(6)(a), F.S.

⁷ Section 112.31425(6)(b), F.S.

- 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.⁸

The public officer must file with the Commission on Ethics, within five 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 statute; 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).⁹

A public officer may not attempt to influence or exercise any control over decisions regarding the management of assets in a qualified blind trust.¹⁰ 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.¹¹ 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.¹²

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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

Effect of the Bill

The bill repeals the statute authorizing the creation and use of a qualified blind trust. As such, the bill repeals 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.

B. SECTION DIRECTORY:

Section 1 repeals s. 112.31425, F.S., relating to Qualified Blind Trusts.

Section 2 provides an effective date of July 1, 2019.

⁸ Section 112.31425(6)(c), F.S.

⁹ Section 112.31425(6)(d), F.S.

¹⁰ Section 112.31425(3), F.S.

¹¹ *Id.*

¹² Section 112.31425(4), F.S.

¹³ Section 112.31425(5), F.S.

¹⁴ *Id.*

¹⁵ Section 112.31425(7), F.S.

¹⁶ Section 112.31425(5), F.S.

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:

Not applicable. The 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.