

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

June 26, 2006



JEB BUSH
GOVERNOR

Ms. Sue Cobb
Secretary of State
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Dear Secretary Cobb:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby withhold my approval of and transmit to you with my objections, Committee Substitute for Senate Bill 1438, enacted during the 38th Session of the Legislature of Florida, since statehood in 1845, during the Regular Session of 2006 and entitled:

An act relating to custodial requirements for public records...

This bill makes stylistic amendments to the existing custodial requirements related to the maintenance, preservation and retention of public records. The bill also codifies existing caselaw concerning the custodial requirements for public records designated as both confidential and exempt under state law by recognizing that the transfer of confidential and exempt records between agencies or governmental entities authorized to receive the records by law does not result in the records losing their "confidential and exempt" status. Further, the bill allows an agency transferring the record to another agency or governmental entity authorized to receive the record by law to obtain a written release from the recipient acknowledging that it intends to maintain the confidential and exempt status of the record. Last, the bill provides that access to any confidential and exempt record shall not be limited to any agency acting in behalf of the custodian of that record, the Legislature, or pursuant to a court order.

While I agree with the Legislature's attempt to codify existing caselaw, I have three objections to this bill. First, I value this separation of powers and have done my best to select judges that share this value and who will uphold the laws as written by the Legislature. This bill weakens the clear lines of separation by designating that a member of the Legislature's access to any confidential and exempt record maintained by any Executive Agency or governmental entity shall not be limited. Allowing members of the Legislature to access confidential and exempt records of Executive Agencies in circumstances other than to perform any checks and balances encroaches upon powers of the executive branch.



Governor's Mentoring Initiative
BE A MENTOR. BE A BIG HELP.
1 800-825-3786

Ms. Sue Cobb
June 26, 2006
Page Two

Second, the underlying policy behind providing for confidentiality and exemptions for certain public records is to protect the privacy and confidentiality rights of our citizens, and to ensure that those requiring services are not dissuaded from seeking necessary services out of fear that their private information will be made public. Thus, Executive Agencies enforcing the laws and providing services to our citizens are granted authority, where necessary, to obtain confidential information from citizens and the law protects that information from disclosure. By providing that any confidential and exempt records maintained by Executive Agencies or governmental entities providing services are subject to review by members of the Legislature at any time and without any claim for necessity, we may discourage members of the public from obtaining necessary services or assisting governmental entities as necessary.

Finally, because many of these confidential and exempt provisions were created so as to ensure Florida law remains consistent with protections provided for in federal law, without protecting this information from unauthorized disclosure or providing for disclosure only as reasonably necessary for State Agencies and governmental entities to provide services or perform their functions, we put our state programs at risk. If federal law does not provide for an exemption for review of information by a state legislature then, absent a court order, the Legislature cannot create its own exemption.

It is for the reasons above that I withhold my approval of Committee Substitute for Senate Bill 1438.

Sincerely,

A handwritten signature in black ink that reads "Jeb Bush". The signature is written in a cursive, flowing style with a large initial "J" and "B".

Jeb Bush