Florida Senate - 2006

 ${\bf By}$ the Committee on Governmental Oversight and Productivity; and Senator Argenziano

585-1984-06

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1	A bill to be entitled
2	An act relating to custodial requirements for
3	public records; amending s. 119.021, F.S.;
4	clarifying the custodial requirements for a
5	record that is confidential and exempt from
6	disclosure pursuant to law; authorizing the
7	custodian of such record to require an agency
8	or other governmental entity that receives the
9	record to acknowledge in writing the
10	confidential and exempt status of the record;
11	providing an effective date.
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13	Be It Enacted by the Legislature of the State of Florida:
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15	Section 1. Section 119.021, Florida Statutes, is
16	amended to read:
17	119.021 Custodial requirements; maintenance,
18	preservation, and retention of public records
19	(1) <u>MAINTENANCE AND PRESERVATION</u> Public records
20	shall be maintained and preserved as follows:
21	(a) All public records should be kept in the buildings
22	in which they are ordinarily used.
23	(b) Insofar as practicable, a custodian of public
24	records of vital, permanent, or archival records shall keep
25	them in fireproof and waterproof safes, vaults, or rooms
26	fitted with noncombustible materials and in such arrangement
27	as to be easily accessible for convenient use.
28	(c)1. Record books should be copied or repaired,
29	renovated, or rebound if worn, mutilated, damaged, or
30	difficult to read.
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1	2. Whenever any state, county, or municipal records
2	are in need of repair, restoration, or rebinding, the head of
3	the concerned state agency, department, board, or commission;
4	the board of county commissioners of such county; or the
5	governing body of such municipality may authorize that such
6	records be removed from the building or office in which such
7	records are ordinarily kept for the length of time required to
8	repair, restore, or rebind them.
9	3. Any public official who causes a record book to be
10	copied shall attest and certify under oath that the copy is an
11	accurate copy of the original book. The copy shall then have
12	the force and effect of the original.
13	(2) <u>RETENTION SCHEDULES</u>
14	(a) The Division of Library and Information Services
15	of the Department of State shall adopt rules to establish
16	retention schedules and a disposal process for public records.
17	(b) Each agency shall comply with the rules
18	establishing retention schedules and disposal processes for
19	public records which are adopted by the records and
20	information management program of the division.
21	(c) Each public official shall systematically dispose
22	of records no longer needed, subject to the consent of the
23	records and information management program of the division in
24	accordance with s. 257.36.
25	(d) The division may ascertain the condition of public
26	records and shall give advice and assistance to public
27	officials to solve problems related to the preservation,
28	creation, filing, and public accessibility of public records
29	in their custody. Public officials shall assist the division
30	by preparing an inclusive inventory of categories of public
31	records in their custody. The division shall establish a time
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1 period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, 2 the division shall, subject to the availability of necessary 3 space, staff, and other facilities for such purposes, make 4 space available in its records center for the filing of 5 6 semicurrent records so scheduled and in its archives for 7 noncurrent records of permanent value, and shall render such 8 other assistance as needed, including the microfilming of 9 records so scheduled. 10 (3) INDEX OF AGENCY ORDERS. -- Agency orders that comprise final agency action and that must be indexed or 11 12 listed pursuant to s. 120.53 have continuing legal 13 significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency 14 shall permanently maintain records of such orders pursuant to 15 the applicable rules of the Department of State. 16 17 (4) (a) TRANSFER OF CUSTODY. -- Whoever has custody of 18 any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be 19 none, to the records and information management program of the 20 21 Division of Library and Information Services of the Department 22 of State, all public records kept or received by him or her in 23 the transaction of official business. (5) (b) UNLAWFUL POSSESSION. -- Whoever is entitled to 2.4 custody of public records shall demand them from any person 25 26 having illegal possession of them, who must forthwith deliver 27 the same to him or her. Any person unlawfully possessing 2.8 public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists 29 30 for failing to deliver such records. 31

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1	(6) CUSTODIAL REQUIREMENTS FOR CONFIDENTIAL AND EXEMPT
2	RECORDS
3	(a) A custodian of public records who holds a record
4	that is confidential and exempt from s. 119.07(1) and s.
5	24(a), Art. I of the State Constitution may not release such
6	record except as provided in statute or pursuant to court
7	order.
8	(b) An agency or other governmental entity that is
9	authorized to receive a confidential and exempt record
10	pursuant to statute shall retain the confidential and exempt
11	status of such record, except as otherwise provided by law.
12	(c) A custodian of public records may require the
13	agency or other governmental entity that is authorized to
14	receive a confidential and exempt record pursuant to statute
15	to acknowledge in a written release that:
16	1. Such record is confidential and exempt; and
17	2. The receiving agency or other governmental entity
18	is required by law to maintain the confidential and exempt
19	status of such record.
20	(d) This subsection does not limit access to any
21	record:
22	1. By an agency or entity acting on behalf of a
23	custodian of public records;
24	2. By the Legislature; or
25	3. Pursuant to court order.
26	Section 2. This act shall take effect July 1, 2006.
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1	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
2	<u>SB 1438</u>
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4 5	Clarifies custodial requirements for records that are confidential and exempt.
6	Provides custodian may not release such records except as provided in statute or pursuant to court order.
7	Permits agency to require release form.
8 9	Clarifies that receiving agency must maintain same level of protection as original custodian of confidential and exempt record.
10 11	Provides that the section does not limit access by entity acting on behalf of agency, by the Legislature, or pursuant to court order.
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