

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD, 62706GEORGE H. RYAN
GOVERNOR

August 2, 2002

To the Honorable Members of the
Illinois House of Representatives
92nd General Assembly

Pursuant to the authority vested in the Governor by Article IV, Section 9(e) of the Illinois Constitution of 1970, and re-affirmed by the People of the State of Illinois by popular referendum in 1974, and conforming to the standard articulated by the Illinois Supreme Court in People ex Rel. Klinger v. Howlett, 50 Ill. 2d 242 (1972), Continental Illinois National Bank and Trust Co. v. Zagel, 78 Ill. 2d 387 (1979), People ex Rel. City of Canton v. Crouch, 79 Ill. 2d 356 (1980), and County of Kane v. Carlson, 116 Ill. 2d 186 (1987), that gubernatorial action be consistent with the fundamental purposes and the intent of the bill, I hereby return House Bill 4938 entitled "AN ACT concerning State records, " with my specific recommendation for change.

House Bill 4938 amends the State Records Act to include "digitized electronic material" and "databases" in definition of "record," and exempts "blank forms" from the definition of "record". House Bill 4938 makes changes regarding inspection and copying of certain records covered by the State Records Act. House Bill 4938 provides that the Auditor General shall audit agencies for compliance with the provisions of this Act and shall report findings to both the agency and the Secretary of State.

The legislation also makes it a Class 4 felony to knowingly and without authority alter, destroy, deface, remove or conceal any public record. The legislation also adds similar language to Section 3 of the State Records Act to prohibit records from being mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, except as provided by law. However, the current Section 24 of the State Records Act makes any violation of Section 3 a Class B misdemeanor. These two provisions have a penalty conflict, since both cover nearly the same type of prohibited conduct but have different penalties. When different penalties apply to offenses with the same elements, the courts are constitutionally required to apply only the lower penalty. Therefore, the new Class 4 felony penalty may be partially or totally invalidated by the addition to Section 3. I propose changes that will remove the conflict and make the Class 4 felony the applicable penalty.

For these reasons, I hereby return House Bill 4938 with the following specific recommendations for change:

on page 2, by replacing line 29 with the following:

"Sec. 3. Records as property of State.

(a) All records"; and

on page 3, by replacing line 5 with the following:

prohibited by law.

(b) Reports and records of the obligation,"; and

on page 13, line 22, by inserting "subsection (b) of' after "of'.

With these changes, House Bill 4938 will have my approval. I respectfully request your concurrence.

Sincerely,
s/GEORGE H. RYAN
Governor