

June 22, 2005

Ms. Glenda E. Hood  
Secretary of State  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399

Dear Secretary Hood:

By the authority vested in me as Governor 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 Committee Substitute for Committee Substitute for Senate Bill 1010, enacted during the 37<sup>th</sup> Session of the Legislature of Florida convened under the Constitution of 1968, during the Regular Session of 2005, and entitled:

An act relating to administrative procedures . . .

This bill amends provisions of the Administrative Procedures Act (APA) to include creating a Florida Administrative Weekly Internet website, expanding the definition of a "small business party" for the purpose of awarding attorney's fees and costs, providing for equitable tolling, exempting certain actions from petition content requirements, and providing administrative changes regarding the Administrative Procedures Committee.

I strongly support one of the bill's key provisions: electronic publication of the Florida Administrative Weekly on an Internet website managed by the Department of State. Providing public access to citizens in the rulemaking process is good public policy, and it does not require legislation. The Department of State is currently undertaking the creation of an interactive, automated rulemaking system and anticipates completion prior to the next legislative session. I look forward to its implementation.

While I support this and other public access and government efficiency efforts provided for in the bill, there are several provisions that could have negative consequences for state agencies and the public, including: increased litigation; increased agency costs and workload; the creation of agency, public and private uncertainty as to rights of appeal and effectiveness of agency orders; delays in litigation; and the vulnerability of licensing agencies with respect to the expanded group of individuals authorized to receive attorney's fees and costs. My general objections are threefold.

First, the bill expands the definition of the term "small business party" to include an additional class of individuals under which parties may receive attorney's fees and costs

Ms. Glenda E. Hood  
June 22, 2005  
Page Two

when the parties prevail in certain proceedings under the APA. This provision could generate unwarranted litigation that consumes limited legal, programmatic, and fiscal resources, regardless of whether an agency's actions were substantially justified.

Second, the bill codifies equitable tolling in the state. This provision extends the time for filing a petition or request for hearing if a petitioner has been misled or "lulled into inaction" by a division of the government or has filed an action in the incorrect forum. No limitation on the time period is provided in the bill and appeal rights are left open-ended. This provision would likely increase litigation and associated costs, and raises the possibility of retroactive remedies imposed years after an action is taken.

Third, the bill exempts actions relating to agency enforcement and disciplinary actions against a licensee or other person from APA petition content requirements. I believe requiring individuals appealing agency actions to provide basic information about their appeal is reasonable. Without this information, agencies will not know if there are issues of material fact and will have to refer petitions for determination through an expensive, cumbersome and time consuming process at the Division of Administrative Hearings. The streamlined informal hearing process, therefore, is severely limited by this bill.

For these reasons, I am withholding my approval of Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 1010, and do hereby veto the same.

Sincerely,

Jeb Bush