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ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements for
 5 bids, proposals, or replies submitted to an agency in
 6 response to a competitive solicitation; expanding the
 7 public record exemption by extending the duration of the
 8 public record exemption; providing a definition;
 9 reorganizing the exemption; providing for future repeal
 10 and legislative review of the public record exemption
 11 under the Open Government Sunset Review Act; amending s.
 12 286.0113, F.S., which provides an exemption from public
 13 meetings requirements for meetings at which a negotiation
 14 with a vendor is conducted and which provides an exemption
 15 from public records requirements for recordings of exempt
 16 meetings; expanding the public meeting exemption to
 17 include meetings at which a negotiation with a vendor is
 18 conducted pursuant to a competitive solicitation, at which
 19 a vendor makes an oral presentation as part of a
 20 competitive solicitation, at which a vendor answers
 21 questions as part of a competitive solicitation, and at
 22 which team members discuss negotiation strategies;
 23 expanding the public record exemption to include any
 24 records presented at an exempt meeting; providing
 25 definitions; reorganizing the exemption; providing for
 26 future repeal and legislative review of the public meeting
 27 and public record exemptions under the Open Government

BILL

ORIGINAL

YEAR

28 | Sunset Review Act; providing a statement of public
 29 | necessity; providing an effective date.
 30 |

31 | Be It Enacted by the Legislature of the State of Florida:
 32 |

33 | Section 1. Paragraph (b) of subsection (1) of section
 34 | 119.071, Florida Statutes, is amended to read:

35 | 119.071 General exemptions from inspection or copying of
 36 | public records.—

37 | (1) AGENCY ADMINISTRATION.—

38 | (b)1. For purposes of this paragraph “competitive
 39 | solicitation” means the process of requesting and receiving
 40 | sealed bids, proposals, or replies submitted by responsive
 41 | vendors in accordance with the terms of a competitive process,
 42 | regardless of the method of procurement.

43 | ~~2.a.~~ Sealed bids, or proposals, or replies received by an
 44 | agency pursuant to a competitive solicitation ~~invitations to bid~~
 45 | ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
 46 | 24(a), Art. I of the State Constitution until such time as the
 47 | agency provides notice of an a decision or intended decision to
 48 | make a contract award ~~pursuant to s. 120.57(3)(a)~~ or until 30
 49 | ~~within 10~~ days after opening the bids, proposals, or replies bid
 50 | ~~or proposal opening~~, whichever is earlier.

51 | ~~3.b.~~ If an agency rejects all bids, ~~or proposals, or~~
 52 | replies submitted in response to a competitive solicitation ~~an~~
 53 | ~~invitation to bid or request for proposals~~ and the agency
 54 | concurrently provides notice of its intent to reissue the
 55 | competitive solicitation ~~invitation to bid or request for~~

BILL

ORIGINAL

YEAR

56 ~~proposals, the rejected bids, or proposals, or replies~~ remain
 57 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 58 Constitution until such time as the agency provides notice of an
 59 ~~a decision or intended decision~~ to make a contract award
 60 ~~pursuant to s. 120.57(3)(a) concerning the reissued~~ competitive
 61 solicitation invitation to bid or request for proposals or until
 62 the agency withdraws the reissued competitive solicitation
 63 ~~invitation to bid or request for proposals. A bid, proposal, or~~
 64 reply is not exempt for longer than 12 months after the initial
 65 agency notice rejecting all bids, proposals, or replies. This
 66 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
 67 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
 68 ~~October 2, 2011, unless reviewed and saved from repeal through~~
 69 ~~reenactment by the Legislature.~~

70 2.a. ~~A competitive sealed reply in response to an~~
 71 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
 72 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
 73 ~~until such time as the agency provides notice of a decision or~~
 74 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
 75 ~~after the final competitive sealed replies are all opened,~~
 76 ~~whichever occurs earlier.~~

77 b. ~~If an agency rejects all competitive sealed replies in~~
 78 ~~response to an invitation to negotiate and concurrently provides~~
 79 ~~notice of its intent to reissue the invitation to negotiate and~~
 80 ~~reissues the invitation to negotiate within 90 days after the~~
 81 ~~notice of intent to reissue the invitation to negotiate, the~~
 82 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
 83 ~~Art. I of the State Constitution until such time as the agency~~

BILL

ORIGINAL

YEAR

84 ~~provides notice of a decision or intended decision pursuant to~~
 85 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
 86 ~~or until the agency withdraws the reissued invitation to~~
 87 ~~negotiate. A competitive sealed reply is not exempt for longer~~
 88 ~~than 12 months after the initial agency notice rejecting all~~
 89 ~~replies.~~

90 ~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
 91 Government Sunset Review Act in accordance with s. 119.15 and
 92 shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed
 93 and saved from repeal through reenactment by the Legislature.

94 Section 2. Subsection (2) of section 286.0113, Florida
 95 Statutes, is amended to read:

96 286.0113 General exemptions from public meetings.—

97 (2) (a) For purposes of this subsection:

98 1. "Competitive solicitation" means the process of
 99 requesting and receiving sealed bids, proposals, or replies
 100 submitted by responsive vendors in accordance with the terms of
 101 a competitive process, regardless of the method of procurement.

102 2. "Team" means a group of members established by a
 103 governmental entity for the purpose of conducting negotiations
 104 as part of a competitive solicitation.

105 (b)1. Any portion of a meeting at which a negotiation with
 106 a vendor is conducted pursuant to a competitive solicitation, at
 107 which a vendor makes an oral presentation as part of a
 108 competitive solicitation, or at which a vendor answers questions
 109 as part of a competitive solicitation ~~s. 287.057(1)~~ is exempt
 110 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

111 2. Any portion of a team meeting at which negotiation

BILL

ORIGINAL

YEAR

112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
 113 Art. I of the State Constitution.

114 (c)1.(b)1. A complete recording shall be made of any
 115 portion of an exempt meeting made exempt in paragraph (a). No
 116 portion of the exempt meeting may be held off the record.

117 2.2. The recording ~~required under subparagraph 1.~~ is
 118 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 119 Constitution until such time as the agency provides notice of an
 120 ~~a decision or~~ intended decision to make a contract award
 121 ~~pursuant to s. 120.57(3)(a) or until 30 20~~ days after opening
 122 the bids, proposals, or replies ~~the final competitive sealed~~
 123 ~~replies are all opened,~~ whichever occurs earlier.

124 3.3. If the agency rejects all bids, proposals, or sealed
 125 replies and concurrently provides notice of its intent to
 126 reissue a competitive solicitation, the recording and any
 127 records presented at the exempt meeting remain ~~remains~~ exempt
 128 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 129 until such time as the agency provides notice of an ~~a decision~~
 130 ~~or~~ intended decision to make a contract award pursuant to s.
 131 120.57(3)(a) concerning the reissued competitive solicitation
 132 ~~invitation to negotiate or until the agency withdraws the~~
 133 reissued competitive solicitation invitation to negotiate. A
 134 recording and any records presented at an exempt meeting are ~~is~~
 135 not exempt for longer than 12 months after the initial agency
 136 notice rejecting all bids, proposals, or replies.

137 (d)(e) This subsection is subject to the Open Government
 138 Sunset Review Act in accordance with s. 119.15 and shall stand
 139 repealed on October 2, 2016 ~~2011~~, unless reviewed and saved from

BILL

ORIGINAL

YEAR

140 | repeal through reenactment by the Legislature.

141 | Section 3. (1) The Legislature finds that it is a public
 142 | necessity that bids, proposals, or replies submitted in response
 143 | to a competitive solicitation be made temporarily exempt from
 144 | public records requirements. Such records shall be made
 145 | available when the agency provides notice of an intended
 146 | decision to make a contract award on the competitive
 147 | solicitation, or when the agency rejects all bids, proposals, or
 148 | replies and ultimately withdraws a reissued competitive
 149 | solicitation. Temporarily protecting such information ensures
 150 | that the process of responding to a competitive solicitation
 151 | remains fair and economical for vendors, while still preserving
 152 | oversight after a competitive solicitation decision is made or
 153 | withdrawn.

154 | (2) The Legislature also finds that it is a public
 155 | necessity that a meeting at which a negotiation with a vendor is
 156 | conducted pursuant to a competitive solicitation, at which a
 157 | vendor makes an oral presentation as part of a competitive
 158 | solicitation, or at which a vendor answers questions as part of
 159 | a competitive solicitation, be made exempt from public meetings
 160 | requirements. In addition, it is a public necessity that any
 161 | records presented at such meetings be made temporarily exempt
 162 | from public records requirements. The recording of the meeting
 163 | and any such records shall be made available when the agency
 164 | provides notice of an intended decision to make a contract award
 165 | on the competitive solicitation, or when the agency rejects all
 166 | bids, proposals, or replies and ultimately withdraws a reissued
 167 | competitive solicitation. Protecting such meetings and

BILL

ORIGINAL

YEAR

168 temporarily protecting the recording and any records presented
 169 by a vendor at such meetings, ensures that the process of
 170 responding to a competitive solicitation remains fair and
 171 economical for vendors, while still preserving oversight after a
 172 competitive solicitation decision is made or withdrawn. It is
 173 unfair and inequitable to compel vendors to disclose to
 174 competitors the nature and details of their proposals during
 175 such meetings or through the minutes or records presented at
 176 such meetings. Such disclosure impedes full and frank discussion
 177 of the strengths, weaknesses, and value of a bid, proposal, or
 178 response; thereby, limiting the ability of the agency to obtain
 179 the best value for the public. The public and private harm
 180 stemming from these practices outweighs the temporary delay in
 181 access to records related to the competitive solicitation.

182 (3) The Legislature further finds that it is a public
 183 necessity that any portion of a team meeting at which
 184 negotiation strategies are discussed be made exempt from public
 185 meetings requirements. In addition, it is a public necessity
 186 that the recording of such meeting be made temporarily exempt
 187 from public records requirements. The recording of the meeting
 188 shall be made available when the agency provides notice of an
 189 intended decision to make a contract award on the competitive
 190 solicitation, or when the agency rejects all bids, proposals, or
 191 replies and ultimately withdraws a reissued competitive
 192 solicitation. Team members often meet to strategize about
 193 competitive solicitations and the approach to take as part of
 194 the evaluation process. Without the public meeting exemption and
 195 the limited public record exemption, the effective and efficient

BILL

ORIGINAL

YEAR

196 | administration of the competitive solicitation process would be
197 | hindered.

198 | Section 4. This act shall take effect upon becoming a law.