

By the Committees on Governmental Oversight and Accountability;
and Governmental Oversight and Accountability

585-04611-11

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

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Be It Enacted by the Legislature of the State of Florida:

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

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

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph, the term "competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

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

3.b. ~~If an agency rejects all bids, or proposals, or replies submitted in response to a competitive solicitation an invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the competitive solicitation invitation to bid or request for proposals, the rejected bids, or proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an~~

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59 ~~a decision or intended decision pursuant to s. 120.57(3)(a)~~
60 ~~concerning the reissued competitive solicitation invitation to~~
61 ~~bid or request for proposals or until the agency withdraws the~~
62 ~~reissued competitive solicitation invitation to bid or request~~
63 ~~for proposals. A bid, proposal, or reply is not exempt for~~
64 ~~longer than 12 months after the initial agency notice rejecting~~
65 ~~all bids, proposals, or replies. This sub-subparagraph is~~
66 ~~subject to the Open Government Sunset Review Act in accordance~~
67 ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~
68 ~~unless reviewed and saved from repeal through reenactment by the~~
69 ~~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~~
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~~

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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, the term:

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

102 2. "Team" means a group of members established by an agency
103 for the purpose of conducting negotiations as part of a
104 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
112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
113 Art. I of the State Constitution.

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

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

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

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

142 Section 3. (1) The Legislature finds that it is a public
143 necessity that bids, proposals, or replies submitted to an
144 agency in response to a competitive solicitation be made
145 temporarily exempt from public-records requirements. Such

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146 records shall be made available when the agency provides notice
147 of an intended decision, or when the agency rejects all bids,
148 proposals, or replies and ultimately withdraws a reissued
149 competitive solicitation. Temporarily protecting such
150 information ensures that the process of responding to a
151 competitive solicitation remains fair and economical for
152 vendors, while still preserving oversight after a competitive
153 solicitation decision is made or 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, or when the agency
165 rejects all bids, proposals, or replies and ultimately withdraws
166 a reissued competitive solicitation. Protecting such meetings
167 and temporarily protecting the recording and any records
168 presented by a vendor at such meetings ensures that the process
169 of responding to a competitive solicitation remains fair and
170 economical for vendors, while still preserving oversight after a
171 competitive solicitation decision is made or withdrawn. It is
172 unfair and inequitable to compel vendors to disclose to
173 competitors the nature and details of their proposals during
174 such meetings or through the minutes or records presented at

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175 such meetings. Such disclosure impedes full and frank discussion
176 of the strengths, weaknesses, and value of a bid, proposal, or
177 response, thereby limiting the ability of the agency to obtain
178 the best value for the public. The public and private harm
179 stemming from these practices outweighs the temporary delay in
180 access to records related to the competitive solicitation.

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

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