

By the Committee on Fiscal Policy & Resources and  
 Representative Wallace

1                                   A bill to be entitled  
 2           An act relating to public records and meetings;  
 3           amending s. 119.07, F.S.; exempting certain  
 4           procurement documents from public records  
 5           requirements; clarifying trade secret  
 6           protection; amending s. 287.0595, F.S.;  
 7           exempting certain procurement documents held by  
 8           the Department of Environmental Protection from  
 9           public records requirements; amending s.  
 10          286.011, F.S.; exempting certain procurement  
 11          selection team meetings from public meetings  
 12          requirements; specifying requirements for such  
 13          meetings; providing a statement of public  
 14          necessity for such exemptions; providing an  
 15          effective date.

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

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 19           Section 1. Paragraph (m) of subsection (3) of section  
 20          119.07, Florida Statutes, is amended to read:

21           119.07 Inspection, examination, and duplication of  
 22          records; exemptions.--

23           (3)

24           (m) Sealed bids, or proposals, or replies received by  
 25          an agency pursuant to invitations to bid, ~~or~~ requests for  
 26          proposals, or invitations to negotiate are exempt from the  
 27          provisions of subsection (1) and s. 24(a), Art. I of the State  
 28          Constitution until ~~such time as~~ the agency provides notice of  
 29          an a decision or intended decision pursuant to s.  
 30          120.57(3)(a), until the solicitation is withdrawn, or until  
 31          all bids, proposals, or replies are rejected ~~or within 10 days~~

1 ~~after bid or proposal opening~~, whichever is earlier. A vendor  
2 does not waive trade secret protection provided by s. 815.045  
3 by including such confidential information in a bid, proposal,  
4 or reply.

5 Section 2. Section 287.0595, Florida Statutes, is  
6 amended to read:

7 287.0595 Pollution response action contracts;  
8 department rules.--

9 (1) The Department of Environmental Protection shall  
10 establish, through the promulgation of administrative rules as  
11 provided in chapter 120:

12 (a) Procedures for determining the qualifications of  
13 responsible potential vendors ~~bidders~~ prior to advertisement  
14 for and receipt of bids, proposals, or replies for pollution  
15 response action contracts, including procedures for the  
16 rejection of unqualified vendors ~~bidders~~. Response actions are  
17 those activities described in s. 376.301(37).

18 (b) Procedures for awarding such contracts to the  
19 lowest responsible and responsive vendor ~~qualified bidder~~ as  
20 well as procedures to be followed in cases in which the  
21 department declares a valid emergency to exist which would  
22 necessitate the waiver of the rules governing the awarding of  
23 such contracts to the lowest responsible and responsive vendor  
24 ~~qualified bidder~~.

25 (c) Procedures governing payment of contracts.

26 (d) Procedures to govern negotiations for contracts,  
27 modifications to contract documents, and terms and conditions  
28 of contracts.

29 (2) In adopting rules under this section, the  
30 Department of Environmental Protection shall follow the  
31 criteria applicable to the department's ~~Department of~~

1 ~~Management Services~~ contracting to the maximum extent  
2 possible, consistent with the goals and purposes of ss.  
3 376.307 and 376.3071.

4 (3) Any bid, proposal, or reply submitted under this  
5 section shall be confidential and exempt from the provisions  
6 of s. 119.07(1) until the Department of Environmental  
7 Protection provides notice of an intended decision pursuant to  
8 s. 120.57(3)(a), until the solicitation is withdrawn, or until  
9 all bids, proposals, or replies are rejected, whichever is  
10 earlier a selection is made and a contract signed or until  
11 bids are no longer under active consideration.

12 (4) This section does not apply to contracts which  
13 must be negotiated under s. 287.055.

14 Section 3. Subsection (9) is added to section 286.011,  
15 Florida Statutes, to read:

16 286.011 Public meetings and records; public  
17 inspection; criminal and civil penalties.--

18 (9) Notwithstanding the provisions of subsection (1),  
19 procurement selection teams for a state agency or authority or  
20 an agency or authority of a county, municipality, or political  
21 subdivision may meet in private to discuss, evaluate, or  
22 negotiate bids, proposals, or replies received by the entity  
23 from vendors in response to an invitation to bid, request for  
24 proposals, or invitation to negotiate issued by the entity.  
25 The persons chairing the meeting shall take minutes which  
26 shall record the times of commencement and termination of the  
27 meeting, all discussion topics and decisions of the  
28 proceedings, the names of all persons present at any time, and  
29 the names of all persons speaking. The minutes of the meeting  
30 shall be filed with the entity's clerk within a reasonable  
31 time after the meeting and shall be maintained in the

1 procurement file. The minutes of evaluation meetings shall be  
2 made part of the public record upon release of the vendor  
3 rankings by the entity. The minutes of negotiation meetings  
4 shall be made part of the public record subsequent to the  
5 agency decision to award to only one vendor.

6           Section 4. The Legislature finds that the exemption  
7 from public records requirements for bids, proposals, or  
8 replies pursuant to invitations to bid, requests for  
9 proposals, or invitations to negotiate is a public necessity.  
10 These documents contain information relating to the business  
11 practices of the vendors and premature disclosure would offer  
12 their competitors an unfair advantage in the procurement  
13 process. Unless these records contain trade secrets or other  
14 information made exempt or confidential, they will be  
15 available for public inspection later in the procurement  
16 process. The Legislature also finds that the exemption from  
17 public records requirements for bids, proposals, or replies  
18 held by the Department of Environmental Protection pursuant to  
19 s. 287.0595, Florida Statutes, is a public necessity. These  
20 documents contain information relating to the business  
21 practices of the vendors and premature disclosure would offer  
22 their competitors an unfair advantage in the procurement  
23 process. Unless these records contain trade secrets or other  
24 information made exempt or confidential, they will be  
25 available for public inspection later in the procurement  
26 process. The Legislature further finds that the exemption  
27 from public meetings requirements for procurement evaluation  
28 and negotiation teams when discussing, evaluating, or  
29 negotiating bids, proposals, or replies received from vendors  
30 is a public necessity. The members of these teams can more  
31 effectively discuss the contents of the documents and engage

1 in more effective discussion with vendors in an effort to  
2 procure the best value for spending tax dollars when meeting  
3 in private. The minutes of the meeting will become part of  
4 the public record later in the procurement process.

5 Section 5. This act shall take effect upon becoming a  
6 law, if HB .... or similar legislation is adopted in the same  
7 legislative session or an extension thereof and becomes law.

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10 HOUSE SUMMARY

11 Revises public records exemptions for sealed bids and  
12 proposals to include replies and invitations to  
13 negotiate. Revises public records exemptions for  
14 pollution response action contract documents held by the  
15 Department of Environmental Protection to include  
16 proposals and replies and to apply to responsible and  
17 responsive vendors. Exempts meetings of procurement  
18 selection teams for state, county, municipality, or  
19 political subdivision agencies or authorities from public  
20 meetings requirements and specifies requirements for such  
21 meetings. See bill for details.  
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