

HB 1369

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## CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:

2 **Council/Committee Substitute**

3 Remove the entire bill and insert:

4 A bill to be entitled

5 An act relating to public records and public meetings;  
6 amending s. 119.071, F.S.; creating a temporary exemption  
7 from public records requirements for rejected bids and  
8 proposals received by a state agency if the agency  
9 reissues the invitation to bid or request for proposals;  
10 providing for review and repeal; providing a statement of  
11 public necessity; creating a temporary exemption from  
12 public records requirements for a competitive sealed reply  
13 in response to an invitation to negotiate; providing an  
14 extension of the temporary exemption if the agency  
15 reissues the invitation to negotiate; providing for review  
16 and repeal; providing a statement of public necessity;  
17 amending s. 286.0113, F.S.; creating an exemption from  
18 public meetings requirements for a meeting at which  
19 negotiation with a vendor is conducted; requiring a  
20 recording of the meeting; temporarily exempting the  
21 recording from disclosure; providing an extension of the  
22 temporary exemption under specified circumstances;

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23 providing for review and repeal; providing a statement of  
24 public necessity; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Paragraph (b) of subsection (1) of section  
29 119.071, Florida Statutes, is amended to read:

30 119.071 General exemptions from inspection or copying of  
31 public records.--

32 (1) AGENCY ADMINISTRATION.--

33 (b) 1.a. Sealed bids or proposals received by an agency  
34 pursuant to invitations to bid or requests for proposals are  
35 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
36 Constitution until such time as the agency provides notice of a  
37 decision or intended decision pursuant to s. 120.57(3)(a) or  
38 within 10 days after bid or proposal opening, whichever is  
39 earlier.

40 b. If an agency rejects all bids or proposals submitted in  
41 response to an invitation to bid or request for proposals and  
42 the agency concurrently provides notice of its intent to reissue  
43 the invitation to bid or request for proposals, the rejected  
44 bids or proposals remain exempt from s. 119.07(1) and s. 24(a),  
45 Art. I of the State Constitution until such time as the agency  
46 provides notice of a decision or intended decision pursuant to  
47 s. 120.57(3)(a) concerning the reissued invitation to bid or  
48 request for proposals or until the agency withdraws the reissued  
49 invitation to bid or request for proposals. This sub-  
50 paragraph is subject to the Open Government Sunset Review Act

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51 in accordance with s. 119.15 and shall stand repealed on October  
52 2, 2011, unless reviewed and saved from repeal through  
53 reenactment by the Legislature.

54 2.a. A competitive sealed reply in response to an  
55 invitation to negotiate, as defined in s. 287.012, is exempt  
56 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
57 until such time as the agency provides notice of a decision or  
58 intended decision pursuant to s. 120.57(3)(a) or until 20 days  
59 after the final competitive sealed replies are all opened,  
60 whichever occurs earlier.

61 b. If an agency rejects all competitive sealed replies in  
62 response to an invitation to negotiate and concurrently provides  
63 notice of its intent to reissue the invitation to negotiate and  
64 reissues the invitation to negotiate within 90 days after the  
65 notice of intent to reissue the invitation to negotiate, the  
66 rejected replies remain exempt from s. 119.07(1) and s. 24(a),  
67 Art. I of the State Constitution until such time as the agency  
68 provides notice of a decision or intended decision pursuant to  
69 s. 120.57(3)(a) concerning the reissued invitation to negotiate  
70 or until the agency withdraws the reissued invitation to  
71 negotiate. A competitive sealed reply is not exempt for longer  
72 than 12 months after the initial agency notice rejecting all  
73 replies.

74 c. This subparagraph is subject to the Open Government  
75 Sunset Review Act in accordance with s. 119.15 and shall stand  
76 repealed on October 2, 2011, unless reviewed and saved from  
77 repeal through reenactment by the Legislature.

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78 Section 2. Section 286.0113, Florida Statutes, is amended  
79 to read:

80 286.0113 General exemptions from public meetings.--

81 (1) Those portions of any meeting which would reveal a  
82 security system plan or portion thereof made confidential and  
83 exempt by s. 119.071(3)(a) are exempt from the provisions of s.  
84 286.011 and s. 24(b), Art. I of the State Constitution. This  
85 section is subject to the Open Government Sunset Review Act, in  
86 accordance with s. 119.15, and shall stand repealed on October  
87 2, 2006, unless reviewed and saved from repeal through  
88 reenactment by the Legislature.

89 (2)(a) A meeting at which a negotiation with a vendor is  
90 conducted pursuant to s. 287.057(3) is exempt from s. 286.011  
91 and s. 24(b), Art. I of the State Constitution.

92 (b)1. A complete recording shall be made of any meeting  
93 made exempt in paragraph (a). No portion of the meeting may be  
94 held off the record.

95 2. The recording required under subparagraph 1. is exempt  
96 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
97 until such time as the agency provides notice of a decision or  
98 intended decision pursuant to s. 120.57(3)(a) or until 20 days  
99 after the final competitive sealed replies are all opened,  
100 whichever occurs earlier.

101 3. If the agency rejects all sealed replies, the recording  
102 remains exempt from s. 119.07(1) and s. 24(a), Art. I of the  
103 State Constitution until such time as the agency provides notice  
104 of a decision or intended decision pursuant to s. 120.57(3)(a)  
105 concerning the reissued invitation to negotiate or until the

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106 agency withdraws the reissued invitation to negotiate. A  
107 recording is not exempt for longer than 12 months after the  
108 initial agency notice rejecting all replies.

109 (c) This subsection is subject to the Open Government  
110 Sunset Review Act in accordance with s. 119.15 and shall stand  
111 repealed on October 2, 2011, unless reviewed and saved from  
112 repeal through reenactment by the Legislature.

113 Section 3. (1) The Legislature finds that it is a public  
114 necessity that sealed bids or proposals submitted in response to  
115 an invitation to bid or request for proposals that are rejected  
116 by an agency be made temporarily exempt from public records  
117 requirements if the agency concurrently provides notice of its  
118 intent to reissue the invitation to bid or request for  
119 proposals. Such records shall be made available when the agency  
120 provides notice of a decision or intended decision, as required  
121 under the Administrative Procedure Act, or if the agency  
122 withdraws the reissued invitation to bid or request for  
123 proposals. Temporarily protecting such information ensures that  
124 the process of invitations to bid and requests for proposals  
125 remains economical and equitable, while still preserving  
126 oversight after an agency decision is made.

127 (2) The Legislature further finds that it is a public  
128 necessity that a competitive sealed reply in response to an  
129 invitation to negotiate be made temporarily exempt from public  
130 records requirements. In addition, a competitive sealed reply in  
131 response to an invitation to negotiate which is rejected by an  
132 agency should be made temporarily exempt from public records  
133 requirements if the agency concurrently provides notice of its

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134 intent to reissue the invitation to negotiate and reissues the  
135 invitation to negotiate within 90 days after the notice of  
136 intent to reissue the invitation to negotiate. Such reply will  
137 be made available when the agency provides notice of a decision  
138 or intended decision, as required under the Administrative  
139 Procedure Act, or if the agency withdraws the reissued  
140 invitation to negotiate. Temporarily protecting such reply  
141 ensures that the process of invitations to negotiate remains  
142 economical and equitable, while still preserving oversight after  
143 an agency decision is made.

144 (3) Additionally, the Legislature finds that it is a  
145 public necessity that a meeting at which a negotiation with a  
146 vendor is conducted pursuant to s. 287.057(3), Florida Statutes,  
147 be made exempt from public meetings requirements. Protecting  
148 such meetings ensures that the process of invitations to  
149 negotiate remains economical and equitable, while still  
150 preserving oversight after an agency decision is made through  
151 the requirement that a complete recording be made of those  
152 meetings. Furthermore, the recording of that closed portion of  
153 the meeting must be made temporarily exempt from public records  
154 requirements in order to preserve the purpose for the public  
155 meetings exemption. In addition, it is unfair and inequitable to  
156 compel vendors to disclose during the negotiation process the  
157 nature and details of their offers to competitors and to others  
158 beyond the agency. Further, the Legislature finds that such  
159 disclosure impedes full and frank discussion of the strength,  
160 weakness, and value of an offer, thereby limiting the agency's  
161 ability to obtain the best value for the state. The Legislature

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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162 | also finds that it is unfair and inequitable to publicly discuss  
163 | and otherwise disclose negotiation strategies, assessment of  
164 | vendors' offers or positions, or the nature or details of  
165 | offers. The public and private harm stemming from these  
166 | practices outweighs the temporary delay in making meetings and  
167 | records related to the negotiation process open to the public.

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