

1 A bill to be entitled

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

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Paragraph (b) of subsection (1) of section  
26 119.071, Florida Statutes, is amended to read:

27 | 119.071 General exemptions from inspection or copying of  
28 | public records.--

29 | (1) AGENCY ADMINISTRATION.--

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

37 | b. If an agency rejects all bids or proposals submitted in  
38 | response to an invitation to bid or request for proposals and  
39 | the agency concurrently provides notice of its intent to reissue  
40 | the invitation to bid or request for proposals, the rejected  
41 | bids or proposals remain exempt from s. 119.07(1) and s. 24(a),  
42 | Art. I of the State Constitution until such time as the agency  
43 | provides notice of a decision or intended decision pursuant to  
44 | s. 120.57(3)(a) concerning the reissued invitation to bid or  
45 | request for proposals or until the agency withdraws the reissued  
46 | invitation to bid or request for proposals. This sub-  
47 | subparagraph is subject to the Open Government Sunset Review Act  
48 | in accordance with s. 119.15 and shall stand repealed on October  
49 | 2, 2011, unless reviewed and saved from repeal through  
50 | reenactment by the Legislature.

51 | 2.a. A competitive sealed reply in response to an  
52 | invitation to negotiate, as defined in s. 287.012, is exempt  
53 | from s. 119.07(1) and s. 24(a), Art. I of the State Constitution

54 until such time as the agency provides notice of a decision or  
55 intended decision pursuant to s. 120.57(3) (a) or until 20 days  
56 after the final competitive sealed replies are all opened,  
57 whichever occurs earlier.

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

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

75 Section 2. Section 286.0113, Florida Statutes, is amended  
76 to read:

77 286.0113 General exemptions from public meetings.--

78 (1) Those portions of any meeting which would reveal a  
79 security system plan or portion thereof made confidential and  
80 exempt by s. 119.071(3) (a) are exempt from the provisions of s.

81 286.011 and s. 24(b), Art. I of the State Constitution. This  
82 section is subject to the Open Government Sunset Review Act, in  
83 accordance with s. 119.15, and shall stand repealed on October  
84 2, 2006, unless reviewed and saved from repeal through  
85 reenactment by the Legislature.

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

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

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

98 3. If the agency rejects all sealed replies, the recording  
99 remains exempt from s. 119.07(1) and s. 24(a), Art. I of the  
100 State Constitution until such time as the agency provides notice  
101 of a decision or intended decision pursuant to s. 120.57(3)(a)  
102 concerning the reissued invitation to negotiate or until the  
103 agency withdraws the reissued invitation to negotiate. A  
104 recording is not exempt for longer than 12 months after the  
105 initial agency notice rejecting all replies.

106 (c) This subsection is subject to the Open Government  
107 Sunset Review Act in accordance with s. 119.15 and shall stand

108 repealed on October 2, 2011, unless reviewed and saved from  
109 repeal through reenactment by the Legislature.

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

124 (2) The Legislature further finds that it is a public  
125 necessity that a competitive sealed reply in response to an  
126 invitation to negotiate be made temporarily exempt from public  
127 records requirements. In addition, a competitive sealed reply in  
128 response to an invitation to negotiate which is rejected by an  
129 agency should be made temporarily exempt from public records  
130 requirements if the agency concurrently provides notice of its  
131 intent to reissue the invitation to negotiate and reissues the  
132 invitation to negotiate within 90 days after the notice of  
133 intent to reissue the invitation to negotiate. Such reply will  
134 be made available when the agency provides notice of a decision

135 | or intended decision, as required under the Administrative  
136 | Procedure Act, or if the agency withdraws the reissued  
137 | invitation to negotiate. Temporarily protecting such reply  
138 | ensures that the process of invitations to negotiate remains  
139 | economical and equitable, while still preserving oversight after  
140 | an agency decision is made.

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

162 | offers. The public and private harm stemming from these  
163 | practices outweighs the temporary delay in making meetings and  
164 | records related to the negotiation process open to the public.

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