

ENROLLED
HB 1369, Engrossed 1

2006 Legislature

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:

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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 | paragraph 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

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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.

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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

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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

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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

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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.