

Bill No. SB 2316

Barcode 301390

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity
(Sebesta) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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.a. Sealed bids or proposals received by an
agency pursuant to 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 a decision or intended decision pursuant to s.
120.57(3)(a) or within 10 days after bid or proposal opening,
whichever is earlier.

b. If an agency rejects all bids or proposals
submitted in response to an invitation to bid or request for

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1 proposals and the agency concurrently provides notice of its
2 intent to reissue the invitation to bid or request for
3 proposals, the rejected bids or proposals remain exempt from
4 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
5 until such time as the agency provides notice of a decision or
6 intended decision pursuant to s. 120.57(3)(a) concerning the
7 reissued invitation to bid or request for proposals or until
8 the agency withdraws the reissued invitation to bid or request
9 for proposals. This sub-subparagraph is subject to the Open
10 Government Sunset Review Act in accordance with s. 119.15, and
11 shall stand repealed on October 2, 2011, unless reviewed and
12 saved from repeal through reenactment by the Legislature.

13 2.a. A competitive sealed reply in response to an
14 invitation to negotiate, as defined in s. 287.012, is exempt
15 from s. 119.07(1) and s. 24(a), Art. I of the State
16 Constitution until such time as the agency provides notice of
17 a decision or intended decision pursuant to s. 120.57(3)(a) or
18 until 10 days after the competitive sealed replies are all
19 opened, whichever is earlier.

20 b. If an agency rejects all competitive sealed replies
21 in response to an invitation to negotiate and the agency
22 concurrently provides notice of its intent to reissue the
23 invitation to negotiate, the rejected replies remain exempt
24 from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution until such time as the agency provides notice of
26 a decision or intended decision pursuant to s. 120.57(3)(a)
27 concerning the reissued invitation to negotiate or until the
28 agency withdraws the reissued invitation to negotiate.

29 3. This subparagraph is subject to the Open Government
30 Sunset Review Act in accordance with s. 119.15, and shall
31 stand repealed on october 2, 2011, unless reviewed and saved

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1 from repeal through reenactment by the Legislature.

2 Section 2. Section 286.0113, Florida Statutes, is
3 amended to read: 286.0113 General exemptions from public
4 meetings.--

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

13 (2)(a) A meeting at which a negotiation with a vendor
14 is conducted pursuant to s. 287.057(3) is exempt from s.
15 286.011 and s. 24(b), Art. I of the State Constitution.

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

19 2. The recording is exempt from s. 119.07(1) and s.
20 24(a), Art. I of the State Constitution until such time as the
21 agency provides notice of a decision or intended decision
22 pursuant to s. 120.57(3)(a) or until 10 days after the
23 competitive sealed replies are all opened, whichever is
24 earlier.

25 (c) This subsection is subject to the Open Government
26 Sunset review Act in accordance with s. 119.15, and shall
27 stand repealed on October 2, 2011, unless reviewed and saved
28 from repeal through reenactment by the Legislature.

29 Section 3. The Legislature finds that it is a public
30 necessity that sealed bids or proposals submitted in response
31 to an invitation to bid or requests for proposals that are

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1 rejected by an agency be made exempt temporarily from public
2 records requirements if the agency concurrently provides
3 notice of its intent to reissue the invitation to bid or
4 request for proposals. Such records will be made available
5 when the agency provides notice of a decision or intended
6 decision as required under the Administrative Procedure Act,
7 or if the agency withdraws the reissued invitation to bid or
8 request for proposals. Temporarily protecting such information
9 ensures that the invitation to bid and the request for
10 proposals process remains economical and equitable, while
11 still preserving oversight once an agency decision is made.

12 The Legislature further finds that it is a public
13 necessity that a competitive sealed reply in response to an
14 invitation to negotiate be made exempt temporarily from public
15 records requirements. In addition, a competitive sealed reply
16 in response to an invitation to negotiate that is rejected by
17 an agency be made exempt temporarily from public records
18 requirements if the agency concurrently provides notice of its
19 intent to reissue the invitation to negotiate. Such reply will
20 be made available when the agency provides notice of a
21 decision or intended decision as required under the
22 Administrative Procedure Act, or if the agency withdraws the
23 reissued invitation to negotiate. Temporarily protecting such
24 reply ensures that the invitation to negotiate process remains
25 economical and equitable, while still preserving oversight
26 once an agency decision is made.

27 Additionally, the Legislature finds that it is a public
28 necessity that a meeting at which a negotiation with a vendor
29 is conducted pursuant to s. 287.057(3), F.S., be made exempt
30 from public meetings requirements. Protecting such meetings
31 ensures that the invitation to negotiate process remains

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1 economical and equitable, while still preserving oversight
2 once an agency decision is made through the requirement that a
3 complete recording be made of those meetings. Furthermore, the
4 recording of that closed portion of the meeting must be made
5 exempt temporarily from public records requirements in order
6 to preserve the purpose for the public meetings exemption. In
7 addition, it is unfair and inequitable to compel vendors
8 during the negotiation process to disclose the nature and
9 details of their offers to competitors and to others beyond
10 the agency. Further, the Legislature finds that such
11 disclosure impedes full and frank discussion of the strength,
12 weakness, and value of an offer, thereby limiting the agency's
13 ability to obtain the best value for the state. The
14 Legislature also finds that it is unfair and inequitable to
15 publicly discuss and otherwise disclose negotiation
16 strategies, assessment of vendors' offers or positions, or the
17 nature or details of offers. The public and private harm
18 stemming from these practices outweighs the temporary delay in
19 making meetings and records related to the negotiation process
20 open to the public.

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

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25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete everything before the enacting clause

28
29 and insert:

30 A bill to be entitled

31 An act relating to public records; amending s.

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1 119.071, F.S.; creating a temporary exemption
2 from public-records requirements for rejected
3 bids, and proposals received by a state agency
4 if the agency reissues the invitation to bid or
5 request for proposals; creating a temporary
6 exemption for a competitive sealed reply in
7 response to an invitation to negotiate;
8 providing an extension of the temporary
9 exemption if the agency reissues the invitation
10 to negotiate; amending s. 286.011, F.S.;
11 creating a meetings exemption for a negotiation
12 with a vendor; requiring a recording of the
13 meeting temporarily exempting the recording;
14 providing for future legislative review and
15 repeal of such exemption under the Open
16 Government Sunset Review Act; providing a
17 statement of public necessity; providing an
18 effective date.

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