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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2010	.	
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The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

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, and replies~~ received by
an agency in response to a competitive procurement solicitation
~~pursuant to invitations to bid or requests for proposals~~ are



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13 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
14 Constitution until ~~such time as~~ the agency provides notice of a
15 decision or intended decision pursuant to s. 120.57(3)(a) or
16 until 20 within 10 days after opening the bids, proposals, or
17 replies ~~bid or proposal opening~~, whichever is earlier.

18 1.b. If an agency rejects all bids, ~~or~~ proposals, or
19 replies submitted in response to a competitive procurement
20 solicitation ~~an invitation to bid or request for proposals~~ and
21 ~~the agency~~ concurrently provides notice of its intent to reissue
22 the competitive procurement solicitation ~~invitation to bid or~~
23 ~~request for proposals~~, the rejected bids, ~~or~~ proposals, or
24 replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of
25 the State Constitution until ~~such time as~~ the agency provides
26 notice of a decision or intended decision pursuant to s.
27 120.57(3)(a) concerning the reissued solicitation ~~invitation to~~
28 ~~bid or request for proposals~~ or until the agency withdraws the
29 reissued solicitation ~~invitation to bid or request for~~
30 ~~proposals~~. A bid, proposal, or reply is not exempt for longer
31 than 12 months after the initial agency notice rejecting all
32 bids, proposals, or replies. ~~This sub-subparagraph is subject to~~
33 ~~the Open Government Sunset Review Act in accordance with s.~~
34 ~~119.15 and shall stand repealed on October 2, 2011, unless~~
35 ~~reviewed and saved from repeal through reenactment by the~~
36 ~~Legislature.~~

37 2.a. ~~A competitive sealed reply in response to an~~
38 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
39 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
40 ~~until such time as the agency provides notice of a decision or~~
41 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~



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42 ~~after the final competitive sealed replies are all opened,~~
43 ~~whichever occurs earlier.~~

44 ~~b. If an agency rejects all competitive sealed replies in~~
45 ~~response to an invitation to negotiate and concurrently provides~~
46 ~~notice of its intent to reissue the invitation to negotiate and~~
47 ~~reissues the invitation to negotiate within 90 days after the~~
48 ~~notice of intent to reissue the invitation to negotiate, the~~
49 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
50 ~~Art. I of the State Constitution until such time as the agency~~
51 ~~provides notice of a decision or intended decision pursuant to~~
52 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
53 ~~or until the agency withdraws the reissued invitation to~~
54 ~~negotiate. A competitive sealed reply is not exempt for longer~~
55 ~~than 12 months after the initial agency notice rejecting all~~
56 ~~replies.~~

57 ~~2.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
58 Government Sunset Review Act in accordance with s. 119.15 and
59 shall stand repealed on October 2, 2015 ~~2011~~, unless reviewed
60 and saved from repeal through reenactment by the Legislature.

61 Section 2. Subsection (2) of section 286.0113, Florida
62 Statutes, is amended to read:

63 286.0113 General exemptions from public meetings.—

64 (2) (a) A meeting at which a negotiation with a vendor is
65 conducted, at which a vendor makes an oral presentation, or at
66 which a vendor answers questions as part of a competitive
67 procurement solicitation pursuant to s. 287.057(3) is exempt
68 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

69 ~~(b)1.~~ A complete recording must ~~shall~~ be made of the any
70 meeting ~~made exempt in paragraph (a).~~ No portion of the meeting



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71 may be held off the record.

72 2. The recording required under subparagraph 1. and all
73 documents or written materials presented at the meeting are is
74 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
75 Constitution until ~~such time as~~ the agency provides notice of a
76 decision or intended decision pursuant to s. 120.57(3)(a) or
77 until 20 days after opening the bids, proposals, or replies the
78 ~~final competitive sealed replies are all opened~~, whichever
79 occurs first earlier.

80 3. If the agency rejects all bids, proposals, or sealed
81 replies and concurrently provides notice of its intent to
82 reissue a competitive procurement solicitation, the recording,
83 documents, and written materials remain remains exempt from s.
84 119.07(1) and s. 24(a), Art. I of the State Constitution until
85 ~~such time as~~ the agency provides notice of a decision or
86 intended decision pursuant to s. 120.57(3)(a) concerning the
87 solicitation reissued invitation to negotiate or until the
88 agency withdraws the reissued solicitation invitation to
89 negotiate. Recordings, documents, and written materials are A
90 ~~recording is~~ not exempt for longer than 12 months after the
91 initial agency notice rejecting all bids, proposals, or replies.

92 (b)(e) This subsection is subject to the Open Government
93 Sunset Review Act in accordance with s. 119.15 and shall stand
94 repealed on October 2, 2015 2011, unless reviewed and saved from
95 repeal through reenactment by the Legislature.

96 Section 3. (1) The Legislature finds that it is a public
97 necessity that bids, proposals, or replies submitted in response
98 to a competitive procurement solicitation be made temporarily
99 exempt from public-records requirements. Such records shall be



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100 made available when the governmental agency provides notice of a
101 final decision or intended final decision on the solicitation,
102 or when the governmental agency rejects all bids, proposals, or
103 replies and ultimately withdraws a reissued competitive
104 solicitation. Temporarily protecting such information ensures
105 that the process of responding to a solicitation remains fair
106 and economical for vendors, while still preserving oversight
107 after a procurement decision is made or withdrawn.

108 (2) In addition, the Legislature finds that it is a public
109 necessity that a meeting at which a vendor makes an oral
110 presentation or answers questions as part of a competitive
111 procurement solicitation be made temporarily exempt from public-
112 meetings requirements. In addition, it is a public necessity
113 that any documents or written materials presented as such
114 meetings be temporarily exempt from public-records requirements.
115 The recording of the meeting and any accompanying documents and
116 materials shall be made available when the governmental agency
117 provides notice of a final decision or intended final decision
118 on the solicitation, or when the governmental agency rejects all
119 bids, proposals, or replies and ultimately withdraws a reissued
120 competitive solicitation. Temporarily protecting such meetings,
121 documents, and materials ensures that the process of responding
122 to a competitive solicitation remains fair and economical for
123 vendors, while still preserving oversight after a procurement
124 decision is made or withdrawn. It is unfair and inequitable to
125 compel vendors to disclose to competitors the nature and details
126 of their proposals during such meetings or through the materials
127 presented at such meetings. Such disclosure impedes full and
128 frank discussion of the strengths, weaknesses, and value of a



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129 proposal, thereby limiting the ability of the governmental
130 agency to obtain the best value for the public. The public and
131 private harm stemming from these practices outweighs the
132 temporary delay in making the meetings, documents, and materials
133 related to the solicitation process open and available to the
134 public.

135 Section 4. This act shall take effect July 1, 2010.

136
137 ===== T I T L E A M E N D M E N T =====

138 And the title is amended as follows:

139 Delete everything before the enacting clause
140 and insert:

141 A bill to be entitled
142 An act relating to public records and meetings;
143 amending s. 119.071, F.S.; providing that bids,
144 proposals, or replies in response to a competitive
145 procurement solicitation are exempt from the public-
146 records law; limiting how long such records are
147 exempt; providing for future repeal and legislative
148 review of the exemption under the Open Government
149 Sunset Review Act; amending s. 286.0113, F.S.;;
150 providing a temporary exemption from the public-
151 meetings law for meetings at which vendors make
152 presentations or answer questions as part of a
153 competitive procurement solicitation; providing that
154 documents or materials presented at such meeting are
155 temporarily exempt from the public-records law;
156 providing for future repeal and legislative review of
157 the exemptions under the Open Government Sunset Review



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Act; providing a statement of public necessity;
providing an effective date.