

By Senator Fasano

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1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 119.071, F.S.; providing that sealed bids,
4 proposals, or replies in response to an invitation to
5 bid, a request for proposals, or an invitation to
6 negotiate issued for construction of a public-private
7 transportation facility are exempt from the public-
8 records law; extending the period that a sealed bid or
9 proposal is exempt from the public-records law
10 following the opening of the bid or proposal by an
11 agency; defining the term "notice of a decision or
12 intended decision" for purposes of the public-records
13 exemption provided for sealed bids, proposals, or
14 replies that are submitted to an agency; amending s.
15 286.0113, F.S.; providing an exemption from the
16 public-meetings law for meetings of a governmental
17 entity at which vendors make presentations or answer
18 questions regarding a sealed bid, proposal, or reply
19 to a solicitation or make oral alternate technical
20 concept presentations; requiring that a recording be
21 made of the meeting; providing that the recording of
22 the meeting is exempt from the public-records law for
23 a specified period following notice by the
24 governmental entity of a decision or intended decision
25 or until withdrawal of the solicitation or rejection
26 of all bids and proposals; providing for future repeal
27 and legislative review of the exemption under the Open
28 Government Sunset Review Act; providing a definition;
29 providing a statement of public necessity; providing

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30 an effective date.

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32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Paragraph (b) of subsection (1) of section
35 119.071, Florida Statutes, is amended to read:

36 119.071 General exemptions from inspection or copying of
37 public records.—

38 (1) AGENCY ADMINISTRATION.—

39 (b)1.a. Sealed bids or proposals received by an agency
40 pursuant to invitations to bid or requests for proposals,
41 including invitations to bid or requests for proposals issued
42 pursuant to s. 334.30, are exempt from s. 119.07(1) and s.
43 24(a), Art. I of the State Constitution until such time as the
44 agency provides notice of a decision or intended decision
45 pursuant to s. 120.57(3)(a) or within 20 ~~10~~ days after bid or
46 proposal opening, whichever is earlier.

47 b. If an agency rejects all bids or proposals submitted in
48 response to an invitation to bid or request for proposals and
49 the agency concurrently provides notice of its intent to reissue
50 the invitation to bid or request for proposals, the rejected
51 bids or proposals remain exempt from s. 119.07(1) and s. 24(a),
52 Art. I of the State Constitution until such time as the agency
53 provides notice of a decision or intended decision pursuant to
54 s. 120.57(3)(a) concerning the reissued invitation to bid or
55 request for proposals or until the agency withdraws the reissued
56 invitation to bid or request for proposals. This sub-
57 subparagraph is subject to the Open Government Sunset Review Act
58 in accordance with s. 119.15 and shall stand repealed on October

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59 2, 2011, unless reviewed and saved from repeal through
60 reenactment by the Legislature.

61 2.a. A competitive sealed reply in response to an
62 invitation to negotiate, as defined in s. 287.012, including an
63 invitation to negotiate issued pursuant to s. 334.30, is exempt
64 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
65 until such time as the agency provides notice of a decision or
66 intended decision pursuant to s. 120.57(3)(a) or until 20 days
67 after the final competitive sealed replies are all opened,
68 whichever occurs earlier.

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

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

86 3. As used in this paragraph, the term "notice of a
87 decision or intended decision" means the agency decision to

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88 award one or more contracts resulting from an invitation to bid,
89 a request for proposals, or an invitation to negotiate provided
90 to one or more vendors; however, the term does not mean an
91 intermediate decision to short-list particular vendors or remove
92 one or more vendors from further competition.

93 Section 2. Subsections (3) and (4) are added to section
94 286.0113, Florida Statutes, to read:

95 286.0113 General exemptions from public meetings.—

96 (3) (a) A meeting of any governmental entity subject to s.
97 286.011 at which vendors are asked to make oral presentations or
98 to answer questions regarding their sealed bids, proposals, or
99 replies in response to a competitive solicitation is exempt from
100 s. 286.011 and s. 24(b), Art. I of the State Constitution.

101 (b) A meeting of any governmental entity subject to s.
102 286.011 at which vendors make oral alternate technical concept
103 presentations is exempt from s. 286.011 and s. 24(b), Art I of
104 the State Constitution.

105 (c)1. A complete recording shall be made of any portion of
106 a meeting made exempt pursuant to paragraph (a) or paragraph
107 (b). A portion of the meeting may not be held off the record.

108 2. The recording required under subparagraph 1. and all
109 documents and written materials from such meeting are exempt
110 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
111 until such time as the governmental entity provides notice of a
112 decision or intended decision or until 20 days after all sealed
113 bids, proposals, or replies are opened, whichever occurs
114 earlier.

115 3. If the governmental entity rejects all bids, proposals,
116 or replies, the recording remains exempt from s. 119.07(1) and

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117 s. 24(a), Art. I of the State Constitution until such time as
118 the governmental entity provides notice of a decision or
119 intended decision concerning the reissued competitive
120 solicitation or until the governmental entity withdraws the
121 reissued competitive solicitation. A recording is not exempt for
122 longer than 12 months after the initial notice rejecting all
123 bids, proposals, or replies.

124 (c) This subsection is subject to the Open Government
125 Sunset Review Act in accordance with s. 119.15 and shall stand
126 repealed on October 2, 2015, unless reviewed and saved from
127 repeal through reenactment by the Legislature.

128 (4) As used in this section, the term "notice of a decision
129 or intended decision" means the decision of the governmental
130 entity to award one or more contracts resulting from a
131 competitive solicitation provided to one or more vendors;
132 however, the term does not mean an intermediate decision to
133 short-list particular vendors or remove one or more vendors from
134 further competition.

135 Section 3. (1) The Legislature finds that it is a public
136 necessity that sealed bids, proposals, or replies submitted in
137 response to a competitive solicitation, including an invitation
138 to negotiate, be made temporarily exempt from public-records
139 requirements. Such records shall be made available when the
140 agency or governmental entity provides notice of a final
141 decision or intended final decision on the contract award, or
142 when the agency or governmental entity rejects all bids,
143 proposals, or replies and ultimately withdraws a reissued
144 competitive solicitation. Temporarily protecting such
145 information ensures that the process of responding to a

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146 competitive solicitation remains fair and economical for
147 vendors, while still preserving oversight after a procurement
148 decision is made.

149 (2) In addition, the Legislature finds that it is a public
150 necessity that a meeting at which vendors make oral
151 presentations; answer questions regarding their sealed bids,
152 proposals, or replies in response to a competitive solicitation;
153 or make oral alternate technical concept presentations be made
154 exempt from public-meetings requirements. Temporarily protecting
155 such meetings ensures that the process of responding to a
156 competitive solicitation remains fair and economical for
157 vendors, while still preserving oversight after a procurement
158 decision is made through the requirement that a complete
159 recording be made of those meetings. Furthermore, the recording
160 of that closed portion of the meeting must be made temporarily
161 exempt from public-records requirements in order to preserve the
162 purpose for the public-meetings exemption. It is unfair and
163 inequitable to compel vendors to disclose to competitors the
164 nature and details of their proposals during such meetings. Such
165 disclosure impedes full and frank discussion of the strengths,
166 weaknesses, and value of a proposal, thereby limiting the
167 ability of the agency or governmental entity to obtain the best
168 value for the public. The Legislature also finds that it is
169 unfair and inequitable to publicly discuss any assessment by the
170 agency or governmental entity of the vendors' proposals which
171 might arise during such a meeting. The public and private harm
172 stemming from these practices outweighs the temporary delay in
173 making meetings and records related to the competitive-
174 solicitation process open to the public.

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