

By the Policy and Steering Committee on Ways and Means; the Committee on Governmental Oversight and Accountability; and 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 bids,
4 proposals, or replies in response to a competitive
5 procurement solicitation are exempt from the public-
6 records law; limiting how long such records are
7 exempt; providing for future repeal and legislative
8 review of the exemption under the Open Government
9 Sunset Review Act; amending s. 286.0113, F.S.;
10 providing a temporary exemption from the public-
11 meetings law for meetings at which vendors make
12 presentations or answer questions as part of a
13 competitive procurement solicitation; providing that
14 documents or materials presented at such meeting are
15 temporarily exempt from the public-records law;
16 providing for future repeal and legislative review of
17 the exemptions under the Open Government Sunset Review
18 Act; providing a statement of public necessity;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (b) of subsection (1) of section
24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of
26 public records.—

27 (1) AGENCY ADMINISTRATION.—

28 (b) ~~1.a. Sealed Bids, or proposals, and replies~~ received by
29 an agency in response to a competitive procurement solicitation

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30 ~~pursuant to invitations to bid or requests for proposals are~~
31 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~
32 ~~Constitution until such time as the agency provides notice of a~~
33 ~~decision or intended decision pursuant to s. 120.57(3)(a) or~~
34 ~~until 20 within 10 days after opening the bids, proposals, or~~
35 ~~replies bid or proposal opening, whichever is earlier.~~

36 1.b. ~~If an agency rejects all bids, or proposals, or~~
37 ~~replies submitted in response to a competitive procurement~~
38 ~~solicitation an invitation to bid or request for proposals and~~
39 ~~the agency concurrently provides notice of its intent to reissue~~
40 ~~the competitive procurement solicitation invitation to bid or~~
41 ~~request for proposals, the rejected bids, or proposals, or~~
42 ~~replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of~~
43 ~~the State Constitution until such time as the agency provides~~
44 ~~notice of a decision or intended decision pursuant to s.~~
45 ~~120.57(3)(a) concerning the reissued solicitation invitation to~~
46 ~~bid or request for proposals or until the agency withdraws the~~
47 ~~reissued solicitation invitation to bid or request for~~
48 ~~proposals. A bid, proposal, or reply is not exempt for longer~~
49 ~~than 12 months after the initial agency notice rejecting all~~
50 ~~bids, proposals, or replies. This sub-subparagraph is subject to~~
51 ~~the Open Government Sunset Review Act in accordance with s.~~
52 ~~119.15 and shall stand repealed on October 2, 2011, unless~~
53 ~~reviewed and saved from repeal through reenactment by the~~
54 ~~Legislature.~~

55 2.a. ~~A competitive sealed reply in response to an~~
56 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
57 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
58 ~~until such time as the agency provides notice of a decision or~~

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59 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
60 ~~after the final competitive sealed replies are all opened,~~
61 ~~whichever occurs earlier.~~

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

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

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

81 286.0113 General exemptions from public meetings.—

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

87 ~~(b)~~1. A complete recording must ~~shall~~ be made of the any

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88 meeting ~~made exempt in paragraph (a)~~. No portion of the meeting
89 may be held off the record.

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

98 3. If the agency rejects all bids, proposals, or sealed
99 replies and concurrently provides notice of its intent to
100 reissue a competitive procurement solicitation, the recording,
101 documents, and written materials remain remains exempt from s.
102 119.07(1) and s. 24(a), Art. I of the State Constitution until
103 ~~such time as~~ the agency provides notice of a decision or
104 intended decision pursuant to s. 120.57(3)(a) concerning the
105 solicitation reissued invitation to negotiate or until the
106 agency withdraws the reissued solicitation invitation to
107 negotiate. Recordings, documents, and written materials are A
108 ~~recording is~~ not exempt for longer than 12 months after the
109 initial agency notice rejecting all bids, proposals, or replies.

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

114 Section 3. (1) The Legislature finds that it is a public
115 necessity that bids, proposals, or replies submitted in response
116 to a competitive procurement solicitation be made temporarily

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117 exempt from public-records requirements. Such records shall be
118 made available when the governmental agency provides notice of a
119 final decision or intended final decision on the solicitation,
120 or when the governmental agency rejects all bids, proposals, or
121 replies and ultimately withdraws a reissued competitive
122 solicitation. Temporarily protecting such information ensures
123 that the process of responding to a solicitation remains fair
124 and economical for vendors, while still preserving oversight
125 after a procurement decision is made or withdrawn.

126 (2) In addition, the Legislature finds that it is a public
127 necessity that a meeting at which a vendor makes an oral
128 presentation or answers questions as part of a competitive
129 procurement solicitation be made temporarily exempt from public-
130 meetings requirements. In addition, it is a public necessity
131 that any documents or written materials presented at such
132 meetings be temporarily exempt from public-records requirements.
133 The recording of the meeting and any accompanying documents and
134 materials shall be made available when the governmental agency
135 provides notice of a final decision or intended final decision
136 on the solicitation, or when the governmental agency rejects all
137 bids, proposals, or replies and ultimately withdraws a reissued
138 competitive solicitation. Temporarily protecting such meetings,
139 documents, and materials ensures that the process of responding
140 to a competitive solicitation remains fair and economical for
141 vendors, while still preserving oversight after a procurement
142 decision is made or withdrawn. It is unfair and inequitable to
143 compel vendors to disclose to competitors the nature and details
144 of their proposals during such meetings or through the materials
145 presented at such meetings. Such disclosure impedes full and

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146 frank discussion of the strengths, weaknesses, and value of a
147 proposal, thereby limiting the ability of the governmental
148 agency to obtain the best value for the public. The public and
149 private harm stemming from these practices outweighs the
150 temporary delay in making the meetings, documents, and materials
151 related to the solicitation process open and available to the
152 public.

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