

1 A bill to be entitled
2 An act relating to public records and public meetings;
3 amending s. 119.071, F.S., which provides a temporary
4 exemption from public records requirements for sealed bids
5 or proposals received by an agency pursuant to invitations
6 to bid or requests for proposals; clarifying the exemption
7 to specify applicability of the exemption to invitations
8 to bid or requests for proposals issued pursuant to s.
9 334.30, F.S., relating to public-private transportation
10 facilities; revising the duration of the exemption;
11 redefining "notice of a decision or intended decision";
12 conforming references; amending s. 286.0113, F.S.;
13 providing an exemption from public meeting requirements
14 for a meeting of any governmental entity at which vendors
15 are asked to make oral presentations or answer questions
16 regarding their sealed bids, proposals, or replies in
17 response to a competitive solicitation and for a meeting
18 of any governmental entity at which vendors make oral
19 alternate technical concept presentations; requiring a
20 complete recording to be made of any portion of such
21 meetings; providing an exemption from public records
22 requirements for the recordings of such meetings and for
23 all documents and written materials generated as a result
24 of such meetings; providing for limited duration of the
25 exemptions for such recordings, documents, and written
26 materials; providing for future review and repeal of the
27 exemptions; defining "notice of a decision or intended
28 decision" for purposes of the exemptions; providing a

29 statement of public necessity; providing an effective
 30 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, which
 41 includes 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 subparagraph 3. ~~s. 120.57(3)(a)~~ or within 20 ~~10~~ days
 46 after bid or 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 subparagraph 3. ~~s. 120.57(3)(a)~~ concerning the reissued
 55 invitation to bid or request for proposals or until the agency
 56 withdraws the reissued invitation to bid or request for

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57 proposals. This sub-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, 2011, unless reviewed and
60 saved from repeal through 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, is exempt
63 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
64 until such time as the agency provides notice of a decision or
65 intended decision pursuant to subparagraph 3. ~~s. 120.57(3)(a)~~ or
66 until 20 days after the final competitive sealed replies are all
67 opened, whichever occurs earlier.

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

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

85 3. For purposes of this paragraph, "notice of a decision
 86 or intended decision" means the agency decision to award the
 87 contract or contracts resulting from an invitation to bid,
 88 request for proposal, or invitation to negotiate to a vendor or
 89 vendors, but this term does not mean any intermediate decision
 90 short-listing particular vendors or removing one or more vendors
 91 from further consideration.

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

94 286.0113 General exemptions from public meetings.—

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

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

104 (c) 1. A complete recording shall be made of any portion of
 105 a meeting made exempt under paragraph (a) or paragraph (b). No
 106 portion of such meetings may be held off the record.

107 2. The recording required under subparagraph 1. and all
 108 documents and written materials generated as a result of such
 109 meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 110 State Constitution until such time as the governmental entity
 111 provides notice of a decision or intended decision pursuant to

112 subsection (4) or until 20 days after all sealed bids,
 113 proposals, or replies are opened, whichever occurs earlier.

114 3. If the governmental entity rejects all bids, proposals,
 115 or replies, the recording required under subparagraph 1. and all
 116 documents and written materials generated as a result of such
 117 meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of
 118 the State Constitution until such time as the governmental
 119 entity provides notice of a decision or intended decision
 120 pursuant to subsection (4) concerning the reissued competitive
 121 solicitation or until the governmental entity withdraws the
 122 reissued competitive solicitation. The recording and the
 123 documents and written materials generated as a result of the
 124 meeting are not exempt for longer than 12 months after the
 125 initial notice rejecting all bids, proposals, or replies.

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

130 (4) For purposes of this section, "notice of a decision or
 131 intended decision" means the decision of the governmental entity
 132 to award the contract or contracts resulting from the
 133 competitive solicitation to a vendor or vendors, but this term
 134 does not mean any intermediate decision short-listing particular
 135 vendors or removing one or more vendors from further
 136 competition.

137 Section 3. (1) It is the finding of the Legislature that
 138 it is a public necessity that sealed bids, proposals, or replies
 139 submitted in response to a competitive solicitation by an agency

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140 be made temporarily exempt from public records requirements and
141 that such records shall only be made publicly available when the
142 agency provides notice of a decision or intended decision on the
143 contract award, or when the agency rejects all bids, proposals,
144 or replies and ultimately withdraws a reissued competitive
145 solicitation. Temporarily protecting such information ensures
146 that the process of responding to a competitive solicitation
147 remains fair and economical for vendors, while still preserving
148 oversight after a procurement decision is made. Further, it is
149 the finding of the Legislature that the exemption from public
150 records requirements for sealed bids or proposals received by an
151 agency pursuant to invitations to bid or requests for proposals
152 under s. 119.071(1)(b), Florida Statutes, includes invitations
153 to bid or requests for proposals issued pursuant to s. 334.30,
154 Florida Statutes, relating to public-private transportation
155 facilities.

156 (2) The Legislature finds that it is a public necessity
157 that a meeting of any governmental entity subject to s. 286.011,
158 Florida Statutes, at which vendors are asked to make oral
159 presentations or answer questions regarding vendors' sealed
160 bids, proposals, or replies in response to a competitive
161 solicitation be made exempt from public meeting requirements. It
162 is also the finding of the Legislature that a meeting of any
163 governmental entity subject to s. 286.011, Florida Statutes, at
164 which vendors make oral alternate technical concept
165 presentations be made exempt from public meeting requirements.
166 Temporarily protecting such meetings ensures that the process of
167 responding to a competitive solicitation remains fair and

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168 economical for vendors, while still preserving oversight after a
169 procurement decision is made through the requirement that a
170 complete recording be made of those meetings. Furthermore, the
171 recordings of those closed portions of meetings and all
172 documents and written materials generated as a result of such
173 meetings must be made temporarily exempt from public records
174 requirements in order to preserve the purpose of the public
175 meeting exemption. It is unfair and inequitable to compel
176 vendors to disclose to competitors the nature and details of
177 their proposals during such meetings. Such disclosure impedes
178 full and frank discussion of the strengths, weaknesses, and
179 value of a proposal, thereby limiting the ability of the
180 governmental entity to obtain the best value for the public. The
181 Legislature also finds that it is unfair and inequitable to
182 publicly discuss any assessment by the governmental entity of
183 the vendors' proposals that might arise during such a meeting.
184 The public and private harm stemming from these practices
185 outweighs the temporary delay in making meetings and records
186 related to the competitive solicitation process open to the
187 public.

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