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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides an exemption from public records requirements for
5 bids, proposals, or replies submitted to an agency in
6 response to a competitive solicitation; expanding the
7 public records exemption by extending the duration of the
8 exemption; providing a definition; reorganizing the
9 exemption; providing for future repeal and legislative
10 review of the exemption under the Open Government Sunset
11 Review Act; amending s. 286.0113, F.S., which provides an
12 exemption from public meetings requirements for meetings
13 at which a negotiation with a vendor is conducted and
14 which provides an exemption from public records
15 requirements for recordings of exempt meetings; expanding
16 the public meetings exemption to include meetings at which
17 a negotiation with a vendor is conducted pursuant to a
18 competitive solicitation, at which a vendor makes an oral
19 presentation as part of a competitive solicitation, at
20 which a vendor answers questions as part of a competitive
21 solicitation, and at which team members discuss
22 negotiation strategies; expanding the public records
23 exemption to include any records presented at an exempt
24 meeting; providing definitions; reorganizing the
25 exemption; providing for future repeal and legislative
26 review of the public meetings and public records
27 exemptions under the Open Government Sunset Review Act;

28 providing a statement of public necessity; providing an
 29 effective date.

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

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

35 119.071 General exemptions from inspection or copying of
 36 public records.—

37 (1) AGENCY ADMINISTRATION.—

38 (b)1. For purposes of this paragraph "competitive
 39 solicitation" means the process of requesting and receiving
 40 sealed bids, proposals, or replies submitted by responsive
 41 vendors in accordance with the terms of a competitive process,
 42 regardless of the method of procurement.

43 ~~2.a.~~ Sealed bids, ~~or~~ proposals, or replies received by an
 44 agency pursuant to a competitive solicitation ~~invitations to bid~~
 45 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
 46 24(a), Art. I of the State Constitution until such time as the
 47 agency provides notice of an a decision or intended decision to
 48 make a contract award ~~pursuant to s. 120.57(3)(a)~~ or until 30
 49 within 10 days after opening the bids, proposals, or replies ~~bid~~
 50 ~~or proposal opening~~, whichever is earlier.

51 ~~3.b.~~ If an agency rejects all bids, ~~or~~ proposals, or
 52 replies submitted in response to a competitive solicitation ~~an~~
 53 ~~invitation to bid or request for proposals~~ and the agency
 54 concurrently provides notice of its intent to reissue the
 55 competitive solicitation ~~invitation to bid or request for~~

56 ~~proposals, the rejected bids, or proposals, or replies~~ remain
 57 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 58 Constitution until such time as the agency provides notice of an
 59 ~~a decision or~~ intended decision to make a contract award
 60 ~~pursuant to s. 120.57(3)(a) concerning the reissued competitive~~
 61 solicitation invitation to bid or request for proposals or until
 62 the agency withdraws the reissued competitive solicitation
 63 ~~invitation to bid or request for proposals. A bid, proposal, or~~
 64 reply is not exempt for longer than 12 months after the initial
 65 agency notice rejecting all bids, proposals, or replies. This
 66 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
 67 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
 68 ~~October 2, 2011, unless reviewed and saved from repeal through~~
 69 ~~reenactment by the Legislature.~~

70 2.a. ~~A competitive sealed reply in response to an~~
 71 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
 72 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
 73 ~~until such time as the agency provides notice of a decision or~~
 74 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
 75 ~~after the final competitive sealed replies are all opened,~~
 76 ~~whichever occurs earlier.~~

77 b. ~~If an agency rejects all competitive sealed replies in~~
 78 ~~response to an invitation to negotiate and concurrently provides~~
 79 ~~notice of its intent to reissue the invitation to negotiate and~~
 80 ~~reissues the invitation to negotiate within 90 days after the~~
 81 ~~notice of intent to reissue the invitation to negotiate, the~~
 82 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
 83 ~~Art. I of the State Constitution until such time as the agency~~

84 ~~provides notice of a decision or intended decision pursuant to~~
 85 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
 86 ~~or until the agency withdraws the reissued invitation to~~
 87 ~~negotiate. A competitive sealed reply is not exempt for longer~~
 88 ~~than 12 months after the initial agency notice rejecting all~~
 89 ~~replies.~~

90 ~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
 91 Government Sunset Review Act in accordance with s. 119.15 and
 92 shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed
 93 and saved from repeal through reenactment by the Legislature.

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

96 286.0113 General exemptions from public meetings.—

97 (2) (a) For purposes of this subsection:

98 1. "Competitive solicitation" means the process of
 99 requesting and receiving sealed bids, proposals, or replies
 100 submitted by responsive vendors in accordance with the terms of
 101 a competitive process, regardless of the method of procurement.

102 2. "Team" means a group of members established by a
 103 governmental entity for the purpose of conducting negotiations
 104 as part of a competitive solicitation.

105 (b)1. Any portion of a meeting at which a negotiation with
 106 a vendor is conducted pursuant to a competitive solicitation, at
 107 which a vendor makes an oral presentation as part of a
 108 competitive solicitation, or at which a vendor answers questions
 109 as part of a competitive solicitation ~~s. 287.057(1)~~ is exempt
 110 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

111 2. Any portion of a team meeting at which negotiation

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112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
 113 Art. I of the State Constitution.

114 (c)-(b)1. A complete recording shall be made of any portion
 115 of an exempt meeting ~~made exempt in paragraph (a).~~ No portion of
 116 the exempt meeting may be held off the record.

117 2. The recording of, and any records presented at, the
 118 exempt meeting are ~~required under subparagraph 1. is~~ exempt from
 119 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 120 until such time as the agency provides notice of an a decision
 121 ~~or~~ intended decision to make a contract award pursuant to s.
 122 ~~120.57(3)(a)~~ or until 30 20 days after opening the bids,
 123 proposals, or replies ~~the final competitive sealed replies are~~
 124 ~~all opened,~~ whichever occurs earlier.

125 3. If the agency rejects all bids, proposals, or sealed
 126 replies and concurrently provides notice of its intent to
 127 reissue a competitive solicitation, the recording and any
 128 records presented at the exempt meeting remain ~~remains~~ exempt
 129 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 130 until such time as the agency provides notice of an a decision
 131 ~~or~~ intended decision to make a contract award pursuant to s.
 132 ~~120.57(3)(a)~~ concerning the reissued competitive solicitation
 133 ~~invitation to negotiate~~ or until the agency withdraws the
 134 reissued competitive solicitation invitation to negotiate. A
 135 recording and any records presented at an exempt meeting are ~~is~~
 136 not exempt for longer than 12 months after the initial agency
 137 notice rejecting all bids, proposals, or replies.

138 (d)-(e) This subsection is subject to the Open Government
 139 Sunset Review Act in accordance with s. 119.15 and shall stand

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140 repealed on October 2, 2016 ~~2011~~, unless reviewed and saved from
141 repeal through reenactment by the Legislature.

142 Section 3. (1) The Legislature finds that it is a public
143 necessity that bids, proposals, or replies submitted to an
144 agency in response to a competitive solicitation be made
145 temporarily exempt from public records requirements. Such
146 records shall be made available when the agency provides notice
147 of an intended decision to make a contract award on the
148 competitive solicitation, or when the agency rejects all bids,
149 proposals, or replies and ultimately withdraws a reissued
150 competitive solicitation. Temporarily protecting such
151 information ensures that the process of responding to a
152 competitive solicitation remains fair and economical for
153 vendors, while still preserving oversight after a competitive
154 solicitation decision is made or withdrawn.

155 (2) The Legislature also finds that it is a public
156 necessity that a meeting at which a negotiation with a vendor is
157 conducted pursuant to a competitive solicitation, at which a
158 vendor makes an oral presentation as part of a competitive
159 solicitation, or at which a vendor answers questions as part of
160 a competitive solicitation be made exempt from public meetings
161 requirements. In addition, it is a public necessity that any
162 records presented at such meetings be made temporarily exempt
163 from public records requirements. The recording of the meeting
164 and any such records shall be made available when the agency
165 provides notice of an intended decision to make a contract award
166 on the competitive solicitation, or when the agency rejects all
167 bids, proposals, or replies and ultimately withdraws a reissued

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168 competitive solicitation. Protecting such meetings and
169 temporarily protecting the recording and any records presented
170 by a vendor at such meetings, ensures that the process of
171 responding to a competitive solicitation remains fair and
172 economical for vendors, while still preserving oversight after a
173 competitive solicitation decision is made or withdrawn. It is
174 unfair and inequitable to compel vendors to disclose to
175 competitors the nature and details of their proposals during
176 such meetings or through the minutes or records presented at
177 such meetings. Such disclosure impedes full and frank discussion
178 of the strengths, weaknesses, and value of a bid, proposal, or
179 response, thereby limiting the ability of the agency to obtain
180 the best value for the public. The public and private harm
181 stemming from these practices outweighs the temporary delay in
182 access to records related to the competitive solicitation.

183 (3) The Legislature further finds that it is a public
184 necessity that any portion of a team meeting at which
185 negotiation strategies are discussed be made exempt from public
186 meetings requirements. In addition, it is a public necessity
187 that the recording of such meeting be made temporarily exempt
188 from public records requirements. The recording of the meeting
189 shall be made available when the agency provides notice of an
190 intended decision to make a contract award on the competitive
191 solicitation, or when the agency rejects all bids, proposals, or
192 replies and ultimately withdraws a reissued competitive
193 solicitation. Team members often meet to strategize about
194 competitive solicitations and the approach to take as part of
195 the evaluation process. Without the public meeting exemption and

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196 | the limited public record exemption, the effective and efficient
197 | administration of the competitive solicitation process would be
198 | hindered.

199 | Section 4. This act shall take effect upon becoming a law.