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CS/HB 7223

2011 Legislature

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;

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

30

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

32

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 in accordance with the terms  
41 of a competitive process, regardless of the method of  
42 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  
48 ~~pursuant to s. 120.57(3)(a) or~~ until 30 ~~within 10~~ days after  
49 opening the bids, proposals, or final replies ~~bid or proposal~~  
50 ~~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~~

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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 pursuant to s. 120.57(3)(a)~~  
 60 concerning the reissued competitive solicitation ~~invitation to~~  
 61 ~~bid or request for proposals~~ or until the agency withdraws the  
 62 reissued competitive solicitation ~~invitation to bid or request~~  
 63 ~~for proposals.~~ A bid, proposal, or reply is not exempt for  
 64 longer than 12 months after the initial agency notice rejecting  
 65 all bids, proposals, or replies. ~~This sub-subparagraph is~~  
 66 ~~subject to the Open Government Sunset Review Act in accordance~~  
 67 ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~  
 68 ~~unless reviewed and saved from repeal through reenactment by the~~  
 69 ~~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~~

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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 in  
 100 accordance with the terms of a competitive process, regardless  
 101 of the method of procurement.

102 2. "Team" means a group of members established by an  
 103 agency for the purpose of conducting negotiations as part of a  
 104 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 ~~pursuant to s. 120.57(3)(a)~~ or until 30 ~~20~~  
122 days after opening the bids, proposals, or final replies ~~the~~  
123 ~~final competitive sealed replies are all opened,~~ whichever  
124 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 ~~pursuant to s. 120.57(3)(a)~~ concerning the  
132 reissued competitive solicitation invitation to negotiate or  
133 until the agency withdraws the reissued competitive solicitation  
134 ~~invitation to negotiate.~~ A recording and any records presented  
135 at an exempt meeting are ~~is~~ not exempt for longer than 12 months  
136 after the initial agency notice rejecting all bids, proposals,  
137 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, or when the agency rejects all bids,  
148 proposals, or replies and ultimately withdraws a reissued  
149 competitive solicitation. Temporarily protecting such  
150 information ensures that the process of responding to a  
151 competitive solicitation remains fair and economical for  
152 vendors, while still preserving oversight after a competitive  
153 solicitation decision is made or withdrawn.

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

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

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

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