



245102

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/30/2011	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph, the term "competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies submitted by responsive



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13 vendors in accordance with the terms of a competitive process,
14 regardless of the method of procurement.

15 ~~2.a.~~ Sealed bids, or proposals, or replies received by an
16 agency pursuant to a competitive solicitation ~~invitations to bid~~
17 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
18 24(a), Art. I of the State Constitution until such time as the
19 agency provides notice of an a decision or intended decision to
20 make a contract award ~~pursuant to s. 120.57(3)(a)~~ or until 30
21 ~~within 10~~ days after opening the bids, proposals, or replies ~~bid~~
22 ~~or proposal opening~~, whichever is earlier.

23 ~~3.b.~~ If an agency rejects all bids, ~~or proposals, or~~
24 replies submitted in response to a competitive solicitation ~~an~~
25 ~~invitation to bid or request for proposals~~ and the agency
26 concurrently provides notice of its intent to reissue the
27 competitive solicitation ~~invitation to bid or request for~~
28 ~~proposals~~, the rejected bids, ~~or proposals, or replies~~ remain
29 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution until such time as the agency provides notice of an
31 ~~a decision or intended decision to make a contract award~~
32 ~~pursuant to s. 120.57(3)(a)~~ concerning the reissued competitive
33 solicitation ~~invitation to bid or request for proposals~~ or until
34 the agency withdraws the reissued competitive solicitation
35 ~~invitation to bid or request for proposals~~. A bid, proposal, or
36 reply is not exempt for longer than 12 months after the initial
37 agency notice rejecting all bids, proposals, or replies. ~~This~~
38 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
39 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
40 ~~October 2, 2011, unless reviewed and saved from repeal through~~
41 ~~reenactment by the Legislature.~~



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

49 ~~b. If an agency rejects all competitive sealed replies in~~
50 ~~response to an invitation to negotiate and concurrently provides~~
51 ~~notice of its intent to reissue the invitation to negotiate and~~
52 ~~reissues the invitation to negotiate within 90 days after the~~
53 ~~notice of intent to reissue the invitation to negotiate, the~~
54 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
55 ~~Art. I of the State Constitution until such time as the agency~~
56 ~~provides notice of a decision or intended decision pursuant to~~
57 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
58 ~~or until the agency withdraws the reissued invitation to~~
59 ~~negotiate. A competitive sealed reply is not exempt for longer~~
60 ~~than 12 months after the initial agency notice rejecting all~~
61 ~~replies.~~

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

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

68 286.0113 General exemptions from public meetings.—

69 (2) (a) For purposes of this subsection, the term:

70 1. "Competitive solicitation" means the process of



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71 requesting and receiving sealed bids, proposals, or replies
72 submitted by responsive vendors in accordance with the terms of
73 a competitive process, regardless of the method of procurement.

74 2. "Team" means a group of members established by an agency
75 for the purpose of conducting negotiations as part of a
76 competitive solicitation.

77 (b)1. Any portion of a meeting at which a negotiation with
78 a vendor is conducted pursuant to a competitive solicitation, at
79 which a vendor makes an oral presentation as part of a
80 competitive solicitation, or at which a vendor answers questions
81 as part of a competitive solicitation s. 287.057(1) is exempt
82 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

83 2. Any portion of a team meeting at which negotiation
84 strategies are discussed is exempt from s. 286.011 and s. 24(b),
85 Art. I of the State Constitution.

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

89 2.2. The recording of and any records presented at the
90 exempt meeting are ~~required under subparagraph 1.~~ is exempt from
91 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
92 until such time as the agency provides notice of an a decision
93 ~~or~~ intended decision to make a contract award pursuant to s.
94 ~~120.57(3)(a)~~ or until 30 20 days after opening the bids,
95 proposals, or replies ~~the final competitive sealed replies are~~
96 ~~all opened,~~ whichever occurs earlier.

97 3.3. If the agency rejects all bids, proposals, or sealed
98 replies and concurrently provides notice of its intent to
99 reissue a competitive solicitation, the recording and any



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100 records presented at the exempt meeting remain ~~remains~~ exempt
101 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
102 until such time as the agency provides notice of an ~~a decision~~
103 ~~or~~ intended decision to make a contract award pursuant to s.
104 ~~120.57(3)(a)~~ concerning the reissued competitive solicitation
105 ~~invitation to negotiate~~ or until the agency withdraws the
106 reissued competitive solicitation invitation to negotiate. A
107 recording and any records presented at an exempt meeting are ~~is~~
108 not exempt for longer than 12 months after the initial agency
109 notice rejecting all bids, proposals, or replies.

110 (d) ~~(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, 2016 ~~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 solicitation be made temporarily exempt from
117 public-records requirements. Such records shall be made
118 available when the agency provides notice of an intended
119 decision to make a contract award on the competitive
120 solicitation, or when the 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 competitive solicitation
124 remains fair and economical for vendors, while still preserving
125 oversight after a competitive solicitation decision is made or
126 withdrawn.

127 (2) The Legislature also finds that it is a public
128 necessity that a meeting at which a negotiation with a vendor is



129 conducted pursuant to a competitive solicitation, at which a
130 vendor makes an oral presentation as part of a competitive
131 solicitation, or at which a vendor answers questions as part of
132 a competitive solicitation, be made exempt from public-meetings
133 requirements. In addition, it is a public necessity that any
134 records presented at such meetings be made temporarily exempt
135 from public-records requirements. The recording of the meeting
136 and any such records shall be made available when the agency
137 provides notice of an intended decision to make a contract award
138 on the competitive solicitation, or when the agency rejects all
139 bids, proposals, or replies and ultimately withdraws a reissued
140 competitive solicitation. Protecting such meetings and
141 temporarily protecting the recording and any records presented
142 by a vendor at such meetings ensures that the process of
143 responding to a competitive solicitation remains fair and
144 economical for vendors, while still preserving oversight after a
145 competitive solicitation decision is made or withdrawn. It is
146 unfair and inequitable to compel vendors to disclose to
147 competitors the nature and details of their proposals during
148 such meetings or through the minutes or records presented at
149 such meetings. Such disclosure impedes full and frank discussion
150 of the strengths, weaknesses, and value of a bid, proposal, or
151 response, thereby limiting the ability of the agency to obtain
152 the best value for the public. The public and private harm
153 stemming from these practices outweighs the temporary delay in
154 access to records related to the competitive solicitation.

155 (3) The Legislature further finds that it is a public
156 necessity that any portion of a team meeting at which
157 negotiation strategies are discussed be made exempt from public-



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158 meetings requirements. In addition, it is a public necessity
159 that the recording of such meeting be made temporarily exempt
160 from public-records requirements. The recording of the meeting
161 shall be made available when the agency provides notice of an
162 intended decision to make a contract award on the competitive
163 solicitation, or when the agency rejects all bids, proposals, or
164 replies and ultimately withdraws a reissued competitive
165 solicitation. Team members often meet to strategize about
166 competitive solicitations and the approach to take as part of
167 the evaluation process. Without the public-meetings exemption
168 and the limited public-records exemption, the effective and
169 efficient administration of the competitive solicitation process
170 would be hindered.

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

172
173 ===== T I T L E A M E N D M E N T =====

174 And the title is amended as follows:

175 Delete everything before the enacting clause
176 and insert:

177 A bill to be entitled
178 An act relating to a review under the Open Government
179 Sunset Review Act; amending s. 119.071, F.S., which
180 provides an exemption from public-records requirements
181 for bids, proposals, or replies submitted to an agency
182 in response to a competitive solicitation; expanding
183 the public-records exemption by extending the duration
184 of the exemption; providing a definition; reorganizing
185 provisions; providing for future repeal and
186 legislative review of the exemption under the Open



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187 Government Sunset Review Act; amending s. 286.0113,
188 F.S., which provides an exemption from public-meetings
189 requirements for meetings at which a negotiation with
190 a vendor is conducted and which provides an exemption
191 from public-records requirements for recordings of
192 exempt meetings; providing definitions; expanding the
193 exemption to include meetings at which a negotiation
194 with a vendor is conducted pursuant to a competitive
195 solicitation, at which a vendor makes an oral
196 presentation as part of a competitive solicitation, at
197 which a vendor answers questions as part of a
198 competitive solicitation, and at which team members
199 discuss negotiation strategies; expanding the public-
200 records exemption to include any records presented at
201 an exempt meeting; reorganizing provisions; providing
202 for future repeal and legislative review under the
203 Open Government Sunset Review Act; providing a
204 statement of public necessity; providing an effective
205 date.