

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1152

INTRODUCER: Senator Margolis

SUBJECT: Public Records/Financial Statement/Road or Public Works Project Proposal

DATE: March 20, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1152 revises an exemption from public records requirements for any financial statement that a governmental entity or agency requires a prospective bidder to submit when bidding in response to an invitation to bid, submitting a letter of interest, or responding to a request for proposals or an invitation to negotiate pursuant to a public procurement. The bill provides an exemption from public records requirements for financial information that a governmental entity requires a person to submit when responding to a solicitation.

The bill is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records and Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Exemptions are subject to the Open Government Sunset Review Act,¹³ which prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of such exemption on October 2 of the

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

Public Records Exemption - Bids

Current law defines “competitive solicitation” as the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.¹⁶ Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from disclosure requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.¹⁷ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from disclosure requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁸

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from disclosure requirements.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., revising an exemption from public records requirements for any financial statement that a governmental entity or agency requires a prospective bidder to submit when bidding in response to an invitation to bid, submitting a letter of interest, or responding to a request for proposals or an invitation to negotiate pursuant to a public procurement. The proposed changes expand the scope of the exemption by referencing all competitive solicitations rather than just proposals for a road or any other public works project.

The bill provides an exemption from public records requirements for financial information that a governmental entity requires a person to submit when responding to a solicitation. This subparagraph does not apply to publicly traded companies and nonprofit organizations.

The bill is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a public necessity statement as required by the Florida Constitution.

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.071(1)(b)1, F.S.

¹⁷ Section 119.071(1)(b)2, F.S.

¹⁸ Section 119.071(1)(b)3, F.S.

¹⁹ Section 119.071(1)(c), F.S.

Section 3 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates new public records exemptions, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates new public records exemptions, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill will create a minimal fiscal impact on agencies as staff responsible for complying with public records requests will require training related to the expansion of the exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Management Services analysis on a substantially similar bill, “[i]ncluding a requirement for bidders to submit redacted proposals and replies would assist

governmental entities and agencies in responding to public records requests by placing the responsibility on the bidders to protect their information. The Division of State Purchasing suggests the following conclusion to the proposed language in subsection (c)1., ‘provided the bidder submits a redacted proposal or reply to the governmental entity or agency identifying its financial statement as exempt under this section.’²⁰

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁰ Department of Management Services, *Bill Analysis HB 403*, (February 5, 2013)(on file with the staff of the Senate Community Affairs Committee).