

By the Committee on Community Affairs; and Senator Evers

578-02840-14

20141318c1

1                   A bill to be entitled  
2       An act relating to public records and meetings;  
3       amending s. 287.05712, F.S.; defining the term  
4       "proprietary confidential business information";  
5       creating an exemption from public records requirements  
6       for unsolicited proposals for a qualifying public-  
7       private project received by a responsible public  
8       entity for a specified period; providing that  
9       proprietary confidential business information in an  
10      unsolicited proposal remains confidential and exempt  
11      from public records requirements; creating an  
12      exemption from public meetings requirements for  
13      portions of meetings at which confidential and exempt  
14      information is discussed; requiring a recording to be  
15      made of a closed portion of a meeting; providing for  
16      future repeal and legislative review of the  
17      exemptions; providing statements of public necessity;  
18      providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22       Section 1. Subsection (16) is added to section 287.05712,  
23 Florida Statutes, to read:

24       287.05712 Public-private partnerships; public records and  
25 public meetings exemptions.—

26       (16) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

27       (a) As used in this subsection, the term "proprietary  
28 confidential business information" means information that has  
29 been designated by a private entity when provided to a

578-02840-14

20141318c1

30 responsible public entity as information that is owned or  
31 controlled by the private entity, is intended to be and is  
32 treated by the private entity as private and the disclosure of  
33 which would harm the business operations of the private entity,  
34 has not otherwise been intentionally disclosed by the private  
35 entity, and is information concerning:

- 36 1. Trade secrets as defined in s. 688.002;
- 37 2. Financial statements or financing terms;
- 38 3. Patent-pending or copyrighted designs;
- 39 4. Leasing or real property acquisition plans; or
- 40 5. Marketing studies.

41 (b)1. An unsolicited proposal received by a responsible  
42 public entity is confidential and exempt from s. 119.07(1) and  
43 s. 24(a), Art. I of the State Constitution until such time that  
44 the responsible public entity receives, opens, and ranks the  
45 proposals as set forth in paragraph (6)(c) and provides notice  
46 of its intended decision.

47 2. An unsolicited proposal is not confidential and exempt  
48 for more than 90 days after the date the responsible public  
49 entity rejects all proposals submitted as provided in paragraph  
50 (6)(c) or the date of receipt of a proposal for a project which  
51 the responsible public entity does not intend to enter into an  
52 agreement for. If the unsolicited proposal contains information  
53 designated by the private entity as proprietary confidential  
54 business information, such information shall remain confidential  
55 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
56 Constitution.

57 (c)1. A portion of a meeting of a responsible public entity  
58 at which information that is confidential and exempt under

578-02840-14

20141318c1

59 paragraph (b) is discussed, is exempt from s. 286.011 and s.  
60 24(b), Art. I of the State Constitution.

61 2. An exempt portion of a meeting shall be recorded and  
62 transcribed. The responsible public entity shall record the  
63 times of commencement and termination of the meeting, all  
64 discussions and proceedings, the names of all persons present at  
65 any time, and the names of all persons speaking. An exempt  
66 portion of a meeting may not be off the record.

67 3. A portion of the transcript of a meeting which reveals  
68 proprietary confidential business information is confidential  
69 and exempt from s. 119.07(1) and s. 24(a), Art. II of the State  
70 Constitution.

71 (d) This subsection is subject to the Open Government  
72 Sunset Review Act in accordance with s. 119.15 and shall stand  
73 repealed on October 2, 2019, unless reviewed and saved from  
74 repeal through reenactment by the Legislature.

75 Section 2. (1) The Legislature finds that it is a public  
76 necessity that an unsolicited proposal held by a responsible  
77 public entity pursuant to s. 287.05712, Florida Statutes, be  
78 made confidential and exempt from s. 119.07(1), Florida  
79 Statutes, and s. 24(a), Article I of the State Constitution  
80 until such time that the responsible public entity receives,  
81 opens, and ranks the proposals set forth in s. 287.05712(6)(c),  
82 Florida Statutes, or, if the responsible public entity rejects  
83 all proposals or decides not to enter into an agreement, no more  
84 than 90 days after such decision. The disclosure of information  
85 in an unsolicited proposal, such as financing mechanisms and  
86 terms, formulas, and designs, could give competitors an unfair  
87 business advantage by publicizing the proposal's financial

578-02840-14

20141318c1

88 strategy and innovative plans, thereby injuring the private  
89 entity that submitted the unsolicited proposal and placing the  
90 private entity at a competitive disadvantage in the marketplace.  
91 Without the exemption, private entities might not submit  
92 unsolicited proposals that could provide timely and cost-  
93 effective solutions for qualifying projects that serve a public  
94 need. The exemption is narrowly drawn in that only proprietary  
95 confidential business information in an unsolicited proposal  
96 will remain confidential and exempt if such information has not  
97 otherwise been made available by a private entity. Therefore,  
98 the Legislature finds that the harm that may result from the  
99 release of such information outweighs any public benefit that  
100 may be derived from disclosure of such the information.

101 (2) The Legislature further finds that, in order to  
102 maintain the confidential and exempt status of this information,  
103 it is a public necessity that a portion of a meeting of a  
104 responsible public entity at which information made confidential  
105 and exempt from public records requirements under this act is  
106 discussed be made exempt from s. 286.011, Florida Statutes, and  
107 s. 24(b), Article I of the State Constitution. Public oversight  
108 is preserved by requiring a transcript of any portion of such  
109 closed meetings of a responsible public entity.

110 Section 3. This act shall take effect July 1, 2014.