

By Senator Wright

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1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 119.071, F.S.; expanding the public
4 records exemption related to bids, proposals, or
5 replies to an agency's competitive solicitation by
6 extending the duration of the exemption in specified
7 circumstances; providing for future legislative review
8 and repeal of the exemption; amending s. 286.0113,
9 F.S.; expanding the public meetings exemption related
10 to negotiations with a vendor that submitted a bid,
11 proposal, or reply to an agency's competitive
12 solicitation by extending the duration of the
13 exemption in specified circumstances; providing for
14 future legislative review and repeal of the exemption;
15 providing statements of public necessity; providing an
16 effective date.

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

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20 Section 1. Paragraph (b) of subsection (1) of section
21 119.071, Florida Statutes, is amended to read:

22 119.071 General exemptions from inspection or copying of
23 public records.—

24 (1) AGENCY ADMINISTRATION.—

25 (b)1. For purposes of this paragraph, "competitive
26 solicitation" means the process of requesting and receiving
27 sealed bids, proposals, or replies in accordance with the terms
28 of a competitive process, regardless of the method of
29 procurement.

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30 2. Sealed bids, proposals, or replies received by an agency
31 pursuant to a competitive solicitation are exempt from s.
32 119.07(1) and s. 24(a), Art. I of the State Constitution until
33 72 hours after ~~such time as~~ the agency provides notice of an
34 intended decision, excluding Saturdays, Sundays, and state
35 holidays, if a notice of protest is not filed; until the
36 deadline to file any formal written protest, if a formal written
37 protest is not filed; or upon the issuance of the agency's final
38 order or an appellate court mandate or order resolving the
39 protest, if a formal written protest is filed until 30 days
40 ~~after opening the bids, proposals, or final replies, whichever~~
41 occurs later is earlier.

42 3. If an agency rejects all bids, proposals, or replies
43 submitted in response to a competitive solicitation and the
44 agency concurrently provides notice of its intent to reissue the
45 competitive solicitation, the rejected bids, proposals, or
46 replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of
47 the State Constitution ~~until such time as~~ provided in
48 subparagraph 2. if the agency provides notice of an intended
49 decision concerning the reissued competitive solicitation or
50 until the agency withdraws the reissued competitive
51 solicitation. Except as provided in subparagraph 2., a bid,
52 proposal, or reply is not exempt for longer than 12 months after
53 the initial agency notice rejecting all bids, proposals, or
54 replies.

55 4. This paragraph is subject to the Open Government Sunset
56 Review Act in accordance with s. 119.15 and shall stand repealed
57 on October 2, 2029, unless reviewed and saved from repeal
58 through reenactment by the Legislature.

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

61 286.0113 General exemptions from public meetings.—

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

63 1. "Competitive solicitation" means the process of
64 requesting and receiving sealed bids, proposals, or replies in
65 accordance with the terms of a competitive process, regardless
66 of the method of procurement.

67 2. "Team" means a group of members established by an agency
68 for the purpose of conducting negotiations as part of a
69 competitive solicitation.

70 (b)1. Any portion of a meeting at which a negotiation with
71 a vendor is conducted pursuant to a competitive solicitation, at
72 which a vendor makes an oral presentation as part of a
73 competitive solicitation, or at which a vendor answers questions
74 as part of a competitive solicitation is exempt from s. 286.011
75 and s. 24(b), Art. I of the State Constitution.

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

79 (c)1. A complete recording must ~~shall~~ be made of any
80 portion of an exempt meeting. No portion of the exempt meeting
81 may be held off the record.

82 2. The recording of, and any records presented at, the
83 exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I
84 of the State Constitution until 72 hours after ~~such time as~~ the
85 agency provides notice of an intended decision, excluding
86 Saturdays, Sundays, and state holidays, if a notice of protest
87 is not filed; until the deadline to file any formal written

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88 protest, if a formal written protest is not filed; or upon the
89 issuance of the agency's final order or an appellate court
90 mandate or order resolving the protest, if a formal written
91 protest is filed until 30 days after opening the bids,
92 proposals, or final replies, whichever occurs later earlier.

93 3. If the agency rejects all bids, proposals, or replies
94 and concurrently provides notice of its intent to reissue a
95 competitive solicitation, the recording and any records
96 presented at the exempt meeting remain exempt from s. 119.07(1)
97 and s. 24(a), Art. I of the State Constitution ~~until such time~~
98 as provided in subparagraph 2. if the agency provides notice of
99 an intended decision concerning the reissued competitive
100 solicitation or until the agency withdraws the reissued
101 competitive solicitation. Except as provided in subparagraph 2.,
102 a recording and any records presented at an exempt meeting are
103 not exempt for longer than 12 months after the initial agency
104 notice rejecting all bids, proposals, or replies.

105 (d) This subsection is subject to the Open Government
106 Sunset Review Act in accordance with s. 119.15 and shall stand
107 repealed on October 2, 2029, unless reviewed and saved from
108 repeal through reenactment by the Legislature.

109 Section 3. (1) The Legislature finds that it is a public
110 necessity that bids, proposals, or replies submitted to an
111 agency in response to a competitive solicitation be made
112 temporarily exempt from public records requirements. Such
113 records must be made available the later of any of the
114 following: 72 hours after the agency provides notice of an
115 intended decision, excluding Saturdays, Sundays, and state
116 holidays, if a notice of protest is not filed; the deadline to

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117 file any formal written protest, if a formal written protest is
118 not filed; or upon the issuance of the agency's final order or
119 an appellate court mandate or order resolving the protest, if a
120 formal written protest is filed; or, alternatively, when the
121 agency rejects all bids, proposals, or replies and ultimately
122 withdraws a reissued competitive solicitation. Temporarily
123 protecting such information ensures that the process of
124 responding to a competitive solicitation remains fair and
125 economical for vendors, while still preserving oversight after a
126 competitive solicitation decision is made or 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 and at which
130 the vendor makes an oral presentation or answers questions as
131 part of a competitive solicitation be made exempt from public
132 meeting requirements. The recording of the meeting and any such
133 records must be made available the later of any of the
134 following: 72 hours after the agency provides notice of an
135 intended decision, excluding Saturdays, Sundays, and state
136 holidays, if a notice of protest is not filed; the deadline to
137 file any formal written protest, if a formal written protest is
138 not filed; or upon the issuance of the agency's final order or
139 an appellate court mandate or order resolving the protest, if a
140 formal written protest is filed; or, alternatively, when the
141 agency rejects all bids, proposals, or replies, and ultimately
142 withdraws a reissued competitive solicitation. Protecting such
143 meetings, and temporarily protecting the recording and any
144 records presented by a vendor at such meetings, ensures that the
145 process of responding to a competitive solicitation remains fair

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146 and economical for vendors, while still preserving oversight
147 after a competitive solicitation decision is made or withdrawn.
148 It is unfair and inequitable to compel vendors to disclose to
149 competitors the nature and details of their proposals during
150 such meetings or through the minutes or records presented at
151 such meetings. Such disclosure impedes full and frank discussion
152 of the strengths, weaknesses, and value of a bid, proposal, or
153 response, thereby limiting the ability of the agency to obtain
154 the best value for the public. The public and private harm
155 arising out of such disclosure outweighs the temporary delay in
156 access to records related to the competitive solicitation.

157 (3) The Legislature further finds that it is a public
158 necessity that any portion of a team meeting at which
159 negotiation strategies are discussed be made exempt from public
160 meetings requirements. In addition, it is a public necessity
161 that the recording of such meetings be made temporarily exempt
162 from public records requirements. The recording of the meeting
163 must be available the later of the following: 72 hours after the
164 agency provides notice of an intended decision, excluding
165 Saturdays, Sundays, and state holidays, if a notice of protest
166 is not filed; the deadline to file any formal written protest,
167 if a formal written protest is not filed; or upon the issuance
168 of the agency's final order or an appellate court mandate or
169 order resolving the protest, if a formal written protest is
170 filed; or, alternatively, when the agency rejects all bids,
171 proposals, or replies, and ultimately withdraws a reissued
172 competitive solicitation. Team members often meet to strategize
173 about competitive solicitations. In the absence of the public
174 meeting exemption and the limited public record exemption, the

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175 effective and efficient administration of the competitive
176 solicitation process would be hindered.

177 Section 4. This act shall take effect July 1, 2024.