

House Bill No. 1369

An act relating to public records and public meetings; amending s. 119.071, F.S.; creating a temporary exemption from public records requirements for rejected bids and proposals received by a state agency if the agency reissues the invitation to bid or request for proposals; providing for review and repeal; providing a statement of public necessity; creating a temporary exemption from public records requirements for a competitive sealed reply in response to an invitation to negotiate; providing an extension of the temporary exemption if the agency reissues the invitation to negotiate; providing for review and repeal; providing a statement of public necessity; amending s. 286.0113, F.S.; creating an exemption from public meetings requirements for a meeting at which negotiation with a vendor is conducted; requiring a recording of the meeting; temporarily exempting the recording from disclosure; providing an extension of the temporary exemption under specified circumstances; providing for review and repeal; providing a statement of public necessity; providing an effective date.

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

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.a. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

b. If an agency rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals, the rejected bids or proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to bid or request for proposals or until the agency withdraws the reissued invitation to bid or request for proposals. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2.a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is exempt from s. 119.07(1) and s. 24(a), Art. I of

the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

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

c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(1) Those portions of any meeting which would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act, in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) A meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

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

2. The recording required under subparagraph 1. is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

3. If the agency rejects all sealed replies, the recording remains exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A recording is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. (1) The Legislature finds that it is a public necessity that sealed bids or proposals submitted in response to an invitation to bid or request for proposals that are rejected by an agency be made temporarily exempt from public records requirements if the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals. Such records shall be made available when the agency provides notice of a decision or intended decision, as required under the Administrative Procedure Act, or if the agency withdraws the reissued invitation to bid or request for proposals. Temporarily protecting such information ensures that the process of invitations to bid and requests for proposals remains economical and equitable, while still preserving oversight after an agency decision is made.

(2) The Legislature further finds that it is a public necessity that a competitive sealed reply in response to an invitation to negotiate be made temporarily exempt from public records requirements. In addition, a competitive sealed reply in response to an invitation to negotiate which is rejected by an agency should be made temporarily exempt from public records requirements if the agency concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate. Such reply will be made available when the agency provides notice of a decision or intended decision, as required under the Administrative Procedure Act, or if the agency withdraws the reissued invitation to negotiate. Temporarily protecting such reply ensures that the process of invitations to negotiate remains economical and equitable, while still preserving oversight after an agency decision is made.

(3) Additionally, the Legislature finds that it is a public necessity that a meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3), Florida Statutes, be made exempt from public meetings requirements. Protecting such meetings ensures that the process of invitations to negotiate remains economical and equitable, while still preserving oversight after an agency decision is made through the requirement that a complete recording be made of those meetings. Furthermore, the recording of that closed portion of the meeting must be made temporarily exempt from public records requirements in order to preserve the purpose for the public meetings exemption. In addition, it is unfair and inequitable to compel vendors to disclose during the negotiation process the nature and details of their offers to competitors and to others beyond the agency. Further, the Legislature finds that such disclosure impedes full and frank discussion of the strength, weakness, and value of an offer, thereby limiting the agency's ability to obtain the best value for the state. The Legislature also finds that it is unfair and inequitable to publicly discuss and otherwise disclose negotiation strategies, assessment of vendors' offers or positions, or the nature or details of offers. The public and private harm stemming from these practices

outweighs the temporary delay in making meetings and records related to the negotiation process open to the public.

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

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.