

## CHAPTER 2016-154

### Committee Substitute for Senate Bill No. 126

An act relating to public records and public meetings; transferring, renumbering, and amending s. 287.05712, F.S., relating to public-private partnerships for public facilities and infrastructure; providing a definition; providing an exemption from public records requirements for a specified period for unsolicited proposals received by a responsible public entity; providing an exemption from public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; requiring that a recording be made of the closed meeting; providing an exemption from public records requirements for a specified period for the recording of, and any records generated during, a closed meeting; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (15) is added to section 287.05712, Florida Statutes, as transferred, renumbered, and amended by SB 124, to read:

255.065 287.05712 Public-private partnerships; public records and public meetings exemptions.—

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term “competitive solicitation” has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that an unsolicited proposal received by a responsible public entity pursuant to s. 255.065, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for a specified period. Temporarily prohibiting the public release of unsolicited proposals ensures the effective and efficient administration of the public-private partnership process established in s. 255.065, Florida Statutes. Temporarily protecting unsolicited proposals protects the public-private partnership process by encouraging private entities to submit such proposals, which will facilitate the timely development and operation of a qualifying project. Protecting such information ensures that other private entities do not gain an unfair competitive advantage. The public records exemption preserves public oversight of the public-private partnership process by providing for disclosure of the unsolicited proposal when the responsible public entity

provides notice of an intended decision; by limiting the exemption to no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or by limiting the exemption to no longer than 180 days after receipt of an unsolicited proposal if such entity does not issue a competitive solicitation for a qualifying project related to the proposal.

(2) The Legislature further finds that it is a public necessity that any portion of a meeting of the responsible public entity during which an unsolicited proposal that is exempt from public records requirements is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature also finds that it is a public necessity that the recording of, and any records generated during, a closed meeting be made temporarily exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Failure to close any portion of a meeting during which such unsolicited proposal is discussed, and failure to protect the release of the recording and records generated during that closed meeting, would defeat the purpose of the public records exemption. In addition, the Legislature finds that public oversight is maintained because the public records exemption for the recording and records generated during any closed portion of a meeting of the responsible public entity are subject to public disclosure when such entity provides notice of an intended decision; are exempt no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or are exempt no longer than 180 days after receipt of an unsolicited proposal if the responsible public entity does not issue a competitive solicitation for a qualifying project related to the proposal.

Section 3. This act shall take effect on the same date that SB 124 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Approved by the Governor March 30, 2016.

Filed in Office Secretary of State March 30, 2016.