

By the Committee on Rules; and Senator Steube

595-02462-18

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1 A bill to be entitled
2 An act relating to public meetings and records;
3 amending s. 286.011, F.S.; expanding an exemption from
4 public meetings requirements to allow specified
5 entities to meet in private with attorneys and
6 technical experts to discuss imminent litigation if
7 certain conditions are met; requiring the entity's
8 attorney to identify the name of the potential
9 claimant or litigant at a public meeting; providing an
10 exception; requiring the transcript of a private
11 meeting concerning imminent litigation to be made
12 public upon the occurrence of a certain circumstance;
13 specifying when litigation is considered imminent;
14 providing for future legislative review and repeal of
15 the exemption; providing a statement of public
16 necessity; providing an 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. Subsection (8) of section 286.011, Florida
21 Statutes, is amended to read:

22 286.011 Public meetings and records; public inspection;
23 criminal and civil penalties.—

24 (8) (a) Notwithstanding ~~the provisions of~~ subsection (1),
25 any board or commission of any state agency or authority or any
26 agency or authority of any county, municipal corporation, or
27 political subdivision, and the chief administrative or executive
28 officer of the governmental entity or his or her designee, is
29 exempt from this section and s. 24(b), Art. I of the State

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30 Constitution for the limited purpose of meeting ~~may meet~~ in
31 private with the entity's attorneys and technical experts
32 ~~attorney~~ to discuss imminent or pending litigation to which the
33 entity is or may in the foreseeable future be ~~presently~~ a party
34 before a court or administrative agency, provided that the
35 following conditions are met:

36 1.(a) The entity's attorney shall advise the entity at a
37 public meeting that he or she desires advice concerning the
38 imminent or pending litigation. For imminent litigation, the
39 entity's attorney shall identify the name of the potential
40 claimant or litigant unless the identity of the potential
41 claimant or litigant is confidential or exempt from s. 119.07(1)
42 or s. 24(a), Art. I of the State Constitution.

43 2.(b) The subject matter of the meeting must ~~shall~~ be
44 confined to settlement negotiations or strategy sessions related
45 to litigation expenditures.

46 3.(c) The entire session shall be recorded by a certified
47 court reporter. The reporter shall record the times of
48 commencement and termination of the session, all discussion and
49 proceedings, the names of all persons present at any time, and
50 the names of all persons speaking. No portion of the session may
51 ~~shall~~ be off the record. The court reporter's notes must ~~shall~~
52 be fully transcribed and filed with the entity's clerk within a
53 reasonable time after the meeting.

54 4.(d) The entity shall give reasonable public notice of the
55 time and date of the attorney-client session and the names of
56 persons who will be attending the session. The session must
57 ~~shall~~ commence at an open meeting at which the persons chairing
58 the meeting shall announce the commencement and estimated length

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59 of the attorney-client session and the names of the persons
60 attending. At the conclusion of the attorney-client session, the
61 meeting must ~~shall~~ be reopened, and the person chairing the
62 meeting shall announce the termination of the session.

63 5.(e) The transcript must ~~shall~~ be made part of the public
64 record upon conclusion of the litigation. If imminent litigation
65 does not commence, the transcript must be made part of the
66 public record within a reasonable time after the matter
67 underlying the imminent litigation is resolved or upon the
68 expiration of the statute of limitations applicable to the
69 matter underlying the imminent litigation, whichever occurs
70 first.

71 (b) Litigation is considered imminent when the entity has
72 received notice of a claim or demand by a party threatening
73 litigation before a court or administrative agency.

74 (c) This subsection is subject to the Open Government
75 Sunset Review Act in accordance with s. 119.15 and shall stand
76 repealed on October 2, 2023, unless reviewed and saved from
77 repeal through reenactment by the Legislature.

78 Section 2. The Legislature finds that it is a public
79 necessity to expand the exemption from public meetings
80 requirements currently applicable to meetings at which any board
81 or commission of any state agency or authority, or any agency or
82 authority of any county, municipal corporation, or political
83 subdivision, and the chief administrative or executive officer
84 of the governmental entity meet in private with the entity's
85 attorneys to discuss pending litigation to which the entity is
86 presently a party before a court or administrative agency. The
87 exemption is expanded to include such meetings when the designee

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88 of the chief administrative or executive officer of the
89 governmental entity is present, when technical experts of the
90 entity are present, and when such meetings are related to
91 certain imminent litigation. In addition, the Legislature finds
92 that it is a public necessity to exempt the transcript of such
93 exempt meetings from public records requirements. These public
94 meetings and public records exemptions are necessary to allow a
95 governmental entity to privately prepare for threatened
96 litigation by obtaining legal advice, exploring and developing
97 relevant facts, and considering an early settlement or
98 discussing other possible resolutions in order to make better-
99 informed decisions. The Legislature also finds that these public
100 meetings and public records exemptions will help ensure that
101 governmental entities receive fair treatment during the judicial
102 and administrative processes.

103 Section 3. This act shall take effect July 1, 2018.