

Legislative Analysis



FOIA EXEMPTIONS FOR DTMB PROCUREMENT

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Senate Bill 69 as enacted
Public Act 21 of 2017

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Rick Jones
House Committee: Michigan Competitiveness
Senate Committee: Government Operations
Complete to 7-3-17

SUMMARY:

Senate Bill 69 amended the Management and Budget Act (MCL 18.1261) to exempt certain business information from the Freedom of Information Act (FOIA) when a business is applying for state government service and purchase contracts through the Department of Technology, Management, and Budget (DTMB).

Under SB 69, when the DTMB uses its competitive solicitation process for state procurement contracts, the following records would be exempt from FOIA:

- A bid, quote, or proposal submitted for a contract, and records created in the preparation and evaluation of the bid, quote, or proposal until the time of final notification of the contract's award.
- Records containing a trade secret, as defined in the Uniform Trade Secrets Act.
- Financial or proprietary information submitted, defined in the bill as "information that has not been publicly disseminated or which is unavailable from other sources, the release of which might cause the submitter of the information competitive harm."

DISCUSSION:

The bill is understood to address two existing problems. First, companies can use a FOIA request to access the bid information of competitors; they can then use this information to set the optimal price to receive the contract, which may be different than what they were otherwise willing to bid. Second, certain companies simply refuse to bid on state contracts because of the lack of protection for their trade secrets and financial and proprietary information.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local governments.

Legislative Analyst: Patrick Morris
Fiscal Analyst: Mary Ann Cleary

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