

ENROLLED  
CS/CS/HB 1085

2013 Legislature

1  
2 An act relating to public records; creating s.  
3 377.24075, F.S.; creating an exemption from public  
4 records requirements for proprietary business  
5 information provided in an application for a natural  
6 gas storage facility permit to inject and recover gas  
7 into and from a natural gas storage reservoir;  
8 defining the term "proprietary business information";  
9 authorizing disclosure of such information under  
10 specified conditions; providing for future review and  
11 repeal of the public records exemption under the Open  
12 Government Sunset Review Act; providing a statement of  
13 public necessity; providing a contingent effective  
14 date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 377.24075, Florida Statutes, is created  
19 to read:

20 377.24075 Exemption from public records requirements.—  
21 Proprietary business information held by the Department of  
22 Environmental Protection in accordance with its statutory duties  
23 with respect to an application for a natural gas storage  
24 facility permit is confidential and exempt from s. 119.07(1) and  
25 s. 24(a), Art. I of the State Constitution.

26 (1) As used in this section, the term "proprietary  
27 business information" means information that:

28        (a) Is owned or controlled by the applicant or a person  
29 affiliated with the applicant.

30        (b) Is intended to be private and is treated by the  
31 applicant as private because disclosure would harm the applicant  
32 or the applicant's business operations.

33        (c) Has not been disclosed except as required by law or a  
34 private agreement that provides that the information will not be  
35 released to the public.

36        (d) Is not publicly available or otherwise readily  
37 ascertainable through proper means from another source in the  
38 same configuration as requested by the department.

39        (e) Includes, but is not limited to:

40        1. Trade secrets as defined in s. 688.002.

41        2. Leasing plans, real property acquisition plans,  
42 exploration budgets, or marketing studies, the disclosure of  
43 which would impair the efforts of the applicant or its  
44 affiliates to contract for goods or services or to acquire real  
45 property interests on favorable terms.

46        3. Competitive interests, which may include well design or  
47 completion plans, geological or engineering studies related to  
48 storage reservoir performance characteristics, or field  
49 utilization strategies or operating plans, the disclosure of  
50 which would impair the competitive business of the applicant  
51 providing the information.

52        (f) May be found in a document:

53        1. Filed with the department by the applicant or  
54 affiliated person seeking a natural gas storage facility permit  
55 pursuant to s. 377.2407; or

56           2. Sent to the department from another governmental entity  
 57 for use by the department in the performance of its duties. This  
 58 subparagraph applies only if the information is otherwise  
 59 confidential or exempt as held by the governmental entity.

60           (2) The department may disclose confidential and exempt  
 61 proprietary business information:

62           (a) Pursuant to a court order;

63           (b) If the applicant to which it pertains gives prior  
 64 written consent; or

65           (c) To another governmental entity if the receiving entity  
 66 agrees in writing to maintain the confidential and exempt status  
 67 of the information and has verified in writing its legal  
 68 authority to maintain such confidentiality.

69           (3) This section is subject to the Open Government Sunset  
 70 Review Act in accordance with s. 119.15 and shall stand repealed  
 71 on October 2, 2018, unless reviewed and saved from repeal  
 72 through reenactment by the Legislature.

73           Section 2. (1) The Legislature finds that it is a public  
 74 necessity that proprietary business information provided to the  
 75 Department of Environmental Protection which relates to trade  
 76 secrets, leasing plans, real property acquisition plans,  
 77 exploration budgets, proprietary well design or completion  
 78 plans, geological or engineering studies related to storage  
 79 reservoir performance characteristics, field utilization  
 80 strategies or operating plans, commercial or marketing studies,  
 81 or other proprietary business information provided by a person  
 82 in conjunction with an application to establish an underground  
 83 natural gas storage facility as defined in s. 377.19, Florida

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84 Statutes, be made confidential and exempt from s. 119.07(1),  
85 Florida Statutes, and s. 24(a), Article I of the State  
86 Constitution. The disclosure of such proprietary business  
87 information could injure an applicant in the marketplace by  
88 giving competitors detailed insight into technical assessments,  
89 design, and experience, thereby putting the applicant at a  
90 competitive disadvantage. Without this exemption, applicants  
91 could be less willing to expend or commit to expend the  
92 substantial resources necessary to determine the feasibility of  
93 establishing, permitting, and operating an underground natural  
94 gas storage facility, resulting in limited opportunities for  
95 developing the additional natural gas storage capacity that this  
96 state critically needs to meet current and future residential,  
97 commercial, and industrial energy needs. The resulting lack of  
98 resources could hinder the ability of electric utility services  
99 to optimize services to their customers and could adversely  
100 affect their customers by depriving them of the opportunities  
101 and energy security that comes with domestic reserves of natural  
102 gas stored underground.

103 (2) Proprietary business information derives actual or  
104 potential independent economic value from not being generally  
105 known to, and not being readily ascertainable by, other persons  
106 who can derive economic value from its disclosure or use. The  
107 Department of Environmental Protection, in the course of  
108 reviewing and issuing permitting decisions relating to  
109 underground natural gas storage facility permits, may need to  
110 obtain proprietary business information. Disclosure of such  
111 information could destroy the value of that property and could

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112 cause economic harm to the applicant providing the information.  
113 Additionally, the reduced competition for provision of domestic  
114 underground storage of natural gas could also adversely affect  
115 energy utility customers. The exemption created by this act will  
116 enhance the ability to increase domestic storage of natural gas,  
117 thereby creating a significant benefit to energy utility  
118 customers. In finding that the public records exemption created  
119 by this act is a public necessity, the Legislature also finds  
120 that any public benefit derived from disclosure of the  
121 information is significantly outweighed by the public and  
122 private harm that could result from disclosure after submittal  
123 of such proprietary business information.

124 Section 3. This act shall take effect October 1, 2013, if  
125 HB 1083 or similar legislation is adopted in the same  
126 legislative session or an extension thereof and becomes a law.