

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           119.0713, F.S.; providing an exemption from public  
 4           records requirements for specified proprietary  
 5           confidential business information provided by a  
 6           private or out-of-state entity to an electric utility  
 7           that is subject to chapter 119, F.S., in conjunction  
 8           with a due diligence review of an electric project or  
 9           a project to improve the delivery, cost, or  
 10          diversification of fuel or renewable energy resources;  
 11          providing for the return of such information to the  
 12          provider; providing for future review and repeal of  
 13          the exemption; providing a statement of public  
 14          necessity; providing an effective date.

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

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 18           Section 1. Subsection (4) is added to section 119.0713,  
 19 Florida Statutes, to read:

20           119.0713 Local government agency exemptions from  
 21 inspection or copying of public records.—

22           (4) (a) Proprietary confidential business information, as  
 23 defined in s. 366.093(3), provided by a private or out-of-state  
 24 entity to an electric utility that is subject to chapter 119 in  
 25 conjunction with a due diligence review of an electric project  
 26 as defined in s. 163.01(3)(d) or a project to improve the  
 27 delivery, cost, or diversification of fuel or renewable energy  
 28 resources is exempt from s. 119.07(1) and s. 24(a), Art. I of

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29 the State Constitution.

30 (b) All proprietary confidential business information  
31 described in paragraph (a) shall be returned to the custody of  
32 the person or entity providing the information after the due  
33 diligence review has been completed and the utility has decided  
34 whether or not to participate in the project.

35 (c) Paragraph (a) is subject to the Open Government Sunset  
36 Review Act in accordance with s. 119.15, and shall stand  
37 repealed on October 2, 2018, unless reviewed and saved from  
38 repeal through reenactment by the Legislature.

39 Section 2. (1) The Legislature finds that it is a public  
40 necessity that proprietary confidential business information, as  
41 defined in s. 366.093(3), Florida Statutes, provided by a  
42 private or out-of-state entity to an electric utility that is  
43 subject to chapter 119, Florida Statutes, in conjunction with a  
44 due diligence review of an electric project as defined in s.  
45 163.01(3)(d), Florida Statutes, or a project to improve the  
46 delivery, cost, or diversification of fuel or renewable energy  
47 resources be made confidential and exempt from public records  
48 requirements. The disclosure of such proprietary confidential  
49 business information, such as trade secrets, internal auditing  
50 controls and reports, security measures, systems, or procedures,  
51 or other information relating to competitive interests, could  
52 injure the provider in the marketplace by giving its competitors  
53 detailed insights into its financial status and strategic plans,  
54 thereby putting the provider at a competitive disadvantage.  
55 Without this exemption, providers might be unwilling to enter  
56 into discussions with the utility regarding the feasibility of

57 future contracting. This could, in turn, limit opportunities the  
58 utility might otherwise have for finding cost-effective or  
59 strategic solutions for providing electric service or improving  
60 the delivery, cost, or diversification of fuel or renewable  
61 energy. This would put public providers of electric utility  
62 services at a competitive disadvantage by limiting their ability  
63 to optimize services to their customers and adversely affecting  
64 the customers of those utilities by depriving them of  
65 opportunities for rate reductions or other improvements in  
66 services.

67 (2) Proprietary confidential business information derives  
68 actual or potential independent economic value from not being  
69 generally known to, and not being readily ascertainable by  
70 proper means by, other persons who can derive economic value  
71 from its disclosure or use. A utility, in performing the  
72 appropriate due diligence review of electric projects or  
73 projects to improve the delivery, cost, or diversification of  
74 fuel or renewable energy sources, may need to obtain proprietary  
75 confidential business information. Without an exemption from  
76 public records requirements for this information, it becomes a  
77 public record when received by a utility that is subject to  
78 chapter 119, Florida Statutes, and must be disclosed upon  
79 request. Disclosure of any propriety confidential business  
80 information under the public records law would destroy the value  
81 of that property and cause economic harm not only to the entity  
82 or person providing the information, but to the ratepayers  
83 through reduced competition for the provision of vital electric  
84 utility services.

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85        (3) In finding that the public records exemption created  
86 by this act is a public necessity, the Legislature also finds  
87 that the public and private harm in disclosing such proprietary  
88 confidential business information significantly outweighs any  
89 public benefit derived from disclosure of the information and  
90 that the exemption created by this act will enhance the ability  
91 of electric utilities to optimize their performance, thereby  
92 benefiting the ratepayers.

93            Section 3. This act shall take effect July 1, 2013.