

By Senator Simmons

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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 ch. 119, F.S., in conjunction with
8 a due diligence review of an electric project or a
9 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 inspection
21 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
29 the State Constitution.

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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37 repealed on October 2, 2018, unless reviewed and saved from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

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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.

85 (3) In finding that the public records exemption created by
86 this act is a public necessity, the Legislature also finds that
87 the public and private harm in disclosing such proprietary

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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.