

By the Committee on Communications, Energy, and Public Utilities; and Senator Simmons

579-01973-13

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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 held by an electric
6 utility that is subject to ch. 119, F.S., in
7 conjunction with a due diligence review of an electric
8 project or a project to improve the delivery, cost, or
9 diversification of fuel or renewable energy resources;
10 providing for the retention of such information for a
11 specified time; providing for future review and repeal
12 of the exemption; providing a statement of public
13 necessity; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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

19 119.0713 Local government agency exemptions from inspection
20 or copying of public records.—

21 (4) (a) Proprietary confidential business information means
22 information, regardless of form or characteristics, which is
23 held by an electric utility that is subject to chapter 119, is
24 intended to be and is treated by the entity that provided the
25 information to the electric utility as private in that the
26 disclosure of the information would cause harm to the providing
27 entity or its business operations, and has not been disclosed
28 unless disclosed pursuant to a statutory provision, an order of
29 a court or administrative body, or private agreement that

579-01973-13

2013714c1

30 provides that the information will not be released to the
31 public. Proprietary confidential business information includes,
32 but is not limited to:

33 1. Trade secrets.

34 2. Internal auditing controls and reports of internal
35 auditors.

36 3. Security measures, systems, or procedures.

37 4. Information concerning bids or other contractual data,
38 the disclosure of which would impair the efforts of the electric
39 utility to contract for goods or services on favorable terms.

40 5. Information relating to competitive interests, the
41 disclosure of which would impair the competitive business of the
42 provider of the information.

43 (b) Proprietary confidential business information held by
44 an electric utility that is subject to chapter 119 in
45 conjunction with a due diligence review of an electric project
46 as defined in s. 163.01(3)(d) or a project to improve the
47 delivery, cost, or diversification of fuel or renewable energy
48 resources is confidential and exempt from s. 119.07(1) and s.
49 24(a), Art. I of the State Constitution.

50 (c) All proprietary confidential business information
51 described in paragraph (b) shall be retained for one year after
52 the due diligence review has been completed and the electric
53 utility has decided whether or not to participate in the
54 project.

55 (d) This subsection is subject to the Open Government
56 Sunset Review Act in accordance with s. 119.15, and shall stand
57 repealed on October 2, 2018, unless reviewed and saved from
58 repeal through reenactment by the Legislature.

579-01973-13

2013714c1

59 Section 2. (1) The Legislature finds that it is a public
60 necessity that proprietary confidential business information
61 held by an electric utility that is subject to chapter 119,
62 Florida Statutes, in conjunction with a due diligence review of
63 an electric project as defined in s. 163.01(3)(d), Florida
64 Statutes, or a project to improve the delivery, cost, or
65 diversification of fuel or renewable energy resources be made
66 confidential and exempt from public records requirements. The
67 disclosure of such proprietary confidential business
68 information, such as trade secrets, internal auditing controls
69 and reports, security measures, systems, or procedures, or other
70 information relating to competitive interests, could injure the
71 provider in the marketplace by giving its competitors detailed
72 insights into its financial status and strategic plans, thereby
73 putting the provider at a competitive disadvantage. Without this
74 exemption, providers might be unwilling to enter into
75 discussions with the utility regarding the feasibility of future
76 contracting. This could, in turn, limit opportunities the
77 utility might otherwise have for finding cost-effective or
78 strategic solutions for providing electric service or improving
79 the delivery, cost, or diversification of fuel or renewable
80 energy. This would put public providers of electric utility
81 services at a competitive disadvantage by limiting their ability
82 to optimize services to their customers and adversely affecting
83 the customers of those utilities by depriving them of
84 opportunities for rate reductions or other improvements in
85 services.

86 (2) Proprietary confidential business information derives
87 actual or potential independent economic value from not being

579-01973-13

2013714c1

88 generally known to, and not being readily ascertainable by
89 proper means by, other persons who can derive economic value
90 from its disclosure or use. A utility, in performing the
91 appropriate due diligence review of electric projects or
92 projects to improve the delivery, cost, or diversification of
93 fuel or renewable energy sources, may need to obtain proprietary
94 confidential business information. Without an exemption from
95 public records requirements for this information, it becomes a
96 public record when received by an electric utility and must be
97 disclosed upon request. Disclosure of any proprietary
98 confidential business information under the public records law
99 would destroy the value of that property and cause economic harm
100 not only to the entity or person providing the information, but
101 to the ratepayers through reduced competition for the provision
102 of vital electric utility services.

103 (3) In finding that the public records exemption created by
104 this act is a public necessity, the Legislature also finds that
105 the public and private harm in disclosing such proprietary
106 confidential business information significantly outweighs any
107 public benefit derived from disclosure of the information and
108 that the exemption created by this act will enhance the ability
109 of electric utilities to optimize their performance, thereby
110 benefiting the ratepayers.

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