

ENROLLED
CS/HB 649

2013 Legislature

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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 chapter 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:

16
17 Section 1. Subsection (4) is added to section 119.0713,
18 Florida Statutes, to read:

19 119.0713 Local government agency exemptions from
20 inspection 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 entity
27 providing the information or its business operations, and has
28 not been disclosed unless disclosed pursuant to a statutory

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29 provision, an order of a court or administrative body, or a
30 private agreement that provides that the information will not be
31 released to the public. Proprietary confidential business
32 information includes, 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 1 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

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57 | repealed on October 2, 2018, unless reviewed and saved from
58 | repeal through reenactment by the Legislature.

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 electric utility regarding the feasibility
76 | of future contracting. This could, in turn, limit opportunities
77 | the electric utility might otherwise have for finding cost-
78 | effective or strategic solutions for providing electric service
79 | or improving the delivery, cost, or diversification of fuel or
80 | renewable energy. This would put public providers of electric
81 | utility services at a competitive disadvantage by limiting their
82 | ability to optimize services to their customers and adversely
83 | affecting the customers of those utilities by depriving them of
84 | opportunities for rate reductions or other improvements in

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85 services.

86 (2) Proprietary confidential business information derives
87 actual or potential independent economic value from not being
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. An electric utility, in performing
91 the 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 propriety confidential
98 business information under the public records law would destroy
99 the value of that property and cause economic harm not only to
100 the entity or person providing the information, but to the
101 ratepayers through reduced competition for the provision of
102 vital electric utility services.

103 (3) In finding that the public records exemption created
104 by this act is a public necessity, the Legislature also finds
105 that 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.