

CHAPTER 2013-143

Committee Substitute for House Bill No. 649

An act relating to public records; amending s. 119.0713, F.S.; providing an exemption from public records requirements for specified proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources; providing for the retention of such information for a specified time; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to chapter 119 in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy

resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

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

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

(2) Proprietary confidential business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. An electric utility, in performing the appropriate due diligence review of electric projects or projects to improve the delivery, cost, or diversification of fuel or renewable energy sources, may need to obtain proprietary confidential business information. Without an exemption from public records requirements for this information, it becomes a public record when received by an electric utility and must be disclosed upon request. Disclosure of any proprietary confidential business information under the public records law would destroy the value of that property and cause economic harm not only to the entity or person providing the information, but to the ratepayers through reduced competition for the provision of vital electric utility services.

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

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

Approved by the Governor June 7, 2013.

Filed in Office Secretary of State June 7, 2013.