

## CHAPTER 2013-206

### Committee Substitute for Committee Substitute for House Bill No. 1085

An act relating to public records; creating s. 377.24075, F.S.; creating an exemption from public records requirements for proprietary business information provided in an application for a natural gas storage facility permit to inject and recover gas into and from a natural gas storage reservoir; defining the term “proprietary business information”; authorizing disclosure of such information under specified conditions; providing for future review and repeal of the public records exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 377.24075, Florida Statutes, is created to read:

377.24075 Exemption from public records requirements.—Proprietary business information held by the Department of Environmental Protection in accordance with its statutory duties with respect to an application for a natural gas storage facility permit is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(1) As used in this section, the term “proprietary business information” means information that:

(a) Is owned or controlled by the applicant or a person affiliated with the applicant.

(b) Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant’s business operations.

(c) Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

(d) Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the department.

(e) Includes, but is not limited to:

1. Trade secrets as defined in s. 688.002.

2. Leasing plans, real property acquisition plans, exploration budgets, or marketing studies, the disclosure of which would impair the efforts of the

applicant or its affiliates to contract for goods or services or to acquire real property interests on favorable terms.

3. Competitive interests, which may include well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, or field utilization strategies or operating plans, the disclosure of which would impair the competitive business of the applicant providing the information.

(f) May be found in a document:

1. Filed with the department by the applicant or affiliated person seeking a natural gas storage facility permit pursuant to s. 377.2407; or

2. Sent to the department from another governmental entity for use by the department in the performance of its duties. This subparagraph applies only if the information is otherwise confidential or exempt as held by the governmental entity.

(2) The department may disclose confidential and exempt proprietary business information:

(a) Pursuant to a court order;

(b) If the applicant to which it pertains gives prior written consent; or

(c) To another governmental entity if the receiving entity agrees in writing to maintain the confidential and exempt status of the information and has verified in writing its legal authority to maintain such confidentiality.

(3) This section 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 business information provided to the Department of Environmental Protection which relates to trade secrets, leasing plans, real property acquisition plans, exploration budgets, proprietary well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, field utilization strategies or operating plans, commercial or marketing studies, or other proprietary business information provided by a person in conjunction with an application to establish an underground natural gas storage facility as defined in s. 377.19, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such proprietary business information could injure an applicant in the marketplace by giving competitors detailed insight into technical assessments, design, and experience, thereby putting the applicant at a competitive disadvantage. Without this exemption, applicants could be less willing to expend or commit to expend the substantial resources necessary to

determine the feasibility of establishing, permitting, and operating an underground natural gas storage facility, resulting in limited opportunities for developing the additional natural gas storage capacity that this state critically needs to meet current and future residential, commercial, and industrial energy needs. The resulting lack of resources could hinder the ability of electric utility services to optimize services to their customers and could adversely affect their customers by depriving them of the opportunities and energy security that comes with domestic reserves of natural gas stored underground.

(2) Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by, other persons who can derive economic value from its disclosure or use. The Department of Environmental Protection, in the course of reviewing and issuing permitting decisions relating to underground natural gas storage facility permits, may need to obtain proprietary business information. Disclosure of such information could destroy the value of that property and could cause economic harm to the applicant providing the information. Additionally, the reduced competition for provision of domestic underground storage of natural gas could also adversely affect energy utility customers. The exemption created by this act will enhance the ability to increase domestic storage of natural gas, thereby creating a significant benefit to energy utility customers. In finding that the public records exemption created by this act is a public necessity, the Legislature also finds that any public benefit derived from disclosure of the information is significantly outweighed by the public and private harm that could result from disclosure after submittal of such proprietary business information.

Section 3. This act shall take effect October 1, 2013, if HB 1083 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.