

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 18-07 OGSR/Local Government Electric Utility
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee	15 Y, 0 N	Moore	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Municipal electric utilities, from time to time, seek or receive proposals from business entities concerning the development of projects related to providing electric service. According to the utilities, providers of new technologies would be discouraged from sharing information about opportunities to participate in projects if such information were subject to public disclosure due to fear of harming their business by exposing competitively sensitive information.

Current law provides that proprietary confidential business information held by an electric utility that is subject to public record requirements 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 is confidential and exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law. The bill also inserts a cross-reference to provide a specific definition for the term "trade secrets," which are protected under the public record exemption.

The bill may have a minimal fiscal impact on local governments. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Information Provided to Municipal Electric Utilities

Municipal electric utilities, from time to time, seek or receive proposals from business entities concerning the development of projects related to providing electric service. According to the utilities, providers of new technologies would be discouraged from sharing information about opportunities to participate in projects if such information were subject to public disclosure due to fear of harming their business by exposing competitively sensitive information.

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for proprietary confidential business information held by an electric utility that is subject to public record requirements in conjunction with a due diligence review of an electric project⁶ or a project to improve the delivery, cost, or diversification of

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ The term "electric project" means:

1. Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
2. Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.

fuel or renewable energy resources. Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The term “proprietary confidential business information” is defined to mean:

[I]nformation, 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 information.

The 2013 public necessity statement for the exemption provided that:

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.⁷

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.⁸

During the 2017 interim, subcommittee staff sent a questionnaire to each municipal electric utility as part of its review under the Open Government Sunset Review Act. In all, responses were received from 19 electric utilities.⁹ All of these utilities recommended that the exemption be reenacted because the exemption has enabled the utilities to pursue opportunities to find the most innovative approaches to meeting the electric needs of their customers. As such, the exemption has brought value to the utilities' customers.

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3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

Section 163.01(3)(d), F.S.

⁷ Section 2, ch. 2013-143, L.O.F.

⁸ Section 119.0713(4)(d), F.S.

⁹ The questionnaire and responses are on file with the Government Accountability Committee.

STORAGE NAME: pcb07a.GAC

DATE: 2/26/2018

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for proprietary confidential business information held by a local government electric utility.

The bill also inserts a cross-reference to provide a specific definition for the term “trade secrets,” which are protected under the public record exemption. Under the new definition, the term “trade secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., to reenact the public record exemption for proprietary confidential business information held by a local government electric utility.

Section 2 provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on municipal electric utilities because staff responsible for complying with public record requests could require training related to revision of the definition of term “trade secrets” in the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the utilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.