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CS/HB 1311

2021 Legislature

1
 2 An act relating to public records and public meetings;
 3 amending s. 350.01, F.S.; providing an exemption from
 4 public meetings requirements for portions of hearings
 5 before the Public Service Commission wherein
 6 proprietary confidential business information is
 7 discussed; requiring recording and transcription of
 8 exempt portions of such hearings; providing an
 9 exemption from public records requirements for such
 10 recordings and transcripts; providing an exception;
 11 providing for future legislative review and repeal of
 12 the exemptions; 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 (9) is added to section 350.01,
 18 Florida Statutes, to read:

19 350.01 Florida Public Service Commission; terms of
 20 commissioners; vacancies; election and duties of chair; quorum;
 21 proceedings; public records and public meetings exemptions.—

22 (9) Notwithstanding the provisions of subsection (8),
 23 those portions of a hearing conducted by the commission wherein
 24 proprietary confidential business information that is
 25 confidential or exempt from s. 119.07(1), pursuant to s.

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26 | 364.183, s. 366.093, s. 367.156, or s. 368.108, is discussed,
 27 | are exempt from s. 286.011 and s. 24(b), Art. I of the State
 28 | Constitution. No exempt portion of a hearing may be off the
 29 | record and all exempt portions shall be recorded and
 30 | transcribed. Such recordings and transcripts are confidential
 31 | and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 32 | Constitution, unless a court of competent jurisdiction, after an
 33 | in camera review, determines that the hearing was not restricted
 34 | to the discussion of proprietary confidential business
 35 | information made confidential and exempt pursuant to s. 364.183,
 36 | s. 366.093, s. 367.156, or s. 368.108. In the event of such a
 37 | judicial determination, only that portion of the recording and
 38 | transcript which reveals nonexempt information may be disclosed
 39 | to a third party. This subsection is subject to the Open
 40 | Government Sunset Review Act in accordance with s. 119.15 and
 41 | shall stand repealed on October 2, 2026, unless reviewed and
 42 | saved from repeal through reenactment by the Legislature.

43 | Section 2. The Legislature finds that it is a public
 44 | necessity that those portions of hearings conducted by the
 45 | Public Service Commission at which proprietary confidential
 46 | business information that is confidential or exempt from s.
 47 | 119.07(1), Florida Statutes, pursuant to s. 364.183, s. 366.093,
 48 | s. 367.156, or s. 368.108, Florida Statutes, is discussed, is
 49 | exempt from s. 286.011, Florida Statutes, and s. 24(b), Article
 50 | I of the State Constitution. Pursuant to its legislative

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51 directive under chapters 364, 366, 367, and 368, Florida
52 Statutes, the commission is the tribunal charged with
53 establishing just, fair, and compensatory utility rates. As
54 such, the commission has the authority to adjudicate all matters
55 within its jurisdiction, and its administrative hearings are
56 conducted in compliance with chapter 120, Florida Statutes. The
57 fact-finding role of the commission is integral in its
58 decisionmaking, and all commission decisions must be supported
59 by a record of competent, substantial evidence. Accordingly,
60 under certain circumstances, the commission must be able to
61 evaluate and discuss proprietary confidential business
62 information in order to make a determination in the public
63 interest. In addition, parties must be permitted to conduct
64 cross-examination when testimony is taken or documents are made
65 a part of the record under s. 120.569(2)(j), Florida Statutes.
66 For this reason, the Legislature finds that the disclosure of
67 proprietary confidential business information could
68 significantly impair the ability of utilities regulated by the
69 commission to fairly compete within the marketplace by revealing
70 such information. Furthermore, such disclosure could harm the
71 businesses with which such utilities contract by revealing the
72 businesses' proprietary confidential business information and
73 make it less likely for such businesses to do business with
74 regulated utilities in the future. The Legislature further finds
75 that the disclosure of proprietary confidential business

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76 | information would cause harm to the company's ratepayers or
77 | business operations. Given such harms, the disclosure of this
78 | information could negatively impact customers of regulated
79 | utilities and result in higher utility prices or lower quality
80 | of service overall. The Legislature further finds that it is a
81 | public necessity that the recordings and transcripts of those
82 | portions of hearings wherein proprietary confidential business
83 | information is discussed be made confidential and exempt from s.
84 | 119.07(1), Florida Statutes, and s. 24(a), Article I of the
85 | State Constitution. Failure to exempt such recordings and
86 | transcripts would defeat the purpose of the public meeting
87 | exemption. Therefore, the Legislature finds that the public and
88 | private harm in disclosing proprietary confidential business
89 | information outweighs any public benefit derived from the
90 | disclosure of such information.

91 | Section 3. This act shall take effect upon becoming a law.