S T A T E O F N E W Y O R K

2187

2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public officers law and the public service law, in relation to trade secrets

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (d) of subdivision 2 of section 87 of the public officers law, as amended by chapter 289 of the laws of 1990, is amended to read as follows:

(d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise; FOR THE PURPOSES OF THIS SECTION, THE TERM "TRADE SECRETS" SHALL MEAN ANY FORMULA, PATTERN, DEVICE OR COMPILATION OF INFORMATION WHICH IS USED IN A COMMERCIAL ENTERPRISE, AND WHICH PROVIDES AN OPPORTUNITY TO OBTAIN AN ADVANTAGE OVER COMPETITORS WHO DO NOT KNOW OR HAVE ACCESS TO IT;

S 2. The public service law is amended by adding a new section 114-b to read as follows:

S 114-B. RECORDS CONTAINING TRADE SECRETS OR CONFIDENTIAL COMMERCIAL INFORMATION. 1. ANY INFORMATION FILED WITH THE COMMISSION BY A PUBLIC UTILITY COMPANY IN CONNECTION WITH ANY PROCEEDING RELATING TO ANY RATE OR CHARGE TO BE IMPOSED ON CUSTOMERS SHALL BE PRESUMED TO BE SUBJECT TO PUBLIC DISCLOSURE IN ACCORDANCE WITH ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

2. (A) ANY PUBLIC UTILITY COMPANY SUBMITTING RECORDS IN CONNECTION WITH ANY PROCEEDING RELATING TO ANY RATE OR CHARGE IMPOSED ON CUSTOMERS REQUESTING TRADE SECRET OR CONFIDENTIAL COMMERCIAL STATUS FOR ALL OR A PORTION OF THE INFORMATION CONTAINED THEREIN SHALL SUBMIT SUCH RECORDS TO THE DEPARTMENT AND SHALL CLEARLY IDENTIFY THE RECORDS OR PORTIONS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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THEREOF CONSIDERED TO BE CONFIDENTIAL. WHERE THE REQUEST ITSELF CONTAINS INFORMATION WHICH IF DISCLOSED WOULD DEFEAT THE PURPOSE FOR WHICH THE EXCEPTION IS SOUGHT, SUCH INFORMATION SHALL ALSO BE EXCEPTED FROM DISCLOSURE UNTIL A FINAL DETERMINATION ON THE REQUEST IS MADE.

(B) A PUBLIC UTILITY COMPANY SEEKING TO EXEMPT INFORMATION FROM DISCLOSURE PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW SHALL SUBMIT SUCH REQUEST TO THE DEPARTMENT IN WRITING AND SHALL, IN ALL CASES, PRESENT SPECIFIC, PERSUASIVE EVIDENCE THAT DISCLOSURE WILL CAUSE IT TO SUFFER A COMPETITIVE INJURY. FACTORS TO BE CONSIDERS INCLUDE, BUT ARE NOT LIMITED TO:

(I) THE EXTENT TO WHICH THE DISCLOSURE CAN BE DEMONSTRATED TO CAUSE UNFAIR ECONOMIC OR COMPETITIVE DAMAGE TO THE PUBLIC UTILITY COMPANY;

(II) THE EXTENT TO WHICH THE INFORMATION IS KNOWN BY OTHERS AND CAN INVOLVE SIMILAR ACTIVITIES;

(III) THE DEMONSTRATED WORTH OR VALUE OF THE INFORMATION TO THE PUBLIC UTILITY COMPANY;

(IV) THE DEGREE OF DIFFICULTY AND COST OF DEVELOPING THE INFORMATION;

(V) THE EASE OR DIFFICULTY ASSOCIATED WITH OBTAINING OR DUPLICATING THE INFORMATION BY OTHERS WITHOUT THE PUBLIC UTILITY COMPANY'S CONSENT; AND

(VI) OTHER PROVISIONS OF STATUTE OR REGULATION SPECIFICALLY EXEMPTING THE INFORMATION FROM DISCLOSURE.

3. INFORMATION SUBMITTED AS PROVIDED IN THIS SECTION SHALL BE EXEMPTED FROM DISCLOSURE AND BE MAINTAINED APART BY THE DEPARTMENT FROM ALL OTHER RECORDS UNTIL FIFTEEN DAYS AFTER THE ENTITLEMENT TO SUCH EXEMPTION HAS BEEN FINALLY DETERMINED OR SUCH FURTHER TIME AS ORDERED BY A COURT OF COMPETENT JURISDICTION.

4. THE PUBLIC UTILITY COMPANY REQUESTING EXEMPTION FROM DISCLOSURE PURSUANT TO THIS SECTION SHALL IN ALL PROCEEDINGS HAVE THE BURDEN OF PROVING ENTITLEMENT TO THE EXEMPTION.

5. FAILURE TO IDENTIFY TRADE SECRET OR CONFIDENTIAL COMMERCIAL INFORMATION AT THE TIME OF SUBMISSION MAY MAKE THE INFORMATION ACCESSIBLE TO OTHERS WITHOUT NOTICE TO THE PUBLIC UTILITY COMPANY UNLESS A SPECIFIC EXEMPTION FROM DISCLOSURE BY OTHER STATUTES OR REGULATIONS PERTAINS TO THE INFORMATION.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.