

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:

1 Section 1. Paragraph (d) of subdivision 2 of section 87 of the public
2 officers law, as amended by chapter 289 of the laws of 1990, is amended
3 to read as follows:
4 (d) are trade secrets or are submitted to an agency by a commercial
5 enterprise or derived from information obtained from a commercial enter-
6 prise and which if disclosed would cause substantial injury to the
7 competitive position of the subject enterprise; FOR THE PURPOSES OF THIS
8 SECTION, THE TERM "TRADE SECRETS" SHALL MEAN ANY FORMULA, PATTERN,
9 DEVICE OR COMPILATION OF INFORMATION WHICH IS USED IN A COMMERCIAL
10 ENTERPRISE, AND WHICH PROVIDES AN OPPORTUNITY TO OBTAIN AN ADVANTAGE
11 OVER COMPETITORS WHO DO NOT KNOW OR HAVE ACCESS TO IT;
12 S 2. The public service law is amended by adding a new section 114-b
13 to read as follows:
14 S 114-B. RECORDS CONTAINING TRADE SECRETS OR CONFIDENTIAL COMMERCIAL
15 INFORMATION. 1. ANY INFORMATION FILED WITH THE COMMISSION BY A PUBLIC
16 UTILITY COMPANY IN CONNECTION WITH ANY PROCEEDING RELATING TO ANY RATE
17 OR CHARGE TO BE IMPOSED ON CUSTOMERS SHALL BE PRESUMED TO BE SUBJECT TO
18 PUBLIC DISCLOSURE IN ACCORDANCE WITH ARTICLE SIX OF THE PUBLIC OFFICERS
19 LAW.
20 2. (A) ANY PUBLIC UTILITY COMPANY SUBMITTING RECORDS IN CONNECTION
21 WITH ANY PROCEEDING RELATING TO ANY RATE OR CHARGE IMPOSED ON CUSTOMERS
22 REQUESTING TRADE SECRET OR CONFIDENTIAL COMMERCIAL STATUS FOR ALL OR A
23 PORTION OF THE INFORMATION CONTAINED THEREIN SHALL SUBMIT SUCH RECORDS
24 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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1 THEREOF CONSIDERED TO BE CONFIDENTIAL. WHERE THE REQUEST ITSELF CONTAINS
2 INFORMATION WHICH IF DISCLOSED WOULD DEFEAT THE PURPOSE FOR WHICH THE
3 EXCEPTION IS SOUGHT, SUCH INFORMATION SHALL ALSO BE EXCEPTED FROM
4 DISCLOSURE UNTIL A FINAL DETERMINATION ON THE REQUEST IS MADE.

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

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

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

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

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

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

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

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

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

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

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