

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1085

**FINAL HOUSE FLOOR ACTION:**

**SPONSOR(S):** State Affairs Committee;  
Agriculture & Natural Resources  
Subcommittee; Eagle and others

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**COMPANION  
BILLS:** (CS/CS/SB 984)

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 1085 passed the House on April 24, 2013, and subsequently passed the Senate on April 30, 2013.

CS/CS/CS/HB 1083 establishes permitting requirements to store gas in a natural gas storage reservoir. It authorizes the Department of Environmental Protection (DEP) to regulate the storage of natural gas by reviewing and processing permit applications to operate such storage facilities. A permit application must contain detailed information relating to the natural gas storage reservoir, including proprietary business information.

This bill, which is linked to CS/CS/CS/HB 1083, creates a public records exemption for proprietary business information that an applicant for a natural gas storage facility permit provides to DEP. It provides a definition of "proprietary business information."

The bill authorizes the release of the confidential and exempt proprietary business information in certain circumstances.

The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant negative fiscal impact on DEP (See Fiscal Comments Section). The bill does not appear to have a fiscal impact on local government.

The bill was approved by the Governor on June 14, 2013, ch. 2013-206, L.O.F., and will become effective on October 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

##### CS/CS/CSHB 1083: Underground Natural Gas Storage

Currently, Florida has no regulatory provisions for underground natural gas storage facilities. The Oil and Gas Program (program) is the permitting authority within the Department of Environmental Protection's (DEP's) Mining and Minerals Regulation Program in the Division of Water Resource Management. Companies interested in the exploration or production of hydrocarbons in Florida are regulated by the program. Primary responsibilities of the program include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection. These concerns are addressed through a system of permits and field inspections to insure compliance. Primary duties include permitting geophysical operations (usually seismic prospecting), permitting drilling or operating wells (all separate permits), and tracking activities through use of a computer database. All permitted activities are inspected by staff of the program.

CS/CS/CS/HB 1083, the companion to this bill, establishes permitting requirements to store gas in a natural gas storage reservoir. CS/CS/CS/HB 1083 provides that before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, a person who desires to conduct such operation must apply to DEP and pay a reasonable fee for processing to obtain a natural gas storage facility permit.

Under CS/CS/CS/HB 1083, each permit application must contain:

- A detailed, three-dimensional description of the natural gas storage reservoir, including geologic-based descriptions of the reservoir boundaries, and the horizontal and vertical dimensions.
- A geographic description of the lateral reservoir boundary.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

- A description and location of all injection, recovery, and observation wells, including casing and cementing plans for each well.
- A description of the reservoir protective area.
- Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas.
- Information identifying all known abandoned or active wells within the natural gas storage facility.
- A field-monitoring plan that requires, at a minimum, monthly field inspections of all wells that are part of the natural gas storage facility.
- A monitoring and testing plan for the well integrity.
- A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary.
- A casing inspection plan.
- A spill prevention and response plan.
- A well spacing plan.
- An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure.
- A gas migration response plan.

Each application can require additional information that is deemed necessary to permit the development of wells, drilling of wells, and operation of exploratory investigation, injection of gas into and recovery of gas from reservoirs, and monitoring of wells.

### **Effect of Proposed Changes**

The bill provides that proprietary business information held by DEP in accordance with its statutory duties with respect to an application for a natural gas storage facility permit is confidential and exempt<sup>3</sup> from s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution.

The bill defines “proprietary business information” as information that:

- Is owned or controlled by the applicant or a person affiliated with the applicant.
- 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.
- 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.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the department.
- Includes, but is not limited to:
  - Trade secrets as defined in s. 688.002, F.S.
  - 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.
  - 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.
- May be found in a document:

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<sup>3</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

- Filed with DEP by the applicant or affiliated person seeking a natural gas storage facility permit pursuant to s. 377.2407, F.S.; or
- Sent to DEP 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.

Confidential and exempt proprietary business information may be disclosed pursuant to a court order; if the applicant to which it pertains gives prior written consent; or 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.

The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>4</sup>

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill likely could create a minimal fiscal impact on DEP, because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, DEP could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

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<sup>4</sup> Section 24(c), Art. I of the State Constitution.