

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 71 Fracturing Chemical Usage Disclosure Act
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Rodrigues
TIED BILLS: HB 157 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	8 Y, 4 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helping	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Hydraulic fracturing is the use of fluid and material to create fractures in a formation to stimulate production from new and existing oil and gas wells. The composition of hydraulic fracturing fluid varies with the nature of the formation, but typically contains mostly water, a proppant that keeps the fractures open such as sand, and a small percentage of chemical additives. The number of chemical additives used in a typical hydraulic fracture treatment varies depending on the conditions of the specific well.

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in hydraulic fracturing. Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well. Currently in Florida, there is no hydraulic fracturing taking place; however, fracturing is not prohibited under Florida law.

The bill establishes the "Fracturing Chemical Usage Disclosure Act" (Act). The bill directs the Department of Environmental Protection (DEP) to designate or establish an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. DEP may designate the Chemical Disclosure Registry, known as FracFocus.org, as the state's official registry. If DEP designates FracFocus.org as the state's official registry, DEP must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the Act must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and specific chemical ingredients for each well on which hydraulic fracturing treatments are performed, by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information to DEP.

The bill also specifies that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must report information within 60 days after the initiation of hydraulic fracturing operations for each well on which hydraulic fracturing treatment is performed; must update the Chemical Disclosure Registry; and must notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of hydraulically fracturing a well.

The reporting and disclosure requirements in the bill do not apply to certain ingredients that were not purposefully added or occur incidentally.

The bill authorizes DEP to adopt rules to administer the registry.

The bill appears to have a minimal fiscal impact on DEP for establishing a registry and rulemaking; no fiscal impact on local government; and an indeterminate, insignificant negative fiscal impact to the private sector for reporting certain information.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0071b.ANRAS

DATE: 2/6/2014

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Hydraulic fracturing is the use of fluid and material to create or restore fractures in a formation to stimulate production from new and existing oil and gas wells. The pressurized mixture causes the rock layer to crack. The fissures are held open to allow natural gas to flow up the well. Hydraulic fracturing allows for extended production in older oil and natural gas fields. It also allows for the recovery of oil and natural gas from formations that are very hard to produce, such as shale.

The composition of hydraulic fracturing fluid varies with the nature of the formation, but typically contains mostly water, a proppant to keep the fractures open such as sand, and a small percentage of chemical additives. The number of chemical additives¹ used in a typical hydraulic fracture treatment varies depending on the conditions of the specific oil and gas well. Some chemical additives may be harmless, while others may be hazardous to health and the environment. A typical hydraulic fracture treatment will use very low concentrations of between 3 and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured. Each component serves a specific, engineered purpose.²

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in hydraulic fracturing. In May 2012, the Bureau of Land Management (BLM), part of the Department of the Interior, published a proposed rule that would require disclosures about chemicals used in fracturing on federal and Indian lands.³ Due, in part, to receiving a high volume of comments, BLM does not have a target date for finishing the rule.⁴

Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well. State requirements vary widely. Generally, they fall into four overlapping categories: (1) which parties must disclose information about chemical additives and whether these disclosures must be made to the public or a state agency; (2) what information about chemicals added to a hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic fracturing fluid and the additives that are combined with it; (3) what protections, if any, will be given to trade secrets; and (4) at what time disclosure must be made in relation to when fracturing takes place.

In Florida, ss. 377.01-377.43, F.S., regulate oil and gas resources.⁵ A permit is required to drill the well necessary to explore oil and gas reserves. If oil is discovered, which only occurs 3 percent of the time according to DEP, the drilling permit covers 90 days for testing. Hydraulic fracturing could occur during this time as part of a work over request, pursuant to Rule 62C-25, F.A.C. If the well is successful, DEP issues an operating permit following testing. Currently, there is no hydraulic fracturing being done in Florida. The last hydraulic fracturing event in Florida occurred almost 10 years ago and was unsuccessful.⁶

Effects of Proposed Changes

The bill establishes the "Fracturing Chemical Usage Disclosure Act" (Act) and creates s. 377.45(1), F.S., directing DEP to designate or establish an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. DEP may designate the Chemical Disclosure

¹ A list of the most often used chemicals can be found at <http://fracfocus.org/chemical-use/what-chemicals-are-used>

² Department of Energy, Modern Shale Gas Development in the United States: A Primer, ES-4 (2009), available at http://www.netl.doe.gov/technologies/oil-gas/publications/ereports/shale_gas_primer_2009.pdf.

³ CRS Report for Congress on 'Hydraulic Fracturing: Chemical Disclosure Requirements' (June 19, 2012). On file with staff.

⁴ Phone conversation between staff and the division chief of the Fluid Minerals Division of BLM on December 11, 2013.

⁵ Rules 62C-25, 62C-26, 62C-27, and 62C-28, F.A.C., promulgate these statutes.

⁶ DEP 2014 analysis. On file with staff.

Registry, known as FracFocus.org,⁷ as the state's official registry. If DEP designates FracFocus.org as the state's official registry, DEP must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the Act must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2),⁸ for each well on which hydraulic fracturing treatments are performed by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information, required in this Act, to DEP.

The bill also specifies that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must:

- Report information, as required above, within 60 days after the initiation of hydraulic fracturing operations for each well on which hydraulic fracturing treatment is performed;
- Update the Chemical Disclosure Registry; and
- Notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of hydraulically fracturing a well.

The reporting and disclosure requirements in the bill do not apply to ingredients that:

- Were not purposefully added to the hydraulic fracturing treatment.
- Occur incidentally or are otherwise unintentionally present in the treatment.

The bill authorizes DEP to adopt rules to administer this section.

B. SECTION DIRECTORY:

Section 1. Creates the "Fracturing Chemical Usage Disclosure Act."

Section 2. Creates s. 377.45, F.S., directing DEP to designate or establish an online hydraulic fracturing chemical registry; requiring service providers, vendors and, and owners or operators of wells on which a hydraulic fracturing treatment is performed to disclose certain information; providing for applicability; and authorizing DEP to adopt rules.

Section 3. Provides an effective date.

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.

⁷ FracFocus.org is a national hydraulic fracturing chemical registry website developed by the Groundwater Protection Council and the Interstate Oil and Gas Compact Commission.

⁸ 29 C.F.R. s. 1910.1200(g)(2) provides that material safety data sheets are required for each hazardous chemical in the workplace and that the sheets be in English and contain specific information.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a service provider, vendor, or owner or operator to report certain information, as described above, which could result in an indeterminate, insignificant negative fiscal impact.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on DEP if the department chooses to establish and maintain its own Chemical Disclosure Registry rather than designating a registry. According to DEP, there would be an insignificant fiscal impact on the department resulting from rule development; however, the cost can be absorbed within its existing budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to adopt rules to establish an online hydraulic fracturing chemical registry.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Agriculture & Natural Resources Subcommittee adopted three amendments to HB 71 before reporting it favorably as a committee substitute. The amendments:

- Direct DEP to designate or establish an online hydraulic fracturing chemical registry. Currently, DEP is directed to establish and maintain an online hydraulic fracturing chemical registry.
- Specify that if DEP chooses to designate FracFocus.org as the state's official registry, then DEP must provide a link to the FracFocus.org website through DEP's website.
- Specify that any registry established by DEP, must include, at a minimum, the total volume of water used in the fracturing treatment and each chemical ingredient.

The analysis is drafted to the CS as passed by the Agriculture & Natural Resources Subcommittee.