

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1083 Underground Natural Gas Storage

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Eagle and others

TIED BILLS: CS/HB 1085 **IDEN./SIM. BILLS:** SB 958

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 1 N, As CS	Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Natural gas can be stored for an indefinite period of time. When natural gas reaches its destination, it is not always immediately needed and can be injected into underground storage facilities. Underground natural gas storage provides pipelines, local distribution companies, producers, and pipeline shippers with an inventory management tool, seasonal supply backup, and access to natural gas needed to avoid imbalances between receipts and deliveries on a pipeline network. Currently, Florida has no regulatory provisions for underground natural gas storage facilities.

The bill establishes a regulatory structure for the underground storage of natural gas by providing the following:

- Declares that underground gas storage is in the public interest.
- Exempts gas-phase hydrocarbons that are transported into Florida, injected into an underground natural gas storage facility, and later recovered as liquid hydrocarbons from the severance tax on oil production; providing that the severance tax on natural gas applies only to native gas.
- Creates definitions for terms, including DEP, lateral storage reservoir boundary, native gas, natural gas storage facility, natural gas storage reservoir, oil and gas, reservoir protective area, shut-in bottom hole pressure, operator, and well site.
- Provides DEP with authority to adopt rules, administer and enforce laws, and issue orders regarding the storage, injection, and recovery of gas from a natural gas storage reservoir, and specifies that DEP is not required to adopt rules before July 1, 2015; however, DEP may issue permits regardless of whether DEP has adopted rules for activities authorized under this act.
- Declares that DEP is vested with the power and authority to issue permits for natural gas storage facilities, charge a permit application fee, and creates standards and conditions for the issuance of such permits.
- Requires that permits from DEP prior to storing gas in, or recovering gas from, natural gas storage include the name and address of the applicant.
- Specifies what must be included in an application for a permit to store gas in a natural gas storage reservoir.
- Provides for the protection of water supplies; provides that a facility operator is responsible for pollution to water supplies; and provides for defenses to claims of pollution to water supplies.
- Provides for the protection of natural gas storage facilities and storage rights with respect to injected gas.
- Specifies that certain well spacing requirements do not apply to injection wells associated with a natural gas storage facility.
- Specifies that limitations on the amount of oil and gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility.
- Specifies that penalties may be applied to any person who violates the law or the provisions of a permit for a natural gas storage facility.
- Specifies that the prohibition of pollution and the cost of clean-up provisions apply to natural gas storage facilities.
- Specifies that projects for natural gas storage facilities are eligible for expedited permitting.

DEP would incur costs to implement the provisions of the bill, but these should be supported by permitting fees. The bill appears to have a positive fiscal impact on local governments as a result of local utilities benefitting from the increased availability of natural gas and potentially lower energy prices.

FULL ANALYSIS

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

STORAGE NAME: h1083c.ANRAS

DATE: 4/10/2013

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Oil and Gas Program (chapter 377, part 1, F.S., and rules 62C-25 through 30, F.A.C.) 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 (division). Companies interested in the exploration or production of hydrocarbons in Florida are regulated by the Oil and Gas 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 the use of a computer database. All permitted activities are inspected by staff of the Oil and Gas Program. Two field offices facilitate these inspections.

DEP is vested with the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.¹
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.²
- To construct wells for the injection and recovery of any natural gas for temporary storage in subsurface reservoirs.³

Before any well in search of oil or gas is drilled, the person desiring to drill the well must notify the division using such form as it may prescribe and must pay a reasonable fee set by rule of DEP not to exceed the actual cost of processing and inspecting for each well. The drilling of any well is prohibited until such notice is given and the fee has been paid and permit granted.⁴ Each permit must contain an agreement by the permit-holder that he or she will not prevent inspection by the division personnel at any time.⁵ The division, in the exercise of its authority to issue permits, must give consideration to and be guided by certain statutorily specified criteria.⁶ Under certain circumstances, before a permit to drill a gas or oil well is granted, the governing authority of the municipality⁷ or the county commissioners of the county⁸ in which the land is located must have first duly approved the application for the permit by resolution.

Section 211.02(1), F.S., provides for a severance tax to be levied upon production of oil within Florida for sale, transport, storage, profit, or commercial use. The tax is measured by the value of the oil produced and saved or sold during a month. The current tax rate for small well oil⁹ is 5 percent of the gross value. The tax rate for tertiary oil¹⁰ and mature field recovery oil¹¹ applies as follows:

¹ Section 377.242(1), F.S.

² Section 377.242(2), F.S.

³ Section 377.242(3), F.S.

⁴ Section 377.24(1), F.S.

⁵ Section 377.242, F.S.

⁶ Section 377.241, F.S.

⁷ Section 377.24(5) and (6), F.S.

⁸ Section 377.24(7), F.S.

⁹ "Small well oil" is defined in s. 211.01(21), F.S., as oil produced from a well from which less than 100 barrels of oil per day are severed, considering only those days of the month during which production of oil from the well actually occurred.

¹⁰ "Tertiary oil" is defined in s. 211.02(3)(a), F.S., as the excess barrels of oil produced, or estimated to be produced, as a result of the actual use of a tertiary recovery method in a qualified enhanced oil recovery project, over the barrels of oil which could have been produced by continued maximum feasible production methods in use prior to the start of tertiary recovery. A "qualified enhanced oil recovery project" means a project for enhancing recovery of oil which meets the requirements of 26 U.S.C. s. 43(c)(2) or substantially similar requirements.

¹¹ "Mature field recovery oil" is defined in s. 211.01(4), F.S., as the barrels of oil recovered from new wells that begin production after July 1, 2012, in fields that were discovered prior to 1981.

- 9 percent of the gross value of oil on the value of oil \$80 and above per barrel.
- 7 percent of the gross value of oil on the value of oil above \$60 and below \$80 per barrel.
- 1 percent of the gross value of oil on the value of oil \$60 and below per barrel.

Currently, Florida has no regulatory provisions for underground natural gas storage facilities.

Underground Natural Gas Storage

Natural gas can be stored for an indefinite period of time. When natural gas reaches its destination, it is not always needed immediately and can be injected into underground storage facilities.¹²

Underground natural gas storage provides pipelines, local distribution companies, producers, and pipeline shippers with an inventory management tool, seasonal supply backup, and access to natural gas needed to avoid imbalances between receipts and deliveries on a pipeline network.¹³

There are three types of underground storage sites used in the United States. They are:

- Depleted natural gas or oil fields (326 sites);¹⁴
- Aquifers (43 sites);¹⁵ and
- Salt caverns (31 sites).¹⁶

As of 2007, there were 34 total sites in the Southeast region where natural gas could be stored, which includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.¹⁷

Any underground storage facility is reconditioned before injection to create a sort of storage vessel underground. Natural gas is injected into the formation, building up pressure as more natural gas is added. The underground formation becomes a sort of pressurized natural gas container. As with newly drilled wells, the higher the pressure in the storage facility, the more readily gas may be extracted. Once the pressure drops to below that of the wellhead, there is no pressure differential left to push the natural gas out of the storage facility. This means that, in any underground storage facility, there is a certain amount of gas that may never be extracted. This is known as physically unrecoverable gas; it is permanently embedded in the formation.¹⁸

In addition to this physically unrecoverable gas, underground storage facilities contain what is known as “base gas” or “cushion gas.” This is the volume of gas that must remain in the storage facility to provide the required pressurization to extract the remaining gas. In the normal operation of the storage facility, this cushion gas remains underground; however, a portion of it may be extracted using specialized compression equipment at the wellhead.¹⁹

“Working gas” is the volume of natural gas in the storage reservoir that can be extracted during the normal operation of the storage facility. This is the natural gas that is being stored and withdrawn (the capacity of storage facilities normally refers to their working gas capacity). At the beginning of a withdrawal cycle, the pressure inside the storage facility is at its highest; meaning working gas can be withdrawn at a high rate. As the volume of gas inside the storage facility drops, pressure (and thus deliverability) in the storage facility also decreases. Periodically, underground storage facility operators may reclassify portions of working gas as base gas after evaluating the operation of their facilities.²⁰

¹² See NaturalGas.org at <http://www.naturalgas.org/naturalgas/storage.asp>

¹³ U.S. Energy Information Administration website on ‘Underground Natural Gas Storage.’ See http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/undrgrnd_storage.html

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See NaturalGas.org at <http://www.naturalgas.org/naturalgas/storage.asp>

¹⁹ *Id.*

²⁰ *Id.*

Under the Natural Gas Act,²¹ the Federal Energy Regulatory Commission (FERC) determines the rate-setting methods for interstate pipeline companies, sets rules for business practices, and is responsible for authorizing the siting, construction, and operations of interstate pipelines, natural gas storage fields, and liquefied natural gas facilities. The Natural Gas Act does not apply to the production, gathering, or local distribution of natural gas.

Effect of Proposed Changes

The bill names this act the “Florida Underground Natural Gas Storage Act.”

The bill exempts gas-phase hydrocarbons that are transported into the state and injected into a natural gas storage facility from the severance tax on oil production. The bill also provides that the severance tax on natural gas applies only to “native gas”²² as defined in s. 377.19, F.S.

The bill declares that underground storage of natural gas is in the public interest because underground storage:

- Promotes conservation of natural gas;
- Makes gas more readily available to the domestic, commercial, and industrial consumers of Florida; and
- Allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand.

The bill amends s. 377.18, F.S., to specify that control and regulation of gas only applies to native gas.

The bill amends s. 377.19, F.S., adding new definitions for the following terms:

- “Department,” which means the Department of Environmental Protection
- “Lateral storage reservoir boundary,” which means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.
- “Native gas,” which means gas that occurs naturally within Florida and does not include gas that is produced outside the state, transported to Florida, and injected into a permitted natural gas storage facility.
- “Natural gas storage facility,” which means an underground reservoir from which oil or gas have previously been produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, infrastructure, right, or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof.
- “Natural gas storage reservoir,” which means a pool or field from which oil or gas have previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas.
- “Oil and gas,” which has the same meaning as the term “oil or gas.”
- “Operator,” which means the entity who, as part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or who stores gas in, or removes gas from, a natural gas storage reservoir.
- “Reservoir protective area,” which means the area extending up to and including 2,000 feet surrounding a natural gas lateral storage reservoir boundary.
- “Shut-in bottom hole pressure,” which means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

²¹ Natural Gas Act, 15 U.S.C., § 717 et seq.

²² Native gas is defined as gas that occurs naturally within Florida and does not include gas produced outside the state, transported to Florida, and injected into a permitted natural gas storage facility.

- “Well site,” which means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and recover gas from a natural gas storage facility.

The bill amends the term “waste” to specify that the term waste:

- Does not include seepage or migration of injected nonnative gas from a natural gas storage reservoir; and
- Does include the unnecessary escape into the air of gas produced from a gas well.

The bill amends s. 377.21, F.S., to specify that the division has the jurisdiction and authority to administer and enforce laws relating to the storage of gas in and recovery of gas from natural gas storage reservoirs.

The bill amends s. 377.22, F.S., authorizing DEP to issue orders and adopt rules with regard to:

- The injection of gas into and recovery of gas from a natural gas storage reservoir.
- Protecting the integrity of natural gas storage reservoirs.
- Requiring and carrying out a reasonable program of producing or injecting wells.
- Preventing wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring natural gas storage reservoirs.
- Regulating the storage and recovery of gas injected into natural gas storage facilities.

The bill also specifies that regulatory action taken by DEP, including, but not limited to, the receipt and processing of permit applications or the issuance of permits, cannot be deemed invalid solely because DEP has not yet adopted rules regarding such regulatory action.

The bill amends s. 377.24, F.S., specifying that before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill, store, or recover oil or gas must notify the division. The storing and recovering of gas are prohibited until notice is given, a fee is paid, and the permit is granted. An application for the storing of gas in and recovering of gas from a natural gas storage reservoir must include the address of the applicant.

The bill creates s. 377.2407, F.S., establishing the permitting requirements to store gas in a natural gas storage reservoir. The bill specifies that before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, the person who desires to conduct such operation must apply to DEP in the manner described below, or using such form as DEP may prescribe to obtain a natural gas facility permit. The department shall require an applicant seeking to obtain such a permit to pay a reasonable permit application fee in an amount necessary to cover the costs associated with receiving, processing, issuing, and recertifying, the permit application, and inspecting for compliance with the permit.

The bill also specifies that 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.
- 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. Each well can be authorized under the natural gas storage facility permit subject to each well individually satisfying applicable well construction and operation criteria.

The bill amends s. 377.241, F.S., to specify that the division must give consideration for activities and operations concerning a natural gas storage facility, and that the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment. The bill also specifies that no permit will be issued for a natural gas storage facility that includes a natural gas storage reservoir that is located in any aquifer containing water with a total dissolved solids concentration of 10,000 mg/l or less, in any offshore location in the Gulf of Mexico, the Straits of Florida, the Atlantic Ocean, or an offshore salt dome.

The bill amends s. 377.242, F.S., to specify that DEP is vested with the power and authority to issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.

The bill creates s. 377.2431, F.S., to provide conditions for granting permits for natural gas storage facilities. A natural gas storage facility permit must be issued for the life of the facility, subject to recertification every 5 years. Before issuing or reissuing a permit, the division must require satisfactory evidence of the following:

- The applicant has implemented, or is in the process of implementing, programs for the control and mitigation of pollution related to oil, petroleum products or their byproducts, and other pollutants.
- The applicant or operator has acquired a lawful right to drill, explore, or develop a natural gas storage reservoir from owners of a majority of the storage rights, or the applicant or operator has obtained a certificate of public convenience and necessity for the natural gas storage reservoir from the Federal Energy Regulatory Commission, pursuant to the Natural Gas Act, 15 U.S.C. ss. 717 et seq.
- The applicant has used all reasonable means to identify known wells that have been drilled into or through the natural gas storage reservoir to determine the status of the wells and whether inactive or abandoned wells have been properly plugged. For any well that has not been properly plugged, before conducting injection operations and after issuance of the permit, the applicant must plug or recondition the well to ensure the integrity of the storage reservoir.
- The applicant has tested the quality of water produced by all water supply wells within the lateral boundary of the natural gas storage facility and complied with all requirements under s. 377.2432, F.S. The applicant must provide to DEP and the owner of the water supply well a written copy of the water quality data collected.

All inspections and other reports required under this section must be submitted to DEP in the manner prescribed by rule.

A natural gas storage facility operator must request approval of a maximum storage pressure for a natural gas storage reservoir in accordance with the following:

- The maximum shut-in wellhead pressure may not exceed the highest shut-in wellhead pressure found to exist during the production history of the reservoir, unless a higher pressure is established by DEP based on testing of caprock and pool containment. The methods used for determining the higher pressure must be approved by DEP.
- If the shut-in wellhead pressure of the original discovery or of the highest production is not known, or a higher pressure has not been established through a method approved by DEP, the maximum storage reservoir pressure must be limited to a freshwater hydrostatic gradient.

DEP is authorized to issue a permit to an applicant regardless of whether DEP has adopted rules for the activities or operations described above, or rules prescribing the forms of the application for a permit.

A county or municipality may not adopt an ordinance, resolution, comprehensive plan, or land development regulation, or otherwise attempt to regulate or enforce any matter concerning natural gas storage facilities governed under this section

The bill creates s. 377.2432, F.S., to specify certain requirements for the protection of water supplies. The bill specifies that any operator of a natural gas storage facility who affects a public or private underground water supply by pollution or diminution must restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. DEP must ensure that the quality of the restored or replaced water is comparable to the quality of the water before it was affected by the operator.

Unless rebutted by a defense listed below, an operator is presumed responsible for pollution of an underground water supply if:

- The water supply is within the horizontal boundary of the natural gas storage facility; and
- The pollution occurred within 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit, or the initial injection of gas into the natural gas storage reservoir, whichever is later.

If the affected underground water supply is within the rebuttable presumption area described above and the rebuttable presumption applies, the operator must provide a temporary water supply if the water user is without a readily available alternative source of water. The temporary water supply must be adequate in quantity and quality for the purposes served by the affected supply.

The bill specifies that a natural gas storage facility operator rebuts the presumption described above by affirmatively proving any of the following:

- The pollution existed before the drilling or alteration activity as determined by a predrilling or prealteration survey.
- The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.
- The water supply well is not within the lateral boundary of the natural gas storage facility.
- The pollution occurred more than 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit.
- The pollution occurred as the result of a cause other than activities authorized under the natural gas storage facility permit.

An operator electing to preserve an affirmative defense as provided above must retain an independent certified laboratory to conduct a predrilling or prealteration survey of the water supply. A copy of survey results must be submitted to DEP and the landowner or water purveyor in the manner prescribed by DEP.

An operator must provide written notice to the landowner or water purveyor indicating that the established presumption may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor must be provided to DEP for the operator to retain the protections.

These provisions in the bill do not prevent a landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy at law or in equity.

The bill creates s. 377.2433, F.S., to provide protection of natural gas storage facilities and remedies. DEP cannot authorize the drilling of any well into or through a permitted natural gas storage reservoir or reservoir protective area, except upon conditions deemed by DEP to be sufficient to prevent the loss, migration, or escape of gas from the natural gas storage reservoir. DEP must provide written notice to the natural gas storage facility operator of any application filed with DEP and any agency action taken related to drilling a well into or through a permitted natural gas storage facility boundary or reservoir protective area.

As a condition for the issuance of a permit by DEP, an applicant seeking to drill a well into or through a permitted natural gas storage facility boundary or reservoir protective area must provide the affected natural gas storage facility operator a reasonable right of entry to observe and monitor all drilling activities.

DEP must ensure that any well drilled into or through a permitted natural gas storage reservoir or reservoir protective area is cased and cemented in a manner sufficient to protect the integrity of the natural gas storage reservoir.

A natural gas storage facility operator may petition DEP for a determination that any other activity is causing gas migration, escape, or loss, or in any other respect adversely affecting the integrity and use of the natural gas storage reservoir. Upon the filing of such petition, DEP must conduct a preliminary investigation and make a preliminary determination of whether probable cause exists to believe that the allegations of the petition may be true and correct. If DEP determines that probable cause exists, DEP must:

- Require the activity allegedly causing the adverse effect to immediately cease operations or take other steps necessary to prevent harm pending a final determination.
- Refer the petition to the Division of Administrative Hearings to conduct formal administrative proceedings pursuant to ss. 120.57 and 120.569, F.S., to make findings of fact regarding the allegations of the petition. Based upon such findings of fact, DEP must enter a final order granting or denying the petition. Any final order granting such petition must include remedial measures to be undertaken by the activity alleged to be causing gas migration up to and including complete cessation of such activity. Final orders issued are appealable pursuant to s. 120.68, F.S.

This does not prohibit a natural gas storage facility operator from seeking any other remedy at law or in equity.

The bill creates s. 377.2434, F.S., to specify certain property rights in injected natural gas. The bill provides that all natural gas that has previously been reduced to possession and that is subsequently injected into a natural gas storage facility, is at all times the property of the injector or the injector's heirs, successors, or assigns, whether owned by the injector or stored under contract.

The gas may not be subject to the right of the owner of the surface of the lands or of any mineral interest therein, under which the natural gas storage facilities lie, or to the right of any person, other than the injector or the injector's heirs, successors, or assigns, to waste or otherwise interfere with or exercise control over such gas, to produce, to take, or to reduce to possession, by means of the law of capture or otherwise. This section does not affect the ownership of hydrocarbons occurring naturally within Florida or the right of the owner of the surface of the lands or of any mineral interest therein to

drill or bore through the natural gas storage facilities in a manner that will protect the facilities against pollution or the escape of stored natural gas.

For natural gas that has migrated to an adjoining property or to a stratum, or portion thereof, that has not been condemned or otherwise purchased:

- The injector or the injector's heirs, successors, or assigns:
 - May not lose title to or possession of the gas if the injector or the injector's heirs, successors, or assigns can prove by a preponderance of the evidence that the gas was originally injected into the underground storage; and
 - Have the right to conduct tests on any existing wells on adjoining property as may be reasonable to determine ownership of the gas, but the tests are solely at the injector's risk and expense.
- The owner of the stratum and the owner of the surface are entitled to compensation, including compensation for use of or damage to the surface or substratum, as provided by law.

The bill amends s. 377.25, F.S., providing that well spacing requirements do not apply to injection wells associated with a natural gas storage facility.

The bill amends s. 377.28, F.S., providing for DEP to consider the need for the operation as a unit of an entire field, or of any pool or pools, or portions for the storage of natural gas. DEP must issue an order requiring unit operation if it finds that the additional recovery of oil or gas does not adversely interfere with the storage or recovery of natural gas within a natural gas storage reservoir.

The bill amends s. 377.30, F.S., to specify that the limitations on the amount of oil and gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility.

The bill amends s. 377.34, F.S., specifying that the division may enforce laws, rules, and orders against those engaged in the storing or recovering of natural gas.

The bill amends s. 377.37, F.S., specifying that penalties may be applied to any person who violates the law or the provisions of a permit for a natural gas storage facility.

The bill amends s. 377.371, F.S., specifying that the storage of gas in a natural gas storage facility cannot pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow an extraneous matter to enter or damage any mineral or freshwater-bearing formation. If the storage of natural gas does result in water pollution, and the pollution damages or threatens to damage human, animal, or plant life; public or private property; or any mineral or water-bearing formation, the person is liable to the state for all costs of cleanup or other damage incurred by the state. However, a person conducting the storage cannot be held liable if the person proves that the prohibited discharge was the result of:

- An act of war.
- An act of government, whether state, federal, or municipal.
- An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.
- An act or omission of a third party without regard to whether such act or omission was or was not negligent.

The bill amends s. 403.973, F.S., to specify that projects for natural gas storage facilities permitted under chapter 377, F.S., are eligible for the expedited permitting process.

The bill specifies that DEP is not required to adopt rules relating to natural gas storage before July 1, 2015. Subject to satisfying all conditions or requirements under this act, DEP may issue a permit to an applicant for a natural gas storage facility regardless of whether DEP has adopted rules for the activities or operations authorized under this act.

B. SECTION DIRECTORY:

Section 1. Provides a short title.

Section 2. Amends s. 211.02, F.S., relating to oil production tax, basis and rate of tax, and tertiary oil and mature field recovery oil.

Section 3. Amends s. 211.025, F.S., relating to gas production taxes.

Section 4. Amends s. 376.301, F.S., conforming a cross-reference.

Section 5. Amends s. 377.06, F.S., relating to the public policy of state concerning natural resources of oil and gas.

Section 6. Amends s. 377.18, F.S., relating to common sources of oil and gas.

Section 7. Amends s. 377.19, F.S., providing definitions.

Section 8. Amends s. 377.21, F.S., extending the jurisdiction of DEP's Division of Resource Management.

Section 9. Amends s. 377.22, F.S., relating to DEP's rules and orders.

Section 10. Amends S. 377.24, F.S., providing for the notice and permitting of storage in and recovery from natural gas storage reservoirs.

Section 11. Creates s. 377.2407, F.S., establishing a natural gas storage facility permit application process.

Section 12. Amends s. 377.241, F.S., providing criteria for the issuance of permits.

Section 13. Amends s. 377.242, F.S., relating to permits for drilling or exploring and extraction through well holes or by other means.

Section 14. Creates s. 377.2431, F.S., establishing conditions and procedures for granting natural gas storage facility permits.

Section 15. Creates s. 377.2432, F.S., providing for the protection of water supplies at natural gas storage facilities.

Section 16. Creates s. 377.2433, F.S., providing for the protection of natural gas storage facilities through an administrative hearing.

Section 17. Creates s. 377.2434, F.S., providing that property rights to injected natural gas are with the injector or the injector's heirs, successors, or assigns.

Section 18. Amends s. 377, 25, F.S., relating to production pools.

Section 19. Amends s. 377.28, F.S., relating to cycling, pooling, and unitization of oil and gas.

Section 20. Amends s. 377.30, F.S., relating to the limitation on the amount of oil or gas taken.

Section 21. Amends s. 377.34, F.S., relating to actions and injunctions by Division of Resource Management of DEP.

Section 22. Amends s. 377.37, F.S., relating to penalties.

Section 23. Amends s. 377.371, F.S., relating pollution prohibitions.

Section 24. Amends s. 403.973, F.S., relating to expedited permitting.

Section 25. Authorizing DEP to issue permits for natural gas storage facilities before adopting rules for such activities and operations.

Section 26. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments Section below.

2. Expenditures:

See Fiscal Comments Section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill appears to have a positive fiscal impact on local governments as a result of local utilities benefitting from the increased availability of natural gas and potentially lower energy prices.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The amount of the fee for the permit developed by the department would be dependent upon the number of applicants and the costs associated with the regulation of natural gas storage as outlined in the bill. The number of applicants is unknown, but expected to be low and costs associated with regulation are likely to be significant. The low number of applicants coupled with the potentially high cost of regulation could result in a substantial fee for the permit developed by the department.

There should be a net positive fiscal impact on pipeline companies and private utility customers by providing more gas at peak times. The bill may also result in additional jobs where a natural gas storage facility is located.

D. FISCAL COMMENTS:

DEP is directed to expand rulemaking, hold public workshops, train staff, review applicants, and issue permits for underground natural gas storage resulting in costs to the department. However, these costs would be offset by fees. The fees required to offset costs incurred by the department will depend on how many potential applicants apply and the costs associated with regulation of natural gas storage as outlined in the bill.

An applicant seeking to obtain a natural gas storage facility permit is required to pay an application permit fee that will cover costs associated with receiving, processing, issuing, and recertifying the permit application and inspecting for compliance with the permit. The permit application fee should provide DEP with sufficient revenue for the development of rules and the permitting process required for the regulation of a natural gas storage facility.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill establishes DEP's rulemaking authority to issue orders and make rules establishing a regulatory framework for permitting and operational compliance enforcement of the storage and recovery of non-native gas within underground natural gas storage facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 1083 favorably as a committee substitute (CS). The CS does the following:

- Clarifies that the definition of natural gas storage facility means an underground reservoir from which oil or gas have previously been produced.
- Clarifies that the definition of natural gas storage reservoir means a pool or field from which oil or gas have previously been produced.
- Deletes language specifying that the authority of DEP to regulate activities must be self-executing.
- Specifies that no permits will be issued for a natural gas storage facility that includes a natural gas storage reservoir that is located in any aquifer containing water with a total dissolved solids concentration of 10,000 mg/l or less, or in any offshore location in the Gulf of Mexico, the Straits of Florida, or the Atlantic Ocean, or an offshore salt dome.
- Deletes eminent domain language.
- Specifies that an operator is presumed responsible for pollution of an underground water supply if the pollution occurred within 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit, or the initial injection of gas into the natural gas storage reservoir, whichever is later.
- Deletes language relating to agreements in the interest of conservation.
- Specifies that DEP is not required to adopt rules relating to natural gas storage before July 1, 2015. DEP may issue a permit to an applicant for a natural gas storage facility regardless of whether the DEP has adopted rules for the activities or operations authorized under this act.

On April 8, 2013, the Agriculture & Natural Resources Appropriations Subcommittee amended and reported CS/HB 1083 favorably as a committee substitute. The CS specifies that DEP will charge an applicant seeking a gas storage permit a reasonable permit application fee in an amount necessary to cover the costs associated with receiving, processing, issuing, and recertifying the permit application, and inspecting for compliance with the permit.