

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1085 Public Records/Natural Gas Storage Facility Permit

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

TIED BILLS: CS/HB 1083 **IDEN./SIM. BILLS:** SB 984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Government Operations Subcommittee	9 Y, 0 N	Stramski	Williamson
3) State Affairs Committee			

SUMMARY ANALYSIS

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/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The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.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 does not appear to have a fiscal impact on the state or local government.

The bill has an effective date of October 1, 2013, if HB 1083 or similar legislation is adopted in the same legislative session.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.¹

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 Act² 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/HB 1083: Underground Natural Gas Storage

Currently, Florida has no regulatory provisions for underground natural gas storage facilities. The Oil and Gas 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 (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 use of a computer database. All permitted activities are inspected by staff of the Oil and Gas Program.

CS/HB 1083, the companion to this bill, establishes permitting requirements to store gas in a natural gas storage reservoir. 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/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.
- A description and location of all injection, recovery, and observation wells, including casing and cementing plans for each well.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

- 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 exempt³ from s. 119.07(1), F.S., and Article I, section 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.
 - 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:
 - Filed with the department by the applicant or affiliated person seeking a natural gas storage facility permit pursuant to s. 377.2407, F.S.; or

³ 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).

- Sent to the department 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 state agency in this or another state or to a federal agency, if the recipient 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.⁴

The bill provides an effective date contingent upon the passage of HB 1083 or similar legislation.

B. SECTION DIRECTORY:

Section 1. Creates s. 377.24075, F.S., creating an exemption from public records requirements for certain information provided in an application for a natural gas storage facility permit to inject and recover gas into and from a natural gas storage reservoir; providing for future review and repeal of the public records exemption under the Open Government Sunset Review Act.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date contingent upon the passage of HB 1083 or similar legislation.

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

⁴ Section 24(c), Art. I of the State Constitution.
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to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to proprietary business information that an entity seeking a natural gas storage permit must submit to DEP.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Trade Secrets

The bill does not define "trade secret" for purposes of the public record exemption. Many public record exemptions, including public record exemptions for proprietary business information, provide that it applies to a trade secret as defined in the Uniform Trade Secrets Act.

Other Comments: Release of the Confidential and Exempt Information

The bill authorizes release of the confidential and exempt proprietary business information to another "state agency in this or another state or to a federal agency" if certain requirements are met. It does not authorize release to local governments. In addition, many exemptions provide for release to "another governmental entity," which would include a state agency in another state or a federal agency.

Other Comments: Retroactive Application

The Supreme Court of Florida has ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. The bill does expressly provide that the public records exemption applies to identifying information held before, on, or after the effective date of the exemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 1085 favorably as a committee substitute (CS). The CS conforms the bill to a more standard format

used for similar bills amending chapter 119, F.S., applies similar standards that define what classes of information qualify for the exemption to a public record, and prescribes the scope of protection DEP must use.