

By Senator Clemens

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1 A bill to be entitled
2 An act relating to public records; amending s. 377.45,
3 F.S.; providing an exemption from public records
4 requirements for trade secrets contained within
5 information relating to hydraulic fracturing
6 treatments obtained by the Division of Resource
7 Management of the Department of Environmental
8 Protection in connection with the division's online
9 hydraulic fracturing chemical registry; providing
10 procedures and requirements with respect to the
11 granting of confidential and exempt status; providing
12 for disclosure under specified circumstances;
13 providing for future legislative review and repeal of
14 the exemption under the Open Government Sunset Review
15 Act; providing a statement of public necessity;
16 providing a contingent effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Subsection (4) of section 377.45, Florida
21 Statutes, as created by SB 1028, 2013 Regular Session, is
22 renumbered as subsection (5), and a new subsection (4) is added
23 to that section, to read:

24 377.45 Hydraulic fracturing chemical registry.-

25 (4) (a) Information obtained from any person under this
26 section, except as otherwise provided by law, shall be available
27 to the public, except upon a showing satisfactory to the
28 division by the person from whom the information is obtained
29 that such information, or a particular part thereof, contains

27-02218-13

20131776__

30 trade secrets as defined in s. 812.081(1)(c).

31 (b)1. Trade secrets, as defined in s. 812.081(1)(c),
32 contained within information relating to hydraulic fracturing
33 treatments obtained by the division in connection with the
34 online hydraulic fracturing chemical registry are confidential
35 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
36 Constitution.

37 2. The person submitting such trade secret information to
38 the division must request that it be kept confidential and
39 exempt and must inform the division of the basis for the claim
40 of trade secret. The department shall, subject to notice and
41 opportunity for hearing, determine whether the information, or
42 any portion thereof, claimed to be a trade secret is or is not a
43 trade secret.

44 3. Such trade secrets may be disclosed to authorized
45 representatives of the division or, pursuant to request, to
46 other governmental entities in order for them to properly
47 perform their duties, or when relevant in any proceeding under
48 this part. Authorized representatives and other governmental
49 entities receiving such trade secret information shall maintain
50 the confidentiality of such information. Those involved in any
51 proceeding under this section, including an administrative law
52 judge, a hearing officer, or a judge or justice, shall maintain
53 the confidentiality of any trade secret information revealed at
54 such proceeding.

55 4. This paragraph is subject to the Open Government Sunset
56 Review Act in accordance with s. 119.15 and shall stand repealed
57 on October 2, 2018, unless reviewed and saved from repeal
58 through reenactment by the Legislature.

27-02218-13

20131776__

59 Section 2. The Legislature finds that it is a public
60 necessity that trade secrets contained within information
61 relating to hydraulic fracturing treatments obtained by the
62 Division of Resource Management of the Department of
63 Environmental Protection in connection with the division's
64 online hydraulic fracturing chemical registry be made
65 confidential and exempt from public records requirements. Trade
66 secrets must be held confidential and exempt from public records
67 requirements because the disclosure of such information would
68 create an unfair competitive advantage for persons receiving
69 such information, which would adversely impact the service
70 company, chemical supplier, or well owner or operator that
71 provides chemical ingredients for a well or wells on which
72 hydraulic fracturing treatments are performed. If such
73 confidential and exempt information regarding trade secrets were
74 released pursuant to a public records request, others would be
75 allowed to take the benefit of the trade secrets without
76 compensation or reimbursement to the service company or chemical
77 supplier or well owner or operator.

78 Section 3. This act shall take effect on the same date that
79 SB 1028 or similar legislation takes effect, if such legislation
80 is adopted in the same legislative session or an extension
81 thereof and becomes law.