HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 743 Fracturing Chemical Usage Disclosure Act
SPONSOR(S): State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Rodrigues
TIED BILLS: HB 745 **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 3 N, As CS	Helpling	Massengale
3) State Affairs Committee	10 Y, 4 N, As CS	Renner	Camechis

SUMMARY ANALYSIS

Hydraulic fracturing (fracking) 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 composition of a 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 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. In May 2012, the Department of Environmental Protection (DEP) published a proposed rule that would require disclosure of the content of fracturing fluids used on lands managed by the agency. 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 being done.

The bill establishes the "Fracturing Chemical Usage Disclosure Act." The bill directs DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. The registry 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 provision in the bill, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. DEP must provide a link through DEP's website to FracFocus.org, the national hydraulic fracturing chemical registry website, operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If the chemical disclosure registry is unable to accept and make publicly available any information, the operator must submit the information to DEP.

The bill also provides that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must report information as required by DEP with respect to wells on which hydraulic fracturing treatment is performed 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 the DEP to adopt rules to administer the registry.

The bill does not appear to have a fiscal impact on state or local government. The bill appears to have an insignificant negative fiscal impact the private sector

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Hydraulic fracturing (fracking) 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. 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 a 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 additives[1] used in a typical 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 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 in DEP published a proposed rule that would require disclosure of the content of fracturing fluids used on lands managed by the agency.[3]

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 fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the 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.[4] 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. One reason is the existing reservoirs are carbonate rock, which is naturally brittle and responds better to acid injection.

Effects of Proposed Changes

The bill establishes the "Fracturing Chemical Usage Disclosure Act" and creates s. 377.45(1), F.S., directing DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. The registry 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)[5], for each well on which hydraulic fracturing treatments are performed

[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/epreports/shale_gas_primer_2009.pdf.
[3] CRS Report for Congress on 'Hydraulic Fracturing: Chemical Disclosure Requirements" (June 19, 2012). On file with staff.
[4] Rules 62C-25, 62C-26, 62C-27, and 62C-28 promulgate these statutes.
[5] 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.

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 subsection, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. DEP must provide a link through DEP's website to FracFocus.org, the national hydraulic fracturing chemical registry website, operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If the chemical disclosure registry is unable to accept and make publicly available any information, the operator must submit the information, required in this Act, to DEP.

Section 377.45(3), F.S., provides that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must:

- Report information as required by DEP with respect to wells on which hydraulic fracturing treatment is performed; 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 establish an online hydraulic fracturing chemical registry; requiring owners and operators of wells on which a hydraulic fracturing treatment is performed to disclose certain information; requiring certain service companies and suppliers to disclose certain information; 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires well operators to report certain information, as described above, which could result in an insignificant negative fiscal impact.

D. FISCAL COMMENTS:

None.

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 March 18, 2013, the Agriculture & Natural Resources Appropriations Subcommittee amended and reported HB 743 favorably as a committee substitute (CS). The amendment deletes the Division of Resource Management and directs instead DEP to execute appropriate provisions of the bill. The amendment also requires that DEP include an internet link to FracFocus, the national hydraulic fracturing chemical registry website, along with the registry on DEP's website.

On March 28, 2013, the State Affairs Committee amended and reported CS/HB 743 favorably as a committee substitute (CS). The CS allows for service providers, vendors, or well owners or operators to disclose the hydraulic fracturing chemical to an existing public online registry site instead of requiring DEP to establish and maintain a site, unless that site becomes unavailable, in which case DEP is required to develop a registry. The CS also revises the disclosure language to specify that service providers, vendors, or owners or operators must report which chemicals are used for hydraulic fracturing.