

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: CS/SB 984

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Richter

SUBJECT: Public Records/Natural Gas Storage Facility Permit

DATE: April 10, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.			GO	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 984 creates s. 377.24075, F.S., to provide that “proprietary business information” related to underground natural gas storage is exempt from the public records requirements of s. 119.15, F.S. The CS defines “proprietary business information” and provides legislative findings related to the public records exemption.

II. Present Situation:

Natural Gas Storage

Natural gas storage is critical to maintaining the reliability and supply needed to meet the demand of consumers. Underground natural gas storage was first introduced in 1909 by the United States Geological Survey and was carried out in 1916 in a depleted reservoir located in Concord, New York.¹

The most common type of underground natural gas storage facility is depleted natural gas wells where all of the recoverable natural gas has been extracted, leaving underground formations

¹ Arthur J. Kidnay and William R. Parrish, FUNDAMENTALS OF NATURAL GAS PROCESSING, 256 (2006).

geologically capable of storing natural gas.² There are 326 depleted reservoir storage sites in the United States.³ These sites are favorable over other types of underground storage because the infrastructure from the extraction network is already in place and the geological characteristics of the reservoir are well known.⁴

For a depleted reservoir to be a viable option for underground storage, it must be located in a consuming region and close to transportation infrastructure. The porosity and permeability of the formation are also critical factors as porosity determines the amount of natural gas that may be held, and the permeability determines the rate at which the natural gas flows through the formation.⁵

Aquifers and salt caverns are also used as underground storage facilities. Salt caverns storage facilities are formed out of existing salt deposits that are impermeable and self-sealing, creating a strong and environmentally sound storage system. Aquifer storage systems are underground porous, permeable rock formations that act as natural water reservoirs and are used to store natural gas in areas where there are no depleted reservoirs. Aquifers are the most expensive type of underground storage facility because of the extensive geologic testing that must be done prior to use.⁶ There are 43 aquifer storage sites and 31 salt cavern storage sites in the United States.⁷

To store natural gas in an underground storage facility, it is first reconditioned by injecting natural gas into the formation, which builds up pressure. As natural gas is added, the voids in the geologic formation are filled and become pressurized, similar to a natural gas container. Steady pressure in the reservoir allows gas to be extracted at a predictable rate, once the pressure drops below the wellhead, there is no pressure left to push the natural gas out of the reservoir. A “base gas” is used to maintain the pressure in the reservoir and remains in the reservoir at all times.⁸ The “working gas” is the natural gas that is injected, stored, and withdrawn.⁹ When the working gas pressure is high, gas may be extracted at a high rate; as the working gas pressure decreases, the flow rate of extracted natural gas decreases. The balance between the “base gas” pressure and the “working gas” pressure directly influences the deliverability rate of the storage facility.¹⁰

Currently in the United States, the majority of natural gas storage facilities are depleted reservoirs located in 22 states, primarily in the northeast.¹¹ The Weekly Natural Gas Storage Report states that 1,724 billion cubic feet of natural gas has been stored over the last five years.¹²

² NaturalGas.org, *Storage of Natural Gas*, <http://www.naturalgas.org/naturalgas/storage.asp> (last visited Apr. 7, 2013).

³ U.S. Energy Information Administration, *Underground Natural Gas Storage*, http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/undgrnd_storage.html (last visited Apr. 7, 2013).

⁴ *Supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Supra* note 3.

⁸ “Base gas” is defined as the volume of gas needed as a permanent inventory to maintain adequate reservoir pressures and deliverability rates throughout the withdrawal season. All native gas is included in base gas volume. *See* U.S. Energy Information Administration, *Natural Gas, Definitions, Sources and Explanatory Notes*, http://www.eia.gov/dnav/ng/tbldefs/ng_stor_wkly_tbldef2.asp (last visited Apr. 7, 2013).

⁹ “Working gas” is defined as the volume of total gas storage capacity that contains natural gas available for withdrawal. *See id.*

¹⁰ *Supra* note 2.

¹¹ *Id.*

Federal Regulation of Natural Gas

The Federal Energy Regulatory Commission (FERC) regulates interstate pipeline operations, storage, permitting and construction of new pipeline facilities, and the transmission rates that pipelines are permitted to charge. The FERC coordinates with other federal and state agencies to permit new pipelines and the conditions under which the pipelines may be constructed. The FERC also regulates the abandonment of facilities.¹³

Regulation of Oil and Gas Resources in Florida

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program (program) regulates oil and gas exploration and production in Florida under part I of ch. 377, F.S., and Rules 62C-25 through 30, Florida Administrative Code. Companies that explore for, or produce oil and gas in Florida, are permitted through the program, which ensures compliance and safety of the activities. In order to drill for oil or gas, the applicant must first provide notice to the DEP and pay the required permit fee. The permit may be granted subject to specific statutory criteria. The local government or municipality in which the land is located must also approve the application for the permit by a resolution.¹⁴

Section 211.02(1), F.S., provides for a severance tax to be levied on the production of oil within Florida for sale, transport, storage, profit, or commercial use. The tax is measured by the value of the oil produced, saved or stored during a month.

Florida is not a large producer of natural gas as the amount recovered in south Florida is considered insignificant. Approximately 700 billion cubic feet of natural gas has been produced in northwest Florida.¹⁵

There are no existing underground natural gas storage facilities in Florida and there are no regulatory provisions or rules for the storage of underground natural gas. All of the natural gas demand in Florida is served by two interstate pipelines delivering up to 4.5 billion cubic feet per day of natural gas. The existing pipelines are capable of providing enough natural gas to fuel approximately 26,000 mega watts of electric generation, which serves 5.5 to 6 million customers. The only natural gas reserves available in Florida are in the "line pack," which is the actual amount of gas in the pipeline or distribution system. The "line pack" allows for operational flexibility for pipeline customers, but is not considered a method of storage.¹⁶

¹² U.S. Energy Information Administration, *Weekly Natural Gas Storage Report*, <http://ir.eia.gov/ngs/ngs.html> (last visited Apr. 7, 2013).

¹³ 15 U.S.C., s. 717 et seq.

¹⁴ See ss. 377.242-377.24, F.S.

¹⁵ DEP, *Senate Bill 958/984 Agency Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ Email from Timothy Riley, Attorney, Hopping Green and Sams (Mar. 6, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

Public Records Law

Article I, section 24(a) of the Florida Constitution sets the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may provide for the exemption of records from the requirements of the constitution; however, the Legislature must specify the public necessity to justify the exemption.¹⁷

Access to public records is also addressed in s. 119.07(1), F.S., which guarantees every person the right to inspect and copy any state, county, or municipal record. The Open Government Sunset Review Act under s. 119.15, F.S., provides that a public record or public meeting exemption may only be created or maintained if it serves a public purpose. The Legislature created a number of specific exemptions from the Sunset Review Act, including documents submitted by a private party that constitute trade secrets as defined in s. 812.081, F.S., and are stamped as confidential at the time of submission to an agency.¹⁸

Underground natural gas storage facilities are not currently permitted in Florida; however, oil and gas wells that are permitted have a one-year exemption from public records requirements.

III. Effect of Proposed Changes:

Section 1 creates s. 377.24075, F.S., to provide that proprietary business information related to an application for an underground natural gas storage facility is exempt from the public record requirements in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.

The CS provides a definition for "proprietary business information," which includes information that:

- Is owned or controlled by the applicant or person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private;
- Has not been disclosed except as required by law or private agreement; and
- Is not publicly available.

The CS also specifies that proprietary business information includes:

- Trade secrets;
- Leasing plans, real property acquisition plans, exploration budgets, or marketing studies; and
- Competitive interests, which may include well design, completion plans, geologic and engineering studies, utilization strategies or operating plans.

The CS includes that information in a document filed with the DEP or sent to the DEP from another governmental entity is in the definition of proprietary business information.

The CS allows the DEP to disclose confidential and proprietary business information under certain circumstances which include:

- Compliance with a court order;

¹⁷ FLA. CONST. art I, s. 24(c).

¹⁸ See ss. 119.15 and 812.081, F.S.

- The applicant gives prior written consent; or
- The information is given to a state or federal agency that agrees in writing to maintain the confidential and exempt status of the information and provides evidence that it is authorized to do so.

The CS provides this section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. and must be repealed on October 2, 2018, unless reenacted by the legislature.

Section 2 creates an unnumbered section of law to provide legislative findings. Specifically the bill states:

- It is in the public necessity that information provided to the DEP by the applicant be confidential;
- The disclosure of proprietary confidential information could injure an applicant in the marketplace;
- Without the exemption the applicant could be less willing to invest the resources necessary to develop natural gas storage in Florida where it is critically needed;
- The lack of stored resources could hinder utility companies from providing service and adversely affect customers;
- Proprietary confidential information and trade secret information provides potential economic value from not being available to the public;
- The exemption created by the bill allows for the increase in domestic storage of natural gas and provides a benefit to customers; and
- The public benefit derived from the disclosure of information is outweighed by the public and private harm that would result if the disclosure occurred within 10 years of submittal.

Section 3 provides the act takes effect on October 1, 2013, provided a companion or similar legislation becomes law during the 2013 Regular Session or an extension thereof.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that protection of proprietary business information benefits private companies engaged in natural gas storage, the CS protects that information until the provision is repealed on October 2, 2018, unless reenacted by the Legislature.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on April 9, 2013:

- provides that “proprietary business information” is exempt from s. 119.07(1), F.S., and provides a definition of “proprietary business information”;
- removes the ten year time limitation on the exemption; and
- provides specific provisions under which the DEP may disclose proprietary business information.

B. Amendments:

None.