

1 A bill to be entitled

2 An act relating to public records; amending s. 377.45,
3 F.S.; defining the term "proprietary business
4 information"; providing an exemption from public
5 records requirements for proprietary business
6 information contained within information relating to
7 high-pressure well stimulations obtained by the
8 Department of Environmental Protection in connection
9 with the department's online high-pressure well
10 stimulation chemical disclosure registry; providing
11 procedures and requirements with respect to the
12 granting of confidential and exempt status; providing
13 for disclosure under specified circumstances;
14 providing for future legislative review and repeal of
15 the exemption under the Open Government Sunset Review
16 Act; providing a statement of public necessity;
17 providing a contingent effective date.

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19 Be It Enacted by the Legislature of the State of Florida:
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21 Section 1. Subsection (4) of section 377.45, Florida
22 Statutes, as created by HB 1205, 2015 Regular Session, is
23 renumbered as subsection (5), and a new subsection (4) is added
24 to that section to read:

25 377.45 High-pressure well stimulation chemical disclosure
26 registry.—

27 (4) (a) As used in this subsection, the term "proprietary
28 business information" means information that:

29 1. Is owned or controlled by the applicant or a person
30 affiliated with the applicant.

31 2. Is intended to be private and is treated by the
32 applicant as private because disclosure would harm the applicant
33 or the applicant's business operations.

34 3. Has not been disclosed except as required by law or a
35 private agreement that provides that the information will not be
36 released to the public.

37 4. Is not publicly available or otherwise readily
38 ascertainable through proper means from another source in the
39 same configuration as requested by the department.

40 5. Includes:

41 a. Trade secrets, as defined in s. 688.002.

42 b. Leasing plans, real property acquisition plans,
43 exploration budgets, or marketing studies, the disclosure of
44 which would impair the efforts of the applicant or its
45 affiliates to contract for goods or services or to acquire real
46 property interests on favorable terms.

47 c. Competitive interests, which may include well design or
48 completion plans, geological or engineering studies related to
49 storage reservoir performance characteristics, or field
50 utilization strategies or operating plans, the disclosure of
51 which would impair the competitive business of the applicant
52 providing the information.

53 (b) Proprietary business information relating to high-
54 pressure well stimulations held by the department in connection
55 with the online high-pressure well stimulation chemical
56 disclosure registry is confidential and exempt from s. 119.07(1)
57 and s. 24(a), Art. I of the State Constitution if the person
58 submitting such information to the department:

59 1. Requests that the proprietary business information be
60 kept confidential and exempt.

61 2. Informs the department of the basis for claiming that
62 the information is proprietary business information.

63 3. Clearly marks each page of a document or specific
64 portion of a document containing information claimed to be
65 proprietary business information as "proprietary business
66 information."

67 (c) If the department receives a public records request
68 for a document that is marked proprietary business information
69 under this section, the department must promptly notify the
70 person who submitted the information as proprietary business
71 information. The notice must inform such person that the person
72 has 10 days following receipt of such notice to file an action
73 in circuit court seeking a determination whether the document in
74 question contains proprietary business information and an order
75 barring public disclosure of the document. If the person files
76 an action within 10 days after receipt of notice of the public
77 records request, the department may not release the documents
78 pending the outcome of the legal action. The failure to file an

79 action within 10 days constitutes a waiver of any claim of
80 confidentiality, and the department shall release the document
81 as requested.

82 (d) Confidential and exempt proprietary business
83 information may be disclosed:

84 1. To another governmental entity if the receiving entity
85 agrees in writing to maintain the confidential and exempt status
86 of the information and has verified in writing its legal
87 authority to maintain such confidentiality.

88 2. When relevant in any proceeding under this part. Those
89 involved in any proceeding under this section, including, but
90 not limited to, an administrative law judge, a hearing officer,
91 or a judge or justice, must maintain the confidentiality of any
92 proprietary business information revealed at such proceeding.

93 (e) This subsection is subject to the Open Government
94 Sunset Review Act in accordance with s. 119.15 and shall stand
95 repealed on October 2, 2020, unless reviewed and saved from
96 repeal through reenactment by the Legislature.

97 Section 2. The Legislature finds that it is a public
98 necessity that proprietary business information relating to
99 high-pressure well stimulations held by the Department of
100 Environmental Protection in connection with the online high-
101 pressure well stimulation chemical disclosure registry be made
102 confidential and exempt from s. 119.07(1), Florida Statutes, and
103 s. 24(a), Article I of the State Constitution. Proprietary
104 business information must be held confidential and exempt from

105 public records requirements because the disclosure of such
106 information would create an unfair competitive advantage for
107 persons receiving such information, which would adversely impact
108 the service company, chemical supplier, or well owner or
109 operator that provides chemical ingredients for a well or wells
110 on which high-pressure well stimulations are performed. If such
111 confidential and exempt information regarding proprietary
112 business information were released pursuant to a public records
113 request, others would be allowed to take the benefit of the
114 proprietary business information without compensation or
115 reimbursement to the service company, chemical supplier, or well
116 owner or operator.

117 Section 3. This act shall take effect on the same date
118 that CS/HB 1205 or similar legislation takes effect, if such
119 legislation is adopted in the same legislative session or an
120 extension thereof and becomes law.