

By Senator Richter

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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 proprietary business information
5 relating to high pressure well stimulations obtained
6 by the Department of Environmental Protection in
7 connection with the department's online high pressure
8 well stimulation chemical disclosure registry;
9 providing procedures and requirements with respect to
10 the granting of confidential and exempt status;
11 providing for disclosure under specified
12 circumstances; providing for future legislative review
13 and repeal of the exemption under the Open Government
14 Sunset Review Act; providing a statement of public
15 necessity; providing a contingent effective date.

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

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19 Section 1. Subsection (4) is added to section 377.45,
20 Florida Statutes, as created by SB 1468, 2015 Regular Session,
21 to read:

22 377.45 High pressure well stimulation chemical disclosure
23 registry.—

24 (4) (a) Proprietary business information, as defined in s.
25 377.24075(1) (a)-(e) and relating to high pressure well
26 stimulations, submitted to the department as part of a permit
27 application or held by the department in connection with the
28 online high pressure well stimulation chemical disclosure
29 registry, is confidential and exempt from s. 119.07(1) and s.

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30 24(a), Art. I of the State Constitution if the person submitting
31 such proprietary business information to the department:

32 1. Requests that the proprietary business information be
33 kept confidential and exempt;

34 2. Informs the department of the basis for the claim of
35 proprietary business information; and

36 3. Clearly marks each page of a document or specific
37 portion of a document containing information claimed to be
38 proprietary business information as "proprietary business
39 information."

40 (b) If the department receives a public records request for
41 a document that is marked proprietary business information under
42 this section, the department must promptly notify the person who
43 submitted the information as proprietary business information.
44 The notice must inform the person that he or she has 30 days
45 after receipt of the notice to file an action in circuit court
46 seeking a determination as to whether the document in question
47 contains proprietary business information and an order barring
48 public disclosure of the document. If the person files an action
49 within 30 days after receipt of notice of the public records
50 request, the department may not release the document pending the
51 outcome of the legal action. The failure to file an action
52 within 30 days constitutes a waiver of any claim of
53 confidentiality, and the department shall release the document
54 as requested.

55 (c) Confidential and exempt proprietary business
56 information may be disclosed:

57 1. To another governmental entity if the receiving entity
58 agrees in writing to maintain the confidential and exempt status

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59 of the information and has verified in writing its legal
60 authority to maintain such confidentiality; or

61 2. When relevant in any proceeding under this part. A
62 person involved in any proceeding under this section, including,
63 but not limited to, an administrative law judge, a hearing
64 officer, or a judge or justice, must maintain the
65 confidentiality of any proprietary business information revealed
66 at such proceeding.

67 (d) This subsection is subject to the Open Government
68 Sunset Review Act in accordance with s. 119.15 and shall stand
69 repealed on October 2, 2020, unless reviewed and saved from
70 repeal through reenactment by the Legislature.

71 Section 2. The Legislature finds that it is a public
72 necessity that proprietary business information, as defined in
73 s. 377.24075(1)(a)-(e), Florida Statutes, and relating to high
74 pressure well stimulations, submitted to the Department of
75 Environmental Protection as part of a permit application or held
76 by the department in connection with the online high pressure
77 well stimulation chemical disclosure registry, be made
78 confidential and exempt from s. 119.07(1), Florida Statutes, and
79 s. 24(a), Article I of the State Constitution. Proprietary
80 business information must be held confidential and exempt from
81 public records requirements because the disclosure of such
82 information would create an unfair competitive advantage for
83 persons receiving such information and would adversely impact
84 the service company, chemical supplier, or well owner or
85 operator that provides chemical ingredients for a well on which
86 high pressure well stimulations are performed. If such
87 confidential and exempt information regarding proprietary

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88 business information were released pursuant to a public records
89 request, others would be allowed to take the benefit of the
90 proprietary business information without compensation or
91 reimbursement to the service company, chemical supplier, or well
92 owner or operator.

93 Section 3. This act shall take effect on the same date that
94 SB 1468 or similar legislation takes effect, if such legislation
95 is adopted in the same legislative session or an extension
96 thereof and becomes a law.