



Agriculture & Natural Resources Subcommittee

**Tuesday, March 17, 2015
12:30 pm
Reed Hall**

**Steve Crisafulli
Speaker**

**Tom Goodson
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Tuesday, March 17, 2015 12:30 pm
End Date and Time: Tuesday, March 17, 2015 02:30 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 813 Secondary Metals Recyclers by Combee
HB 1205 Regulation of Oil and Gas Resources by Rodrigues, R., Pigman
HB 1209 Public Records/High-pressure Well Stimulation Chemical Disclosure Registry by Rodrigues, R.

NOTICE FINALIZED on 03/13/2015 15:58 by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 813 Secondary Metals Recyclers
SPONSOR(S): Combee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore <i>fw</i>	Blalock <i>AFB</i>
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A secondary metals recycler is a person who is engaged in the business of obtaining metals or converting metals into raw material products. Secondary metals recyclers are currently regulated by the Department of Revenue (DOR). Current law requires a secondary metals recycler to register with DOR prior to engaging in business, authorizes law enforcement officers to inspect regulated metals property and records, and provides certain prohibitions and penalties.

The bill includes the following revisions pertaining to the regulation of secondary metals recyclers:

- Transfers all powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of DOR relating to the administration of the laws governing secondary metals recyclers, by a type two transfer, to the Department of Agriculture and Consumer Services (DACS).
- Authorizes DOR to provide DACS with confidential information relative to the administration of the laws governing secondary metals recyclers.
- Authorizes an employee of DACS who is a non-sworn trained regulatory investigator to inspect all purchased regulated metals property and records in the possession of a secondary metals recycler; authorizes DACS to seek an inspection warrant if DACS' personnel are denied access to a secondary metals recycler's place of business to verify registration.
- Specifies that to be a secondary metals recycler, a person must register on an application form prescribed by DACS; increases the annual registration fee for each secondary metals recycler location from \$6 to \$350; requires each secondary metals recycler to maintain current and valid workers' compensation insurance and general liability insurance coverage in a minimum amount established by DACS throughout the registration period; and provides that failure to maintain coverage may result in DACS immediately suspending registration, or eligibility for registration, and the secondary metals recycler must immediately cease operation.
- Authorizes DACS to deny, suspend, revoke, or restrict a registration if, within the previous 10 years (2 years under current law), the registrant or applicant, or an owner, director, or trustee of the applicant or registrant was convicted of certain crimes; and authorizes the immediate suspension of a registration or an application for registration, if the registrant or applicant, or an owner, officer, director or trustee, was convicted of certain felony offenses.
- Provides that a secondary metals recycler who knowingly and intentionally violates a prohibited act or practice related to secondary metals recyclers commits a third degree felony; specifies that a person who knowingly provides false information and receives money or consideration from a secondary metals recycler in return for regulated metals property commits a second or third degree felony, depending on the value of money or consideration received, and commits a second degree felony if the money or consideration received is for restricted regulated metals property.
- Requires the Florida Department of Law Enforcement to retain fingerprints of applicants, and requires a renewal applicant to pay fingerprint retention fees.
- Prohibits the purchase of regulated metals property, restricted regulated metals property, or ferrous metals on Sundays, and prohibits a secondary metals recycler from purchasing certain regulated metals property, without first ascertaining proof that the seller is the owner of the property.

The bill appears to have a negative fiscal impact on DACS. (See Fiscal Comments Section). The bill also appears to have a negative fiscal impact on the private sector. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A secondary metals recycler is, generally, a person who is engaged, from a fixed location,¹ in the business of obtaining ferrous² or nonferrous³ metals or converting metals into raw material products, or who has facilities for converting metals into raw material products.⁴ Secondary metals recyclers are currently regulated by the Department of Revenue (DOR) under part II of ch. 538, F.S.

Required Records

Section 538.19, F.S., requires a secondary metals recycler to maintain legible paper and electronic records, approved by the Florida Department of Law Enforcement (FDLE), of all purchase transactions. Electronic records of a purchase transaction must be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction.

Inspections of Regulated Metals Property and Records

During the usual business hours of a secondary metals recycler, a properly identified law enforcement officer may inspect any and all purchased regulated metals property in the possession of the secondary metals recycler and any and all records required to be maintained.⁵

Violations and Penalties

Pursuant to s. 538.23(1)(a), F.S., a secondary metals recycler commits a third degree felony⁶ if he or she knowingly and intentionally:

- Violates provisions related to inspections of regulated metals property and records⁷ or hold notice requirements;⁸
- Engages in a pattern of failing to keep records;⁹
- Purchases regulated metals property, restricted regulated metals property, or ferrous metals from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle;¹⁰ or

¹ Section 538.18(4), F.S., defines a "fixed location" as any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

² Section 538.18(3), F.S., defines "ferrous metals" as any metals containing significant quantities of iron or steel.

³ Section 538.18(6), F.S., defines "nonferrous metals" as metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys, excluding precious metals.

⁴ See s. 538.18(11), F.S.

⁵ Section 538.20, F.S.

⁶ Sections 772.082, 772.083, and 772.084, F.S.; A third degree felony is punishable by a term of imprisonment up to five years, or up to 10 years for a habitual offender, and a \$5,000 fine.

⁷ Section 538.20, F.S.

⁸ Section 538.21, F.S., provides that a hold notice may be issued by a law enforcement officer who has reasonable cause to believe that certain items of regulated metals property in a secondary metals recycler's possession have been stolen. Upon receipt of the notice, the secondary metals recycler may not process or remove the items identified in the notice for 15 calendar days after receipt of the notice, unless released sooner by a law enforcement officer. No later than the expiration of the 15 day hold notice, a law enforcement officer may issue a second hold notice for 45 calendar days. At the expiration of any hold notice, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property.

⁹ Section 538.19, F.S.

- Violates provisions related to methods of payment.¹¹

A person who knowingly gives false verification of ownership or gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

- A third degree felony¹² if the value of the money or other consideration received is less than \$300.
- A second degree felony¹³ if the value of the money or other consideration received is \$300 or more.¹⁴

Registration

A person must register with DOR to engage in business as a secondary metals recycler.¹⁵ A person acting as a secondary metals recycler who is not registered with DOR commits a third degree felony.¹⁶ The registration must be conspicuously displayed at the place of business set forth on the registration.¹⁷

An application for registration can only be accepted from a fixed business address.¹⁸ An application with an address of a hotel or motel room, a vehicle, or a post office box will not be accepted.¹⁹ If a secondary metals recycler owns more than one location, the application must list each location, and DOR will issue a duplicate registration for each location.²⁰

An application must include a fee equal to the federal and state costs for processing required fingerprints.²¹ A secondary metals recycler must pay a \$6 fee for each location at the time of registration and an annual renewal fee of \$6 per location on October 1 of each year.²² All fees, less costs of administration, are deposited into DOR's Operating Trust Fund.²³

DOR is required to forward an applicant's fingerprints to FDLE for state and federal processing, provided the federal service is available, to be processed for any criminal justice information.²⁴ The cost of processing the fingerprints must be paid to FDLE by DOR.²⁵ DOR is authorized to issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies, but is authorized to revoke the temporary registration if the completed

¹⁰ Section 538.26(2), F.S.

¹¹ Section 538.235, F.S.

¹² See *supra* at note 6.

¹³ Sections 775.082, 775.083, and 775.084, F.S.; A second degree felony is punishable by a term of imprisonment up to 15 years, or up to 30 years for a habitual offender, and a \$10,000 fine.

¹⁴ Section 538.23(3), F.S.

¹⁵ Section 538.25(1), F.S.

¹⁶ Section 538.23(5), F.S.; See *supra* at note 6.

¹⁷ Section 538.25(2), F.S.

¹⁸ Section 538.25(1), F.S.

¹⁹ *Id.*

²⁰ Section 538.25(1)(a), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Section 538.25(1)(b), F.S.; Section 943.045, F.S., defines "criminal justice information" as information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

²⁵ Section 538.25(1)(b), F.S.

background check reveals a prohibited criminal background.²⁶ FDLE is required to submit its findings to DOR within 30 days after the date the fingerprints are submitted to FDLE.²⁷

DOR is authorized to impose a civil fine of up to \$10,000 for each knowing and intentional violation of the registration requirements in s. 538.25, F.S.²⁸ If the fine is not paid within 60 days, DOR may bring a civil action, under s. 120.69, F.S.,²⁹ to recover the fine.³⁰ The fine must be transferred into the General Revenue Fund.³¹

In addition to assessing a civil fine, DOR may deny, revoke, restrict, or suspend a registration if, within a 24-month period immediately preceding the denial, revocation, restriction or suspension:

- The applicant or registrant has been convicted of knowingly and intentionally:
 - Violating provisions related to inspections of regulated metals property³² or hold notice requirements;³³
 - Engaging in a pattern of failing to keep records;³⁴
 - Making a material false statement in an application for registration; or
 - Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;³⁵
- The applicant or registrant has been convicted of or has entered a plea of guilty or nolo contendere to a felony against state or federal laws involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler;³⁶ or
- The applicant has, after receipt of written notice from DOR of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to DOR.³⁷

Prohibited Acts and Practices

Section 538.26, F.S., provides that it is unlawful for a secondary metals recycler to:

- Purchase regulated metals property, restricted regulated metals property, or ferrous metals before 7 a.m. or after 7 p.m.³⁸
- Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle.³⁹
- Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any location other than a fixed location.⁴⁰

²⁶ Id.

²⁷ Id.

²⁸ Section 538.25(3), F.S.

²⁹ Section 120.69, F.S., provides that an agency may seek enforcement of an action by filing a petition for enforcement in the circuit court where the subject matter of the enforcement is located.

³⁰ Section 538.25(3), F.S.

³¹ Id.

³² Section 538.20, F.S.

³³ Section 538.21, F.S.

³⁴ Section 538.19, F.S.

³⁵ Section 538.25(4)(a), F.S.

³⁶ Section 538.25(4)(b), F.S.

³⁷ Section 538.25(4)(c), F.S.

³⁸ Section 538.26(1), F.S.

³⁹ Section 538.26(2), F.S.

⁴⁰ Section 538.26(3), F.S.

- Purchase regulated metals property from a seller who:
 - Uses a name other than his or her own name or the registered name of the seller's business;
 - Is younger than 18 years of age; or
 - Is visibly or apparently under the influence of drugs or alcohol.⁴¹
- Purchase the following restricted regulated metals property without obtaining proof that the seller owns the regulated metals property:
 - A manhole cover.
 - An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.
 - A guardrail.
 - A street sign, traffic sign, or traffic signal and its fixtures and hardware.
 - A funeral marker or funeral vase.
 - A historical marker.
 - Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
 - Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.
 - A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.
 - An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.
 - A stainless steel beer keg.
 - A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.
 - Metallic wire that has been burned in whole or in part to remove insulation.
 - A brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," that is commonly used on structures for access to water for the purpose of extinguishing fires.
 - A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.
 - A shopping cart.
 - A brass water meter.
 - A storm grate.
 - A brass sprinkler head used in commercial agriculture.
 - More than two lead-acid batteries, or any part or component of the battery, in a single purchase or from the same individual in a single day.⁴²

Confidentiality and Information Sharing

Section 213.053(2), F.S., provides that all information contained in returns, reports, accounts, or declarations received by DOR, including investigative reports and information and letters of technical advice, is confidential except for official purposes. This applies to certain taxes, trust funds, fees, and the registration of secondary metals recyclers.⁴³ DOR may disclose information to governmental or nongovernmental agencies pursuant to a written agreement between the executive director of DOR and the agency and those agencies are bound by the same requirements of confidentiality as DOR.⁴⁴

⁴¹ Section 538.26(4), F.S.

⁴² Section 538.26(5), F.S.

⁴³ Section 213.053(1), F.S.

⁴⁴ Section 213.053(8), F.S.

Effect of Proposed Changes

Transfers Regulation of Secondary Metals Recyclers from DOR to the Department of Agriculture and Consumer Services

The bill transfers from DOR to the Department of Agriculture and Consumer Services (DACs) all powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the administration of part II of ch. 538, F.S., by a type two transfer.⁴⁵ The transfer does not affect the validity of any judicial or administrative action pending as of 11:59 p.m. on the day before the effective date of the bill (July 1, 2015) to which DOR is at that time a party, and DACs must be substituted as a party in interest in any such action. All lawful orders issued by DOR relating to the administration of part II of ch. 538, F.S., issued before July 1, 2015, must remain in effect and be enforceable after July 1, 2015, unless subsequently modified in accordance with law. The rules of DOR relating to the administration of part II of ch. 538, F.S., that were in effect at 11:59 p.m. on the day before July 1, 2015, must remain in effect and be enforceable after July 1, 2015, unless subsequently modified in accordance with law.

Confidentiality and Information Sharing

The bill amends s. 213.053, F.S., to authorize DOR to provide information relative to ch. 212, F.S.,⁴⁶ and secondary metals recyclers to DACs in the conduct of its official duties.

Inspection of Regulated Metals Property and Records

The bill amends s. 538.20, F.S., to provide that, in addition to a law enforcement officer, an employee of DACs who is a non-sworn trained regulatory investigator may inspect all purchased regulated metals property in the possession of a secondary metals recycler and all records maintained by a secondary metals recycler.

Prohibited Acts and Penalties

The bill amends s. 538.26, F.S., regarding certain prohibited acts and practices, as follows:

- Prohibits a secondary metals recycler from purchasing regulated metals property, restricted regulated metals property, or ferrous metals on Sundays.
- Prohibits a secondary metals recycler from purchasing a metal electric light pole and its fixtures, and hardware that is readily identifiable as connected to a metal electric light structure without first obtaining proof that the seller owns the property.

The bill amends s. 538.23, F.S., regarding violations and penalties, as follows:

- Provides that any secondary metals recycler who knowingly and intentionally violates any provision of s. 538.26, F.S., related to certain acts and practices that are prohibited by secondary metals recyclers, commits a third degree felony.⁴⁷ Currently, only one act listed

⁴⁵ Section 20.06(2), F.S., defines a type two transfer as: merging into another agency or department of an existing agency or department or a program, activity, or function thereof; or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished. Any agency transferred by a type two transfer has all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

⁴⁶ Chapter 212, F.S., governs taxes on sales, use, and other transactions.

⁴⁷ See *supra* at note 6.

under s. 538.26, F.S.,⁴⁸ is punishable as a third degree felony, and a violation of any other provision under s. 538.26, F.S., is punishable as a first degree misdemeanor, with a fine not to exceed \$10,000.⁴⁹

- Provides that a person who knowingly provides false information and receives money or other consideration from a secondary metals recycler in return for regulated metals property commits a third degree felony if the value of the money or other consideration received is less than \$300. If the value of the money or other consideration received is \$300 or more, the person commits a second degree felony. A person also commits a second degree felony if the money or other consideration received is for restricted regulated metals property.

Registration

The bill amends s. 538.25, F.S, regarding registration of secondary metals recyclers, as follows:

- Specifies that in order to be a secondary metals recycler a person must register on an application form prescribed by DACS. An application for registration must state the full name of the applicant, the place where the business is to be conducted, and any other relevant information required by DACS. If the applicant is not an individual, the applicant must state the full name and address of each direct or beneficial owner of at least 10 percent equity interest in the business. If the applicant is a corporation, the application must state the full name and address of each officer and director.
- Increases the annual registration fee for each secondary metals recycler location from \$6 to \$350. The fee is submitted to DACS, and all fees collected must be transferred into the General Inspection Trust Fund.
- Requires an applicant to submit a full set of fingerprints to DACS or an authorized entity or vendor.⁵⁰
- Requires FDLE to retain submitted fingerprints and to enroll the fingerprints in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program, when FDLE begins participation with the FBI. FDLE must search arrest fingerprints against retained fingerprints, and any arrest record identified must be reported to DACS.
- Requires DACS, for a renewal applicant's registration, to request FDLE to forward retained fingerprints of the applicant to the FBI, unless the applicant is enrolled in the national retained print arrest notification program. The fee for the national criminal history check must be paid as part of the renewal fee to DACS and must be forwarded to FDLE. If an applicant's fingerprints are retained in the national retained print arrest notification program, the applicant must pay the state and national retention fee to DACS, and DACS must forward the fee to FDLE.
- Requires DACS to notify FDLE of a person whose fingerprints have been retained but who is no longer registered as a secondary metals recycler.
- Requires DACS to screen background results to determine if an applicant meets registration requirements.
- Repeals authorization for the issuance of a temporary registration pending completion of the background check, and the requirement for FDLE to report its background check findings within 30 days of receipt of the fingerprints.
- Requires each secondary metals recycler to maintain current and valid workers' compensation insurance and general liability insurance coverage in a minimum amount established by DACS throughout the registration period, and to provide DACS with written evidence of each before registering with DACS. If a secondary metals recycler fails to maintain the required insurance coverage, DACS may immediately suspend the secondary metals recycler's registration or

⁴⁸ Section 538.26(2), F.S., provides that it is unlawful for a secondary metals recycler to purchase regulated metals property, restricted regulated metals property, or ferrous metals from a seller who presents such property for sale at the registered location when the property was not transported in a motor vehicle.

⁴⁹ Section 538.07(1), F.S.; Section 775.082, F.S., provides that a first degree misdemeanor is punishable by a term of imprisonment not to exceed one year.

⁵⁰ Section 943.053(13), F.S., provides the requirements for an authorized entity or vendor.

eligibility for registration and the secondary metals recycler must immediately cease operating in the state.

- Requires a person applying for or renewing a local business tax receipt to engage in business as a secondary metals recycler to exhibit an active registration certificate from DACS before the local business tax receipt may be issued or renewed.
- Requires a secondary metals recycler to allow DACS personnel to enter the secondary metals recycler's place of business to verify that a registration is valid. If DACS' personnel are refused entry for this purpose, DACS can seek an inspection warrant to obtain compliance with this requirement.
- Repeals the assessment of a civil fine of up to \$10,000 for each knowing and intentional violation of the registration requirements.
- Authorizes DACS to assess administrative penalties in s. 538.27, F.S.,⁵¹ as well as to deny, suspend, revoke, or restrict a registration if, within a 10-year period⁵² immediately preceding the denial, suspension, revocation, or restriction:
 - The applicant or registrant, or an owner, officer, director or trustee of the applicant or registrant has been convicted of knowingly and intentionally:
 - ❖ Violating provisions related to inspections of regulated metals property, hold notice requirements, or any prohibited act or practice contained in s. 538.26, F.S.;
 - ❖ Engaging in a pattern of failing to keep records;
 - ❖ Making a material false statement in an application for registration; or
 - ❖ Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;
 - The applicant or registrant, or an owner, officer, director, or trustee of the applicant or registrant, has been convicted of, or entered a plea of guilty or nolo contendere to, a felony against state or federal laws involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or
 - The applicant has, after receipt of written notice from DOR of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to DOR.
- Requires DACS to suspend the registration or an application for registration of any registrant or applicant if the registrant or applicant, or any of its owners, officers, directors, or trustees have been convicted of a felony under ch. 812⁵³ or ch. 817, F.S.,⁵⁴ immediately upon receiving written verification of the conviction from a law enforcement agency, court, or state attorney's office or FDLE.

Administrative Penalties

The bill creates s. 536.27, F.S., which provides for administrative penalties, upon DACS' determination that a violation of ss. 538.19,⁵⁵ 538.235,⁵⁶ 538.25,⁵⁷ or 538.26, F.S.,⁵⁸ has occurred, as follows:

- Issuing a notice of noncompliance pursuant to s. 120.695, F.S.⁵⁹

⁵¹ Section 538.27, F.S., provides for administrative penalties.

⁵² Current law provides for a 2-year period.

⁵³ Chapter 812, F.S., relates to theft, robbery, and related crimes.

⁵⁴ Chapter 817, F.S., relates to fraudulent practices, including false pretenses and frauds, credit card crimes, credit service organizations, and credit counseling services.

⁵⁵ See discussion of s. 538.19, F.S., in the present situation section, under "Required Records."

⁵⁶ Section 538.235, F.S., provides specific restrictions and methods of payment for transactions involving secondary metals.

⁵⁷ See discussion of s. 538.25, F.S., in the present situation section, under "Registration."

⁵⁸ See discussion of s. 538.26, F.S., in the present situation, under "Prohibited Acts and Practices."

- Imposing an administrative fine up to \$200 per violation, but not to exceed \$5,000 per inspection. Any fine collected must be deposited in the General Inspection Trust Fund. If a fine is not paid within 60 days after imposition, DACS is authorized to bring a civil action under s. 120.69, F.S.,⁶⁰ to recover the fine.
- Directing that the secondary metals recycler cease and desist specified activities.

Additionally, the bill requires any administrative proceeding that could result in the entry of an order imposing any administrative penalties to be conducted in accordance with ch. 120, F.S.⁶¹

Rulemaking Authority

The bill also creates s. 538.29, F.S., which authorizes DACS to adopt rules to implement the laws governing secondary metals recyclers and requires the rules to include tiered penalties for violations of these laws.

B. SECTION DIRECTORY:

Section 1. Transfers administration of part II of ch. 538, F.S., relating to secondary metals recyclers, from the Department of Revenue to the Department of Agriculture and Consumer Services.

Section 2. Amends s. 213.053, F.S., authorizing the Department of Revenue to share certain confidential information with the Department of Agriculture and Consumer Services.

Section 3. Amends s. 319.30, F.S., making conforming changes to the bill.

Section 4. Amends s. 538.18, F.S., making conforming changes to the bill.

Section 5. Amends s. 538.19, F.S., making conforming changes to the bill.

Section 6. Amends s. 538.20, F.S., authorizing specified persons to inspect regulated metals property and records.

Section 7. Amends s. 538.21, F.S., prohibiting a secondary metals recycler from disposing of certain property for a specified period.

Section 8. Amends s. 538.23, F.S., revising violations subject to criminal penalties.

Section 9. Amends s. 538.25, F.S., revising registration requirements.

Section 10. Amends s. 538.26, F.S., prohibiting certain acts and practices of secondary metals recyclers.

Section 11. Creates s. 538.27, F.S., providing for administrative penalties.

Section 12. Creates s. 538.29, F.S., providing for rulemaking authority.

Section 13. Provides an effective date of July 1, 2015.

⁵⁹ Section 120.695, F.S., provides that it is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules.

⁶⁰ See *supra* at note 27.

⁶¹ Chapter 120, F.S., is the Administrative Procedure Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section below.

2. Expenditures:

See Fiscal Comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially negative fiscal impact on secondary metals recyclers. Under the bill, the secondary metals recycler's annual registration fee is raised from \$6 to \$350 per site, and a secondary metals recycler must maintain current and valid workers' compensation insurance and general liability coverage through the registration period.

D. FISCAL COMMENTS:

DACS provided the following estimated fiscal analysis⁶² of the bill:

	(FY 14-15) Amount/FTE	(FY 15-16) Amount/FTE	(FY 16-17) Amount/FTE
A. Revenues			
1. Recurring			
a. Registration Fees (829 dealers @ \$350)	0	290,150	290,150
b. Fingerprinting Fees (829 dealers @ \$31.50)	0	26,114	
c. Administrative Penalties	0	Undetermined	Undetermined
TOTAL RECURRING REVENUES	0	316,264	290,150
B. Expenditures GITF			
1. Recurring			
a. Salaries and Benefits			
Regulatory Consultant (1)	0	48,941	48,941
Law Enforcement Investigator II (1)	0	61,809	61,809
Investigation Specialist II (2)	0	97,882	97,882
b. Expenses			
Professional – expense package (4)	0	24,664	24,664
Law Enforcement Package (1)	0	1,937	1,937
Uniform Allowance (1)	0	500	500

⁶² On file with Agricultural and Natural Resources Subcommittee staff.
 STORAGE NAME: h0813.ANRS.DOCX
 DATE: 3/11/2015

c. Contracted Services			
FDLE Fingerprinting Services (744 @ \$31.50)	0	23,436	
d. Special Category			
Human Resources Allocation (4)	<u>0</u>	<u>1,376</u>	<u>1,376</u>
TOTAL RECURRING COST	0	260,545	237,109
2. Non-Recurring – General Inspection Trust Fund			
a. Expenses			
Professional – expense package (4)	0	15,528	0
Law Enforcement Package (1)	0	5,047	0
b. Contracted Services			
Software – develop, test, deploy			
1,040 hrs. @ \$85	0	88,400 ⁶³	0
c. OCO			
Mobile and Portable Radios	0	8,800	0
d. Acquisition of Motor Vehicles (3)			
2014 Ford Expedition 4WD 4DR XL SSV (1)	0	31,099	0
2014 Chevy Impala (2)	0	38,658	0
TOTAL NONRECURRING COST	0	187,532	0
TOTAL RECURRING/NONRECURRING COST	0	448,077	237,109
Non-Operating Cost			
Information Technology Support	0	2,465	2,465
Administrative /Indirect Cost	0	5,284	5,284
General Revenue Service Charge	0	<u>22,707</u>	<u>22,832</u>
TOTAL NON-OPERATING COST	0	30,456	30,581
EXPENDITURES GRAND TOTAL (GITF)	0	478,533	267,690

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

⁶³ The nonrecurring cost of \$88,400.00 to develop, test, and deploy software is only for an off-line registration application program. If this registration application program was designed for on line use, the total nonrecurring cost to develop, test and deploy software would be \$176,800.00.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DACS to adopt rules to implement the laws governing secondary metals recyclers, which must include tiered penalties for violations of these laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The cross-reference to s. 538.26(2), F.S., on line 233 is duplicative under the bill, and, therefore, should be deleted.

The bill provides that DACS will administer the registration of secondary metals recyclers. There is a provision in s. 213.05, F.S., authorizing DOR to administer the registration, which should be addressed in this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to secondary metals recyclers;
 3 transferring administration of part II of chapter 538,
 4 F.S., relating to secondary metals recyclers, from the
 5 Department of Revenue to the Department of Agriculture
 6 and Consumer Services; providing for applicability
 7 with respect to pending actions, orders, and rules;
 8 amending s. 213.053, F.S.; authorizing the Department
 9 of Revenue to share certain confidential information
 10 with the Department of Agriculture and Consumer
 11 Services; amending ss. 319.30, 538.18, and 538.19,
 12 F.S.; conforming provisions to changes made by the
 13 act; amending s. 538.20, F.S.; authorizing specified
 14 persons to inspect regulated metals property and
 15 records; amending s. 538.21, F.S.; prohibiting a
 16 secondary metals recycler from disposing of certain
 17 property for a specified period; amending s. 538.23,
 18 F.S.; revising violations subject to criminal
 19 penalties; amending s. 538.25, F.S.; revising
 20 application requirements for registration as a
 21 secondary metals recycler; revising registration fees;
 22 requiring such fees to be transferred into the General
 23 Inspection Trust Fund; requiring applicants to submit
 24 fingerprints and pay a fee for fingerprint processing
 25 and retention; providing for the submission,
 26 retention, and use of collected fingerprints;

27 requiring secondary metals recyclers to maintain
 28 specified insurance coverage; requiring secondary
 29 metals recyclers to exhibit active registration
 30 certificates from the Department of Agriculture and
 31 Consumer Services before applying for or renewing a
 32 local business tax receipt; requiring secondary metals
 33 recyclers to allow department personnel to enter
 34 certain places of business for a specified purpose;
 35 revising penalties for noncompliance; requiring the
 36 department to suspend certain registrations or
 37 applications for registration under certain
 38 circumstances; amending s. 538.26, F.S.; prohibiting
 39 secondary metals recyclers from purchasing regulated
 40 metals property, restricted regulated metals property,
 41 or ferrous metals on Sundays; prohibiting the purchase
 42 of specified restricted regulated metals property
 43 without obtaining certain proof of the seller's
 44 transactions involving regulated metals property;
 45 creating s. 538.27, F.S.; providing penalties for
 46 noncompliance; creating s. 538.29, F.S.; authorizing
 47 the department to adopt rules; providing an effective
 48 date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. (1) All powers, duties, functions, records,

53 personnel, property, pending issues, existing contracts,
 54 administrative authority, administrative rules, and unexpended
 55 balances of appropriations, allocations, and other funds of the
 56 Department of Revenue relating to the administration of part II
 57 of chapter 538, Florida Statutes, are transferred by a type two
 58 transfer, pursuant to s. 20.06(2), Florida Statutes, to the
 59 Department of Agriculture and Consumer Services.

60 (2) This section does not affect the validity of any
 61 judicial or administrative action pending as of 11:59 p.m. on
 62 the day before the effective date of this act to which the
 63 Department of Revenue is at that time a party, and the
 64 Department of Agriculture and Consumer Services shall be
 65 substituted as a party in interest in any such action.

66 (3) All lawful orders issued by the Department of Revenue
 67 relating to the administration of part II of chapter 538,
 68 Florida Statutes, issued before the effective date of this act
 69 shall remain in effect and be enforceable after the effective
 70 date of this section unless thereafter modified in accordance
 71 with law.

72 (4) The rules of the Department of Revenue relating to the
 73 administration of part II of chapter 538, Florida Statutes, that
 74 were in effect at 11:59 p.m. on the day before the effective
 75 date of this act shall remain in effect and be enforceable after
 76 the effective date of this section unless thereafter modified in
 77 accordance with law.

78 Section 2. Paragraph (cc) is added to subsection (8) of

79 | section 213.053, Florida Statutes, and subsection (11) of that
 80 | section is amended, to read:

81 | 213.053 Confidentiality and information sharing.—

82 | (8) Notwithstanding any other provision of this section,
 83 | the department may provide:

84 | (cc) Information relative to chapter 212 and part II of
 85 | chapter 538 to the Department of Agriculture and Consumer
 86 | Services in the conduct of its official duties.

87 |

88 | Disclosure of information under this subsection shall be
 89 | pursuant to a written agreement between the executive director
 90 | and the agency. Such agencies, governmental or nongovernmental,
 91 | shall be bound by the same requirements of confidentiality as
 92 | the Department of Revenue. Breach of confidentiality is a
 93 | misdemeanor of the first degree, punishable as provided by s.
 94 | 775.082 or s. 775.083.

95 | (11) Notwithstanding any other provision of this section,
 96 | with respect to a request for verification of a certificate of
 97 | registration issued pursuant to s. 212.18 to a specified dealer
 98 | or taxpayer or with respect to a request by a law enforcement
 99 | officer for verification of a certificate of registration issued
 100 | pursuant to s. 538.09 to a specified secondhand dealer ~~or~~
 101 | ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~
 102 | the department may disclose whether the specified person holds a
 103 | valid certificate, ~~or~~ whether a specified certificate number is
 104 | valid, ~~or~~ whether a specified certificate number has been

105 canceled or is inactive or invalid, and the name of the holder
 106 of the certificate. This subsection shall not be construed to
 107 create a duty to request verification of any certificate of
 108 registration.

109 Section 3. Paragraph (b) of subsection (1) of section
 110 319.30, Florida Statutes, is amended to read:

111 319.30 Definitions; dismantling, destruction, change of
 112 identity of motor vehicle or mobile home; salvage.—

113 (1) As used in this section, the term:

114 (b) "Certificate of registration number" means the
 115 certificate of registration number issued by the Department of
 116 Agriculture and Consumer Services Revenue ~~of the State of~~
 117 ~~Florida~~ pursuant to s. 538.25.

118 Section 4. Subsection (2) of section 538.18, Florida
 119 Statutes, is amended to read:

120 538.18 Definitions.—As used in this part, the term:

121 (2) "Department" means the Department of Agriculture and
 122 Consumer Services Revenue ~~Revenue~~.

123 Section 5. Subsections (1), (2), and (3) of section
 124 538.19, Florida Statutes, are amended to read:

125 538.19 Records required; limitation of liability.—

126 (1) A secondary metals recycler shall maintain a legible
 127 paper record of all purchase transactions to which such
 128 secondary metals recycler is a party. A secondary metals
 129 recycler shall also maintain a legible electronic record, in the
 130 English language, of all such purchase transactions. The

131 appropriate law enforcement official may provide data
 132 specifications regarding the electronic record format, but such
 133 format must be approved by the department ~~of Law Enforcement~~. An
 134 electronic record of a purchase transaction shall be
 135 electronically transmitted to the appropriate law enforcement
 136 official no later than 10 a.m. of the business day following the
 137 date of the purchase transaction. The record transmitted to the
 138 appropriate law enforcement official must not contain the price
 139 paid for the items. A secondary metals recycler who transmits
 140 such records electronically is not required to also deliver the
 141 original or paper copies of the transaction forms to the
 142 appropriate law enforcement official. However, such official
 143 may, for purposes of a criminal investigation, request the
 144 secondary metals recycler to make available the original
 145 transaction form that was electronically transmitted. This
 146 original transaction form must include the price paid for the
 147 items. The secondary metals recycler shall make the form
 148 available to the appropriate law enforcement official within 24
 149 hours after receipt of the request.

150 (2) The following information must be maintained on the
 151 form approved by the department ~~of Law Enforcement~~ for each
 152 purchase transaction:

- 153 (a) The name and address of the secondary metals recycler.
- 154 (b) The name, initials, or other identification of the
 155 individual entering the information on the ticket.
- 156 (c) The date and time of the transaction.

157 (d) The weight, quantity, or volume, and a description of
 158 the type of regulated metals property purchased in a purchase
 159 transaction.

160 (e) The amount of consideration given in a purchase
 161 transaction for the regulated metals property.

162 (f) A signed statement from the person delivering the
 163 regulated metals property stating that she or he is the rightful
 164 owner of, or is entitled to sell, the regulated metals property
 165 being sold. If the purchase involves a stainless steel beer keg,
 166 the seller must provide written documentation from the
 167 manufacturer that the seller is the owner of the stainless steel
 168 beer keg or is an employee or agent of the manufacturer.

169 (g) The distinctive number from the personal
 170 identification card of the person delivering the regulated
 171 metals property to the secondary metals recycler.

172 (h) A description of the person from whom the regulated
 173 metals property was acquired, including:

174 1. Full name, current residential address, workplace, and
 175 home and work phone numbers.

176 2. Height, weight, date of birth, race, gender, hair
 177 color, eye color, and any other identifying marks.

178 3. The right thumbprint, free of smudges and smears.

179 4. Vehicle description to include the make, model, and tag
 180 number of the vehicle and trailer of the person selling the
 181 regulated metals property.

182 5. Any other information required by the form approved by

183 the department ~~of Law Enforcement~~.

184 (i) A photograph, videotape, or digital image of the
185 regulated metals being sold.

186 (j) A photograph, videotape, or similar likeness of the
187 person receiving consideration in which such person's facial
188 features are clearly visible.

189 (3) A secondary metals recycler complies with the
190 requirements of this section if it maintains an electronic
191 database containing the information required by subsection (2)
192 as long as the electronic information required by subsection
193 (2), along with an electronic oath of ownership with an
194 electronic signature of the seller of the secondary metals being
195 purchased by the secondary metals recyclers and an electronic
196 image of the seller's right thumbprint that has no smudges and
197 smears, can be downloaded onto a paper form in the image of the
198 form approved by the department ~~of Law Enforcement~~ as provided
199 in subsection (2).

200 Section 6. Section 538.20, Florida Statutes, is amended to
201 read:

202 538.20 Inspection of regulated metals property and
203 records.—During the usual and customary business hours of a
204 secondary metals recycler, a law enforcement officer or employee
205 of the department who is a nonsworn trained regulatory
206 investigator shall, after properly identifying herself or
207 himself as such ~~a law enforcement officer~~, have the right to
208 inspect:

HB 813

2015

209 (1) Any and all purchased regulated metals property in the
 210 possession of the secondary metals recycler, ~~and~~

211 (2) Any and all records required to be maintained under s.
 212 538.19.

213 Section 7. Subsection (3) of section 538.21, Florida
 214 Statutes, is amended to read:

215 538.21 Hold notice.—

216 (3) A secondary metals recycler may not dispose of any
 217 property identified by a hold notice or extended hold notice
 218 until the applicable hold period expires. At the expiration of
 219 the hold period or, if extended in accordance with this section,
 220 at the expiration of the extended hold period, the hold is
 221 automatically released and the secondary metals recycler may
 222 dispose of the regulated metals property unless other
 223 disposition has been ordered by a court of competent
 224 jurisdiction.

225 Section 8. Paragraph (a) of subsection (1) and subsection
 226 (3) of section 538.23, Florida Statutes, are amended to read:

227 538.23 Violations and penalties.—

228 (1)(a) Except as provided in paragraph (b), a secondary
 229 metals recycler who knowingly and intentionally:

- 230 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 231 2. Engages in a pattern of failing to keep records
 232 required by s. 538.19;
- 233 3. Violates s. 538.26(2); or
- 234 4. Violates s. 538.235,

235
 236 commits a felony of the third degree, punishable as provided in
 237 s. 775.082, s. 775.083, or s. 775.084.

238 (3) Any person who knowingly provides false information,
 239 gives false verification of ownership, ~~or who~~ gives a false or
 240 altered identification and who receives money or other
 241 consideration from a secondary metals recycler in return for
 242 regulated metals property commits:

243 (a) A felony of the third degree, punishable as provided
 244 in s. 775.082, s. 775.083, or s. 775.084, if the value of the
 245 money or other consideration received is less than \$300.

246 (b) A felony of the second degree, punishable as provided
 247 in s. 775.082, s. 775.083, or s. 775.084, if the value of the
 248 money or other consideration received is \$300 or more or if the
 249 money or other consideration received is for restricted
 250 regulated metals.

251 Section 9. Subsections (1), (3), (4), and (6) of section
 252 538.25, Florida Statutes, are amended to read:

253 538.25 Registration.—

254 (1) A person may not engage in business as a secondary
 255 metals recycler at any location without registering with the
 256 department on an application form prescribed by the department.
 257 An application for registration must state the full name of the
 258 applicant, the place where the business is to be conducted, and
 259 any other relevant information required by the department. If
 260 the applicant is not an individual, the applicant must state the

261 full name and address of each direct or beneficial owner of at
 262 least 10-percent equity interest in the business. If the
 263 applicant is a corporation, the application must state the full
 264 name and address of each officer and director. The department
 265 shall accept applications only from a fixed business address.
 266 The department may not accept an application that provides an
 267 address of a hotel room or motel room, a vehicle, or a post
 268 office box.

269 (a) Fingerprint fees, as provided for in subparagraph
 270 (b)2., ~~A fee equal to the federal and state costs for processing~~
 271 ~~required fingerprints~~ must be submitted to the department with
 272 each application for registration. One application is required
 273 for each secondary metals recycler. If a secondary metals
 274 recycler is the owner of more than one secondary metals
 275 recycling location, the application must list each location, and
 276 the department shall issue a duplicate registration for each
 277 location. For purposes of subsections (3) and, (4), ~~and (5),~~
 278 these duplicate registrations shall be deemed individual
 279 registrations. A secondary metals recycler shall remit an annual
 280 registration fee of \$350 to the department at the time of
 281 registration for each of the secondary metals recycler's
 282 business locations ~~pay a fee of \$6 per location at the time of~~
 283 ~~registration and an annual renewal fee of \$6 per location on~~
 284 ~~October 1 of each year. All fees collected, less costs of~~
 285 ~~administration,~~ shall be transferred into the General Inspection
 286 Operating Trust Fund.

287 (b)1. An applicant shall submit a full set of fingerprints
 288 to the department or an entity or vendor authorized by s.
 289 943.053(13). The fingerprints shall be forwarded to the
 290 Department of Law Enforcement for state processing, and the
 291 Department of Law Enforcement shall forward the fingerprints to
 292 the Federal Bureau of Investigation for national processing.

293 2. Fees for state and federal fingerprint processing and
 294 fingerprint retention fees shall be borne by the applicant. The
 295 state cost for fingerprint processing is that authorized in s.
 296 943.053(3)(b) for records provided to persons or entities other
 297 than those specified as exceptions therein.

298 3. Fingerprints submitted to the Department of Law
 299 Enforcement pursuant to this paragraph shall be retained by the
 300 Department of Law Enforcement as provided in s. 943.05(2)(g) and
 301 (h) and enrolled in the Federal Bureau of Investigation's
 302 national retained print arrest notification program.
 303 Fingerprints shall be enrolled in the national retained print
 304 arrest notification program when the Department of Law
 305 Enforcement begins participation with the Federal Bureau of
 306 Investigation. Arrest fingerprints shall be searched against the
 307 retained prints by the Department of Law Enforcement and the
 308 Federal Bureau of Investigation, and any arrest record
 309 identified shall be reported to the department by the Department
 310 of Law Enforcement.

311 4. For a renewal of an applicant's registration, the
 312 department shall request the Department of Law Enforcement to

313 forward the retained fingerprints of the applicant to the
 314 Federal Bureau of Investigation unless the applicant is enrolled
 315 in the national retained print arrest notification program
 316 described in subparagraph 3. The fee for the national criminal
 317 history check shall be paid as part of the renewal fee to the
 318 department and shall be forwarded to the Department of Law
 319 Enforcement. If an applicant's fingerprints are retained in the
 320 national retained print arrest notification program, the
 321 applicant shall pay the state and national retention fee to the
 322 department, and the department shall forward the fee to the
 323 Department of Law Enforcement.

324 5. The department shall notify the Department of Law
 325 Enforcement regarding a person whose fingerprints have been
 326 retained but who is no longer registered under this chapter.

327 6. The department shall screen background results to
 328 determine whether an applicant meets registration requirements.
 329 ~~The department shall forward the full set of fingerprints to the~~
 330 ~~Department of Law Enforcement for state and federal processing,~~
 331 ~~provided the federal service is available, to be processed for~~
 332 ~~any criminal justice information as defined in s. 943.045. The~~
 333 ~~cost of processing such fingerprints shall be payable to the~~
 334 ~~Department of Law Enforcement by the department. The department~~
 335 ~~may issue a temporary registration to each location pending~~
 336 ~~completion of the background check by state and federal law~~
 337 ~~enforcement agencies but shall revoke such temporary~~
 338 ~~registration if the completed background check reveals a~~

339 ~~prohibited criminal background. The Department of Law~~
 340 ~~Enforcement shall report its findings to the Department of~~
 341 ~~Revenue within 30 days after the date the fingerprints are~~
 342 ~~submitted for criminal justice information.~~

343 (c) An applicant for a secondary metals recycler
 344 registration must be a natural person who has reached the age of
 345 18 years or a corporation organized or qualified to do business
 346 in the state.

347 1. If the applicant is a natural person, the registration
 348 must include a complete set of her or his fingerprints,
 349 certified by an authorized law enforcement officer, and a valid
 350 ~~recent~~ fullface photographic identification card of herself or
 351 himself.

352 2. If the applicant is a partnership, all the partners
 353 must make application for registration.

354 3. If the applicant is a corporation, the registration
 355 must include the name and address of such corporation's
 356 registered agent for service of process in the state and a
 357 certified copy of statement from the Secretary of State that the
 358 corporation is duly organized in the state or, if the
 359 corporation is organized in a state other than Florida, a
 360 certified copy of the statement that the corporation is duly
 361 qualified to do business in this state.

362 (d) Each secondary metals recycler must maintain current
 363 and valid workers' compensation insurance and general liability
 364 insurance coverage in a minimum amount established by the

365 department throughout the registration period. A secondary
 366 metals recycler must provide the department with written
 367 evidence of workers' compensation insurance coverage and general
 368 liability insurance coverage before registering with the
 369 department under this section. Failure to maintain workers'
 370 compensation insurance or general liability insurance in
 371 accordance with this paragraph constitutes an immediate threat
 372 to the public health, safety, and welfare of the residents of
 373 this state. If a secondary metals recycler fails to maintain
 374 insurance coverage as required by this paragraph, the department
 375 may immediately suspend the secondary metals recycler's
 376 registration or eligibility for registration and the secondary
 377 metals recycler must immediately cease operating in this state.

378 (e) A person applying for or renewing a local business tax
 379 receipt to engage in business as a secondary metals recycler
 380 must exhibit an active registration certificate from the
 381 department before the local business tax receipt may be issued
 382 or renewed.

383 (2) A secondary metals recycler's registration shall be
 384 conspicuously displayed at the place of business set forth on
 385 the registration. A secondary metals recycler must allow
 386 department personnel to enter the secondary metals recycler's
 387 place of business in order to verify that a registration is
 388 valid. If department personnel are refused entry for this
 389 purpose, the department may seek an inspection warrant as
 390 provided for in chapter 933 to obtain compliance with this

391 ~~requirement shall not dispose of property at any location until~~
 392 ~~any holding period has expired.~~

393 ~~(3) The Department of Revenue may impose a civil fine of~~
 394 ~~up to \$10,000 for each knowing and intentional violation of this~~
 395 ~~section, which fine shall be transferred into the General~~
 396 ~~Revenue Fund. If the fine is not paid within 60 days, the~~
 397 ~~department may bring a civil action under s. 120.69 to recover~~
 398 ~~the fine.~~

399 ~~(3)~~(4) In addition to the penalties fine provided in s.
 400 538.27 subsection (3), a registration under this section may be
 401 denied or any registration granted may be revoked, restricted,
 402 or suspended by the department if, after October 2, 1989, and
 403 within a 10-year ~~24-month~~ period immediately preceding such
 404 denial, revocation, restriction, or suspension:

405 (a) The applicant or registrant, or an owner, officer,
 406 director, or trustee of the applicant or registrant, has been
 407 convicted of knowingly and intentionally:

- 408 1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 409 2. Engaging in a pattern of failing to keep records as
 410 required by s. 538.19;
- 411 3. Making a material false statement in the application
 412 for registration; or
- 413 4. Engaging in a fraudulent act in connection with any
 414 purchase or sale of regulated metals property;

415 (b) The applicant or registrant, or an owner, officer,
 416 director, or trustee of the applicant or registrant, has been

417 convicted of, or entered a plea of guilty or nolo contendere to,
 418 a felony ~~committed by the secondary metals recycler~~ against the
 419 laws of the state or of the United States involving theft,
 420 larceny, dealing in stolen property, receiving stolen property,
 421 burglary, embezzlement, obtaining property by false pretenses,
 422 possession of altered property, or any felony drug offense or of
 423 knowingly and intentionally violating the laws of the state
 424 relating to registration as a secondary metals recycler; or

425 (c) The applicant has, after receipt of written notice
 426 from the Department of Revenue of failure to pay sales tax,
 427 failed or refused to pay, within 30 days after the secondary
 428 metals recycler's receipt of such written notice, any sales tax
 429 owed to the Department of Revenue.

430 ~~(4)-(5)~~ A denial of an application, or a revocation,
 431 restriction, or suspension of a registration, by the department
 432 shall be probationary for a period of 12 months in the event
 433 that the secondary metals recycler subject to such action has
 434 not had any other application for registration denied, or any
 435 registration revoked, restricted, or suspended, by the
 436 department within the previous 24-month period.

437 (a) If, during the 12-month probationary period, the
 438 department does not again deny an application or revoke,
 439 restrict, or suspend the registration of the secondary metals
 440 recycler, the action of the department shall be dismissed and
 441 the record of the secondary metals recycler cleared thereof.

442 (b) If, during the 12-month probationary period, the

443 department, for reasons other than those existing before ~~prior~~
 444 ~~to~~ the original denial or revocation, restriction, or
 445 suspension, again denies an application or revokes, restricts,
 446 or suspends the registration of the secondary metals recycler,
 447 the probationary nature of such original action shall terminate
 448 and both the original action of the department and the action of
 449 the department causing the termination of the probationary
 450 nature thereof shall immediately be reinstated against the
 451 secondary metals recycler.

452 (5) The department shall suspend the registration or the
 453 application for registration of a registrant or applicant if the
 454 registrant or applicant or any of its owners, officers,
 455 directors, or trustees have been convicted of a felony under
 456 chapter 812 or chapter 817 immediately upon receiving written
 457 verification of the conviction from a law enforcement agency,
 458 court, or state attorney's office or the Department of Law
 459 Enforcement.

460 (6) Upon the request of a law enforcement official, the
 461 department ~~of Revenue~~ shall release to the official the name and
 462 address of any secondary metals recycler registered to do
 463 business within the official's jurisdiction.

464 Section 10. Subsection (1) and paragraph (b) of subsection
 465 (5) of section 538.26, Florida Statutes, are amended to read:

466 538.26 Certain acts and practices prohibited.—It is
 467 unlawful for a secondary metals recycler to do or allow any of
 468 the following acts:

HB 813

2015

469 (1) Purchase regulated metals property, restricted
 470 regulated metals property, or ferrous metals between the hours
 471 of 7 p.m. and before 7 a.m. or any time on Sunday after 7 p.m.

472 (5)

473 (b) The purchase of any of the following regulated metals
 474 property is subject to the restrictions provided in paragraph

475 (a):

476 1. A manhole cover.

477 2. A metal ~~An~~ electric light pole ~~or other utility~~
 478 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is ~~are~~
 479 readily identifiable as connected to a metal electric light ~~the~~
 480 ~~utility~~ structure.

481 3. A guard rail.

482 4. A street sign, traffic sign, or traffic signal and its
 483 fixtures and hardware.

484 5. Communication, transmission, distribution, and service
 485 wire from a utility, including copper or aluminum bus bars,
 486 connectors, grounding plates, or grounding wire.

487 6. A funeral marker or funeral vase.

488 7. A historical marker.

489 8. Railroad equipment, including, but not limited to, a
 490 tie plate, signal house, control box, switch plate, E clip, or
 491 rail tie junction.

492 9. Any metal item that is observably marked upon
 493 reasonable inspection with any form of the name, initials, or
 494 logo of a governmental entity, utility company, cemetery, or

495 railroad.

496 10. A copper, aluminum, or aluminum-copper condensing or
 497 evaporator coil, including its tubing or rods, from an air-
 498 conditioning or heating unit, excluding coils from window air-
 499 conditioning or heating units and motor vehicle air-conditioning
 500 or heating units.

501 11. An aluminum or stainless steel container or bottle
 502 designed to hold propane for fueling forklifts.

503 12. A stainless steel beer keg.

504 13. A catalytic converter or any nonferrous part of a
 505 catalytic converter unless purchased as part of a motor vehicle.

506 14. Metallic wire that has been burned in whole or in part
 507 to remove insulation.

508 15. A brass or bronze commercial valve or fitting,
 509 referred to as a "fire department connection and control valve"
 510 or an "FDC valve," that is commonly used on structures for
 511 access to water for the purpose of extinguishing fires.

512 16. A brass or bronze commercial potable water backflow
 513 preventer valve that is commonly used to prevent backflow of
 514 potable water from commercial structures into municipal domestic
 515 water service systems.

516 17. A shopping cart.

517 18. A brass water meter.

518 19. A storm grate.

519 20. A brass sprinkler head used in commercial agriculture.

520 21. Three or more ~~than two~~ lead-acid batteries, or any

521 part or component thereof, in a single purchase or from the same
 522 individual in a single day.

523 Section 11. Section 538.27, Florida Statutes, is created
 524 to read:

525 538.27 Administrative penalties.-

526 (1) Upon a determination that a violation of s. 538.19, s.
 527 538.235, s. 538.25, or s. 538.26 has occurred, the department
 528 may take one or more of the following actions:

529 (a) Issue a notice of noncompliance pursuant to s.
 530 120.695.

531 (b) Impose an administrative fine up to \$200 per
 532 violation, but not to exceed \$5,000 per inspection. Any fine
 533 collected shall be deposited in the General Inspection Trust
 534 Fund. If a fine is not paid within 60 days after imposition, the
 535 department may bring a civil action under s. 120.69 to recover
 536 the fine.

537 (c) Direct that the secondary metals recycler cease and
 538 desist specified activities.

539 (2) The administrative proceedings that could result in
 540 the entry of an order imposing any of the penalties specified in
 541 this section shall be conducted in accordance with chapter 120.

542 Section 12. Section 538.29, Florida Statutes, is created
 543 to read:

544 538.29 Rulemaking authority.-The department may adopt
 545 rules to implement this part. Such rules shall include tiered
 546 penalties for violations of this part.

HB 813

2015

547

Section 13. This act shall take effect July 1, 2015.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Combee offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. (1) All powers, duties, functions, records,
8 personnel, property, pending issues, existing contracts,
9 administrative authority, administrative rules, and unexpended
10 balances of appropriations, allocations, and other funds of the
11 Department of Revenue relating to the administration of part II
12 of chapter 538, Florida Statutes, are transferred by a type two
13 transfer, pursuant to s. 20.06(2), Florida Statutes, to the
14 Department of Agriculture and Consumer Services.

15 (2) This section does not affect the validity of any
16 judicial or administrative action pending as of 11:59 p.m. on
17 the day before the effective date of this act to which the



Amendment No.

18 Department of Revenue is at that time a party, and the
19 Department of Agriculture and Consumer Services shall be
20 substituted as a party in interest in any such action.

21 (3) All lawful orders issued by the Department of Revenue
22 relating to the administration of part II of chapter 538,
23 Florida Statutes, issued before the effective date of this act
24 shall remain in effect and be enforceable after the effective
25 date of this section unless thereafter modified in accordance
26 with law.

27 (4) The rules of the Department of Revenue relating to the
28 administration of part II of chapter 538, Florida Statutes, that
29 were in effect at 11:59 p.m. on the day before the effective
30 date of this act shall remain in effect and be enforceable after
31 the effective date of this section unless thereafter modified in
32 accordance with law.

33 Section 2. Paragraph (cc) is added to subsection (8) of
34 section 213.053, Florida Statutes, and subsection (11) of that
35 section is amended, to read:

36 213.053 Confidentiality and information sharing.—

37 (8) Notwithstanding any other provision of this section,
38 the department may provide:

39 (cc) Information relative to chapter 212 and part II of
40 chapter 538 to the Department of Agriculture and Consumer
41 Services in the conduct of its official duties.

42
43 Disclosure of information under this subsection shall be



Amendment No.

44 pursuant to a written agreement between the executive director
45 and the agency. Such agencies, governmental or nongovernmental,
46 shall be bound by the same requirements of confidentiality as
47 the Department of Revenue. Breach of confidentiality is a
48 misdemeanor of the first degree, punishable as provided by s.
49 775.082 or s. 775.083.

50 (11) Notwithstanding any other provision of this section,
51 with respect to a request for verification of a certificate of
52 registration issued pursuant to s. 212.18 to a specified dealer
53 or taxpayer or with respect to a request by a law enforcement
54 officer for verification of a certificate of registration issued
55 pursuant to s. 538.09 to a specified secondhand dealer ~~or~~
56 ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~
57 the department may disclose whether the specified person holds a
58 valid certificate, ~~or~~ whether a specified certificate number is
59 valid, ~~or~~ whether a specified certificate number has been
60 canceled or is inactive or invalid, and the name of the holder
61 of the certificate. This subsection shall not be construed to
62 create a duty to request verification of any certificate of
63 registration.

64 Section 3. Paragraph (b) of subsection (1) of section
65 319.30, Florida Statutes, is amended to read:

66 319.30 Definitions; dismantling, destruction, change of
67 identity of motor vehicle or mobile home; salvage.—

68 (1) As used in this section, the term:

69 (b) "Certificate of registration number" means the



Amendment No.

70 certificate of registration number issued by the Department of
71 Agriculture and Consumer Services Revenue of the State of
72 Florida pursuant to s. 538.25.

73 Section 4. Subsections (1) and (2) of section 538.18,
74 Florida Statutes, are amended to read:

75 538.18 Definitions.—As used in this part, the term:

76 (1) "Appropriate law enforcement official" means the
77 sheriff of the county in which a secondary metals recycler is
78 located or, if the secondary metals recycler is located within a
79 municipality, the police chief of the municipality in which the
80 secondary metals recycler is located; however, the sheriff or
81 police chief may designate as the appropriate law enforcement
82 official or their agent for the county or municipality, as
83 applicable, any law enforcement officer or their agent working
84 within that respective county or municipality. This subsection
85 does not limit the authority or duties of the sheriff.

86 (2) "Department" means the Department of Agriculture and
87 Consumer Services Revenue.

88 Section 5. Subsections (1), (2), and (3) of section
89 538.19, Florida Statutes, are amended to read:

90 538.19 Records required; limitation of liability.—

91 (1) A secondary metals recycler shall maintain a legible
92 paper record of all purchase transactions to which such
93 secondary metals recycler is a party. A secondary metals
94 recycler shall also maintain a legible electronic record, in the
95 English language, of all such purchase transactions. The



Amendment No.

96 appropriate law enforcement official may provide data
97 specifications regarding the electronic record format, but such
98 format must be approved by the department ~~of Law Enforcement~~. An
99 electronic record of a purchase transaction shall be
100 electronically transmitted to the appropriate law enforcement
101 official no later than 10 a.m. of the business day following the
102 date of the purchase transaction. The record transmitted to the
103 appropriate law enforcement official must not contain the price
104 paid for the items. A secondary metals recycler who transmits
105 such records electronically is not required to also deliver the
106 original or paper copies of the transaction forms to the
107 appropriate law enforcement official. However, such official
108 may, for purposes of a criminal investigation, request the
109 secondary metals recycler to make available the original
110 transaction form that was electronically transmitted. This
111 original transaction form must include the price paid for the
112 items. The secondary metals recycler shall make the form
113 available to the appropriate law enforcement official within 24
114 hours after receipt of the request.

115 (2) The following information must be maintained on the
116 form approved by the department ~~of Law Enforcement~~ for each
117 purchase transaction:

118 (a) The name and address of the secondary metals recycler.

119 (b) The name, initials, or other identification of the
120 individual entering the information on the ticket.

121 (c) The date and time of the transaction.



Amendment No.

122 (d) The weight, quantity, or volume, and a description of
123 the type of regulated metals property purchased in a purchase
124 transaction.

125 (e) The amount of consideration given in a purchase
126 transaction for the regulated metals property.

127 (f) A signed statement from the person delivering the
128 regulated metals property stating that she or he is the rightful
129 owner of, or is entitled to sell, the regulated metals property
130 being sold. If the purchase involves a stainless steel beer keg,
131 the seller must provide written documentation from the
132 manufacturer that the seller is the owner of the stainless steel
133 beer keg or is an employee or agent of the manufacturer.

134 (g) The distinctive number from the personal
135 identification card of the person delivering the regulated
136 metals property to the secondary metals recycler.

137 (h) A description of the person from whom the regulated
138 metals property was acquired, including:

139 1. Full name, current residential address, workplace, and
140 home and work phone numbers.

141 2. Height, weight, date of birth, race, gender, hair
142 color, eye color, and any other identifying marks.

143 3. The right thumbprint, free of smudges and smears.

144 4. Vehicle description to include the make, model, and tag
145 number of the vehicle and trailer of the person selling the
146 regulated metals property.

147 5. Any other information required by the form approved by



Amendment No.

148 the department of ~~Law Enforcement~~.

149 (i) A photograph, videotape, or digital image of the
150 regulated metals being sold.

151 (j) A photograph, videotape, or similar likeness of the
152 person receiving consideration in which such person's facial
153 features are clearly visible.

154 (3) A secondary metals recycler complies with the
155 requirements of this section if it maintains an electronic
156 database containing the information required by subsection (2)
157 as long as the electronic information required by subsection
158 (2), along with an electronic oath of ownership with an
159 electronic signature of the seller of the secondary metals being
160 purchased by the secondary metals recyclers and an electronic
161 image of the seller's right thumbprint that has no smudges and
162 smears, can be downloaded onto a paper form in the image of the
163 form approved by the department of ~~Law Enforcement~~ as provided
164 in subsection (2).

165 Section 6. Section 538.20, Florida Statutes, is amended to
166 read:

167 538.20 Inspection of regulated metals property and
168 records.—During the usual and customary business hours of a
169 secondary metals recycler, a law enforcement officer or employee
170 of the department who is a nonsworn trained regulatory
171 investigator shall, after properly identifying herself or
172 himself as such a ~~law enforcement officer~~, have the right to
173 inspect:



Amendment No.

174 (1) Any and all purchased regulated metals property in the
175 possession of the secondary metals recycler, ~~and~~

176 (2) Any and all records required to be maintained under s.
177 538.19.

178 Section 7. Subsection (3) of section 538.21, Florida
179 Statutes, is amended to read:

180 538.21 Hold notice.—

181 (3) A secondary metals recycler may not dispose of any
182 property identified by a hold notice or extended hold notice
183 until the applicable hold period expires. At the expiration of
184 the hold period or, if extended in accordance with this section,
185 at the expiration of the extended hold period, the hold is
186 automatically released and the secondary metals recycler may
187 dispose of the regulated metals property unless other
188 disposition has been ordered by a court of competent
189 jurisdiction.

190 Section 8. Paragraph (a) of subsection (1) and subsection
191 (3) of section 538.23, Florida Statutes, are amended to read:

192 538.23 Violations and penalties.—

193 (1)(a) Except as provided in paragraph (b), a secondary
194 metals recycler who knowingly and intentionally:

195 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;

196 2. Engages in a pattern of failing to keep records
197 required by s. 538.19;

198 3. Violates s. 538.26(2); or

199 4. Violates s. 538.235,



Amendment No.

200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who knowingly provides false information, gives false verification of ownership, ~~who~~ gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

(a) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the money or other consideration received is less than \$300.

(b) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the money or other consideration received is \$300 or more or if the money or other consideration received is for restricted regulated metals.

Section 9. Subsections (1), (3), (4), and (6) of section 538.25, Florida Statutes, are amended to read:

538.25 Registration.—

(1) A person may not engage in business as a secondary metals recycler at any location without registering with the department on an application form prescribed by the department. An application for registration must state the full name of the applicant, the place where the business is to be conducted, and any other relevant information required by the department. If the applicant is not an individual, the applicant must state the



Amendment No.

226 full name and address of each direct or beneficial owner of at
227 least 10-percent equity interest in the business. If the
228 applicant is a corporation, the application must state the full
229 name and address of each officer and director. The department
230 shall accept applications only from a fixed business address.
231 The department may not accept an application that provides an
232 address of a hotel room or motel room, a vehicle, or a post
233 office box.

234 (a) Fingerprint fees, as provided for in subparagraph
235 (b)2., A fee equal to the federal and state costs for processing
236 required fingerprints must be submitted to the department with
237 each application for registration. One application is required
238 for each secondary metals recycler. If a secondary metals
239 recycler is the owner of more than one secondary metals
240 recycling location, the application must list each location, and
241 the department shall issue a duplicate registration for each
242 location. For purposes of subsections (3) and, (4) and (5),
243 these duplicate registrations shall be deemed individual
244 registrations. A secondary metals recycler shall pay a fee of \$6
245 per location at the time of registration and an annual renewal
246 fee of \$6 per location on October 1 of each year. All fees
247 collected, less costs of administration, shall be transferred
248 into the Operating Trust Fund.

249 (b)1. An applicant shall submit a full set of fingerprints
250 to the department or an entity or vendor authorized by s.
251 943.053(13). The fingerprints shall be forwarded to the



Amendment No.

252 Department of Law Enforcement for state processing, and the
253 Department of Law Enforcement shall forward the fingerprints to
254 the Federal Bureau of Investigation for national processing.

255 2. Fees for state and federal fingerprint processing and
256 fingerprint retention fees shall be borne by the applicant. The
257 state cost for fingerprint processing is that authorized in s.
258 943.053(3)(b) for records provided to persons or entities other
259 than those specified as exceptions therein.

260 3. Fingerprints submitted to the Department of Law
261 Enforcement pursuant to this paragraph shall be retained by the
262 Department of Law Enforcement as provided in s. 943.05(2)(g) and
263 (h) and enrolled in the Federal Bureau of Investigation's
264 national retained print arrest notification program.

265 Fingerprints shall be enrolled in the national retained print
266 arrest notification program when the Department of Law
267 Enforcement begins participation with the Federal Bureau of
268 Investigation. Arrest fingerprints shall be searched against the
269 retained prints by the Department of Law Enforcement and the
270 Federal Bureau of Investigation, and any arrest record
271 identified shall be reported to the department by the Department
272 of Law Enforcement.

273 4. For a renewal of an applicant's registration, the
274 department shall request the Department of Law Enforcement to
275 forward the retained fingerprints of the applicant to the
276 Federal Bureau of Investigation unless the applicant is enrolled
277 in the national retained print arrest notification program



Amendment No.

278 described in subparagraph 3. The fee for the national criminal
279 history check shall be paid as part of the renewal fee to the
280 department and shall be forwarded to the Department of Law
281 Enforcement. If an applicant's fingerprints are retained in the
282 national retained print arrest notification program, the
283 applicant shall pay the state and national retention fee to the
284 department, and the department shall forward the fee to the
285 Department of Law Enforcement.

286 5. The department shall notify the Department of Law
287 Enforcement regarding a person whose fingerprints have been
288 retained but who is no longer registered under this chapter.

289 6. The department shall screen background results to
290 determine whether an applicant meets registration requirements.
291 ~~The department shall forward the full set of fingerprints to the~~
292 ~~Department of Law Enforcement for state and federal processing,~~
293 ~~provided the federal service is available, to be processed for~~
294 ~~any criminal justice information as defined in s. 943.045. The~~
295 ~~cost of processing such fingerprints shall be payable to the~~
296 ~~Department of Law Enforcement by the department. The department~~
297 ~~may issue a temporary registration to each location pending~~
298 ~~completion of the background check by state and federal law~~
299 ~~enforcement agencies but shall revoke such temporary~~
300 ~~registration if the completed background check reveals a~~
301 ~~prohibited criminal background. The Department of Law~~
302 ~~Enforcement shall report its findings to the Department of~~
303 ~~Revenue within 30 days after the date the fingerprints are~~



Amendment No.

304 ~~submitted for criminal justice information.~~

305 (c) An applicant for a secondary metals recycler
306 registration must be a natural person who has reached the age of
307 18 years or a corporation organized or qualified to do business
308 in the state.

309 1. If the applicant is a natural person, the registration
310 must include a complete set of her or his fingerprints,
311 certified by an authorized law enforcement officer, and a valid
312 ~~recent~~ fullface photographic identification card of herself or
313 himself.

314 2. If the applicant is a partnership, all the partners
315 must make application for registration.

316 3. If the applicant is a corporation, the registration
317 must include the name and address of such corporation's
318 registered agent for service of process in the state and a
319 certified copy of statement from the Secretary of State that the
320 corporation is duly organized in the state or, if the
321 corporation is organized in a state other than Florida, a
322 certified copy of the statement that the corporation is duly
323 qualified to do business in this state.

324 (d) In addition to maintaining workers' compensation
325 insurance, each secondary metals recycler must maintain a
326 minimum of \$100,000 General Liability Insurance coverage
327 throughout the registration period.

328 (e) A person applying for or renewing a local business tax
329 receipt to engage in business as a secondary metals recycler



Amendment No.

330 must exhibit an active registration certificate from the
331 department before the local business tax receipt may be issued
332 or renewed.

333 (2) A secondary metals recycler's registration shall be
334 conspicuously displayed at the place of business set forth on
335 the registration. A secondary metals recycler must allow
336 department personnel to enter the secondary metals recycler's
337 place of business in order to verify that a registration is
338 valid. If department personnel are refused entry for this
339 purpose, the department may seek an inspection warrant as
340 provided for in chapter 933 to obtain compliance with this
341 requirement shall not dispose of property at any location until
342 any holding period has expired.

343 ~~(3) The Department of Revenue may impose a civil fine of~~
344 ~~up to \$10,000 for each knowing and intentional violation of this~~
345 ~~section, which fine shall be transferred into the General~~
346 ~~Revenue Fund. If the fine is not paid within 60 days, the~~
347 ~~department may bring a civil action under s. 120.69 to recover~~
348 ~~the fine.~~

349 ~~(3)(4)~~ In addition to the penalties ~~fine~~ provided in s.
350 538.27 subsection (3), a registration under this section may be
351 denied or any registration granted may be revoked, restricted,
352 or suspended by the department if, after October 2, 1989, and
353 within a 10-year ~~24-month~~ period immediately preceding such
354 denial, revocation, restriction, or suspension:

355 (a) The applicant or registrant, or an owner, officer,



Amendment No.

356 director, or trustee of the applicant or registrant, has been
357 convicted of knowingly and intentionally:

- 358 1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
359 2. Engaging in a pattern of failing to keep records as
360 required by s. 538.19;
361 3. Making a material false statement in the application
362 for registration; or

- 363 4. Engaging in a fraudulent act in connection with any
364 purchase or sale of regulated metals property;

365 (b) The applicant or registrant, or an owner, officer,
366 director, or trustee of the applicant or registrant, has been
367 convicted of, or entered a plea of guilty or nolo contendere to,
368 a felony ~~committed by the secondary metals recycler~~ against the
369 laws of the state or of the United States involving theft,
370 larceny, dealing in stolen property, receiving stolen property,
371 burglary, embezzlement, obtaining property by false pretenses,
372 possession of altered property, or any felony drug offense or of
373 knowingly and intentionally violating the laws of the state
374 relating to registration as a secondary metals recycler; or

375 (c) The applicant has, after receipt of written notice
376 from the Department of Revenue of failure to pay sales tax,
377 failed or refused to pay, within 30 days after the secondary
378 metals recycler's receipt of such written notice, any sales tax
379 owed to the Department of Revenue.

380 ~~(4)-(5)~~ A denial of an application, or a revocation,
381 restriction, or suspension of a registration, by the department



Amendment No.

382 shall be probationary for a period of 12 months in the event
383 that the secondary metals recycler subject to such action has
384 not had any other application for registration denied, or any
385 registration revoked, restricted, or suspended, by the
386 department within the previous 24-month period.

387 (a) If, during the 12-month probationary period, the
388 department does not again deny an application or revoke,
389 restrict, or suspend the registration of the secondary metals
390 recycler, the action of the department shall be dismissed and
391 the record of the secondary metals recycler cleared thereof.

392 (b) If, during the 12-month probationary period, the
393 department, for reasons other than those existing before ~~prior~~
394 ~~to~~ the original denial or revocation, restriction, or
395 suspension, again denies an application or revokes, restricts,
396 or suspends the registration of the secondary metals recycler,
397 the probationary nature of such original action shall terminate
398 and both the original action of the department and the action of
399 the department causing the termination of the probationary
400 nature thereof shall immediately be reinstated against the
401 secondary metals recycler.

402 (5) The department shall suspend the registration or the
403 application for registration of a registrant or applicant if the
404 registrant or applicant or any of its owners, officers,
405 directors, or trustees have been convicted of a felony under ss.
406 817.67, 817.705, or 817.806 immediately upon receiving written
407 verification of the conviction from a law enforcement agency,



Amendment No.

408 court, or state attorney's office or the Department of Law
409 Enforcement.

410 (6) Upon the request of a law enforcement official, the
411 department of Revenue shall release to the official the name and
412 address of any secondary metals recycler registered to do
413 business within the official's jurisdiction.

414 Section 10. Subsection (1) and paragraph (b) of subsection
415 (5) of section 538.26, Florida Statutes, are amended to read:

416 538.26 Certain acts and practices prohibited.—It is
417 unlawful for a secondary metals recycler to do or allow any of
418 the following acts:

419 (1) Purchase regulated metals property, restricted
420 regulated metals property, or ferrous metals between the hours
421 of 7 p.m. and before 7 a.m. or any time on Sunday after 7 p.m.

422 (5)

423 (b) The purchase of any of the following regulated metals
424 property is subject to the restrictions provided in paragraph

425 (a):

426 1. A manhole cover.

427 2. A metal ~~An~~ electric light pole ~~or other utility~~
428 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is are
429 readily identifiable as connected to a metal electric light ~~the~~
430 ~~utility~~ structure.

431 3. A guard rail.

432 4. A street sign, traffic sign, or traffic signal and its
433 fixtures and hardware.



Amendment No.

- 434 5. Communication, transmission, distribution, and service
435 wire from a utility, including copper or aluminum bus bars,
436 connectors, grounding plates, or grounding wire.
- 437 6. A funeral marker or funeral vase.
- 438 7. A historical marker.
- 439 8. Railroad equipment, including, but not limited to, a
440 tie plate, signal house, control box, switch plate, E clip, or
441 rail tie junction.
- 442 9. Any metal item that is observably marked upon
443 reasonable inspection with any form of the name, initials, or
444 logo of a governmental entity, utility company, cemetery, or
445 railroad.
- 446 10. A copper, aluminum, or aluminum-copper condensing or
447 evaporator coil, including its tubing or rods, from an air-
448 conditioning or heating unit, excluding coils from window air-
449 conditioning or heating units and motor vehicle air-conditioning
450 or heating units.
- 451 11. An aluminum or stainless steel container or bottle
452 designed to hold propane for fueling forklifts.
- 453 12. A stainless steel beer keg.
- 454 13. A catalytic converter or any nonferrous part of a
455 catalytic converter unless purchased as part of a motor vehicle.
- 456 14. Metallic wire that has been burned in whole or in part
457 to remove insulation.
- 458 15. A brass or bronze commercial valve or fitting,
459 referred to as a "fire department connection and control valve"



Amendment No.

460 or an "FDC valve," that is commonly used on structures for
461 access to water for the purpose of extinguishing fires.

462 16. A brass or bronze commercial potable water backflow
463 preventer valve that is commonly used to prevent backflow of
464 potable water from commercial structures into municipal domestic
465 water service systems.

466 17. A shopping cart.

467 18. A brass water meter.

468 19. A storm grate.

469 20. A brass sprinkler head used in commercial agriculture.

470 21. Three or more than two lead-acid batteries, or any
471 part or component thereof, in a single purchase or from the same
472 individual in a single day.

473 Section 11. Section 538.27, Florida Statutes, is created
474 to read:

475 538.27 Administrative penalties.—

476 (1) Upon a determination that a violation of s. 538.19, s.
477 538.235, s. 538.25, or s. 538.26 has occurred, the department
478 may take one or more of the following actions:

479 (a) Issue a notice of noncompliance pursuant to s.
480 120.695.

481 (b) Impose an administrative fine up to \$200 per
482 violation, but not to exceed \$5,000 per inspection. Any fine
483 collected shall be deposited in the General Inspection Trust
484 Fund. If a fine is not paid within 60 days after imposition, the
485 department may bring a civil action under s. 120.69 to recover



Amendment No.

486 the fine.

487 (c) Direct that the secondary metals recycler cease and
488 desist specified activities.

489 (2) The administrative proceedings that could result in
490 the entry of an order imposing any of the penalties specified in
491 this section shall be conducted in accordance with chapter 120.

492 Section 12. Section 538.29, Florida Statutes, is created
493 to read:

494 538.29 Rulemaking authority.—The department may adopt
495 rules to implement this part. Such rules shall include tiered
496 penalties for violations of this part.

497 Section 13. In order to fund the provisions of this act, a
498 sum of \$320,000 recurring general revenue and \$190,000 non-
499 recurring general revenue is appropriated.

500 Section 14. This act shall take effect July 1, 2015.

501

502 -----

503 T I T L E A M E N D M E N T

504 Remove everything before the enacting clause and insert:

505 A bill to be entitled

506 An act relating to secondary metals recyclers; transferring
507 administration of part II of chapter 538, F.S., relating to
508 secondary metals recyclers, from the Department of Revenue to
509 the Department of Agriculture and Consumer Services; providing
510 for applicability with respect to pending actions, orders, and
511 rules; amending s. 213.053, F.S.; authorizing the Department of



Amendment No.

512 Revenue to share certain confidential information with the
513 Department of Agriculture and Consumer Services; amending s.
514 319.30, F.S., conforming a provision to changes made by the act;
515 amending s. 538.18, F.S.; providing for designation of an agent
516 as an appropriate law enforcement official; amending s. 538.19,
517 F.S.; amending ss. 319.30, 538.18, and 538.19, F.S.; conforming
518 provisions to changes made by the act; amending s. 538.20, F.S.;
519 authorizing specified persons to inspect regulated metals
520 property and records; amending s. 538.21, F.S.; prohibiting a
521 secondary metals recycler from disposing of certain property for
522 a specified period; amending s. 538.23, F.S.; revising
523 violations subject to criminal penalties; amending s. 538.25,
524 F.S.; revising application requirements for registration as a
525 secondary metals recycler; revising registration fees; requiring
526 such fees to be transferred into the General Inspection Trust
527 Fund; requiring applicants to submit fingerprints and pay a fee
528 for fingerprint processing and retention; providing for the
529 submission, retention, and use of collected fingerprints;
530 requiring secondary metals recyclers to maintain specified
531 insurance coverage; requiring secondary metals recyclers to
532 exhibit active registration certificates from the Department of
533 Agriculture and Consumer Services before applying for or
534 renewing a local business tax receipt; requiring secondary
535 metals recyclers to allow department personnel to enter certain
536 places of business for a specified purpose; revising penalties
537 for noncompliance; requiring the department to suspend certain



Amendment No.

538 | registrations or applications for registration under certain
539 | circumstances; amending s. 538.26, F.S.; prohibiting secondary
540 | metals recyclers from purchasing regulated metals property,
541 | restricted regulated metals property, or ferrous metals on
542 | Sundays; prohibiting the purchase of specified restricted
543 | regulated metals property without obtaining certain proof of the
544 | seller's transactions involving regulated metals property;
545 | creating s. 538.27, F.S.; providing penalties for noncompliance;
546 | creating s. 538.29, F.S.; authorizing the department to adopt
547 | rules; appropriating a certain amount of recurring and non-
548 | recurring general revenue to fund the act; providing an
549 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1205 Regulation of Oil and Gas Resources
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 1207, HB 1209 **IDEN./SIM. BILLS:** SB 1468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore <i>AM</i>	Blalock <i>MR</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program). The Program's primary responsibilities include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

The bill makes the following revisions related to the Program:

- Reallocates funds in the Oil and Gas Tax Trust Fund to fund the Environmental Rapid Response Trust Fund to be used to improve abandoned well plugging and to clean up the spillage of pollutants during Program activities;
- Empowers DEP to issue a single permit that authorizes multiple Program activities;
- Requires the Division, when determining whether to issue a permit, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Allows information about past violations to be used as a basis for permit denial or imposition of permit conditions, including increased monitoring or increasing the required surety amount to up to five times the standard amount;
- Requires DEP, upon issuance of a permit, to notify the county in which the activities will occur of the issuance of the permit and the activities authorized by the permit;
- Requires DEP to conduct inspections during specified Program activities;
- Defines "high-pressure well stimulation" as a well intervention performed by injecting more than 100,000 gallons of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore;
- Requires a well operator to obtain a permit, pay a fee, and provide a surety to DEP prior to performing a high-pressure well stimulation;
- Requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations;
- Requires a well operator to report information relating to high-pressure well stimulations to DEP, including each chemical ingredient used in the well stimulation fluid, within 60 days of initiating the well stimulation;
- Requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed;
- Allows information contained in reports that relate to oil and gas wells or that disclose substances used during high-pressure well stimulations to be considered proprietary business information at the request of the operator;
- Prohibits a county, municipality, or other political subdivision of the state from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production; and
- Increases the maximum civil penalty for violation of any provision of the laws governing energy resources, including any rule, regulation, or order of the Division, or an oil or gas permit from \$10,000 to \$25,000 per offense.

The bill may have an indeterminate negative fiscal impact on the private sector and an indeterminate fiscal impact on the state. See Fiscal Analysis section.

The bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Constitutional Issues section.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1205.ANRS.DOCX

DATE: 3/13/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Oil and Gas Production in Florida

There are two major areas in Florida that produce oil and gas: the Sunniland Trend in South Florida and the Jay Field in the western panhandle.¹ The Sunniland Trend began producing in 1943 and is located in Lee, Hendry, Collier, and Dade counties.² The Jay Field, located in Escambia and Santa Rosa counties, began producing in 1970.³ Oil production from the two regions peaked at 48 million barrels (MBbls) in 1978, but has steadily declined over the years, producing only 2.2 MBbls in 2014.⁴ Natural gas production has decreased as well, from 52 billion cubic feet (BCF) in 1978 to approximately 21 BCF in 2014.⁵ There are currently 161 active oil and gas wells in Florida.⁶

The Oil and Gas Program

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).⁷ The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.⁸ These concerns are addressed through a system of permits and field inspections to ensure compliance.

DEP is required to adopt rules and issue orders to implement and enforce the Program.⁹ The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.¹⁰ The statutes enumerate various purposes for which DEP must adopt rules.¹¹

¹ Jacqueline M. Lloyd, *Florida Geological Survey Information Circular No. 107*, June 1991, available at <http://ufdcweb1.uflib.ufl.edu/UF00001168/00001/3x>.

² *Id.*

³ *Id.*

⁴ DEP Presentation on Oil and Gas Regulation, Agriculture and Natural Resources Subcommittee, February 18, 2014, available at <http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2852>.

⁵ *Id.*; DEP, Oil and Gas Annual Production Reports, http://www.dep.state.fl.us/water/mines/oil_gas/production.htm (last accessed March 13, 2015).

⁶ DEP Presentation on Oil and Gas Regulation, Agriculture and Natural Resources Subcommittee, February 18, 2014, available at <http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2852>.

⁷ The Oil and Gas Program is governed by part 1 of chapter 377, F.S., and chapters 62C-25 through 62C-30, F.A.C.

⁸ Section 377.06, F.S.

⁹ Section 377.22(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

Permitting

DEP is vested with the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.¹²
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.¹³
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.¹⁴

Before any geophysical operation in search of oil, gas, or minerals may be conducted, the person desiring to conduct the operation must apply for a permit from DEP and pay a processing fee.¹⁵ Geophysical operations consist of using various methods to locate geologic structures in the ground that could contain oil or gas.¹⁶ These methods include gravity surveys, magnetic surveys, and seismic surveys.¹⁷ Seismic surveys are the industry's primary tool for locating areas containing oil or gas, and they consist of using explosives or heavy vibrations to create sound pulses in the ground that reflect off geologic structures and are then captured by specialized microphones.¹⁸ The collected data is then used to establish drilling targets.

After a drilling target is established, a person who would like to drill a well in search of oil or gas or drill a well to inject gas into and recover gas from a natural gas storage reservoir must notify the Division, pay a fee,¹⁹ and obtain a separate permit authorizing the drilling before the drilling commences.²⁰ These drilling permits are valid for one year and may be renewed for an additional year provided no substantive changes are requested.²¹ After a well is drilled, a separate operating permit must be obtained and fee paid²² before a person may use the well for its intended purpose, such as producing oil, disposing of saltwater, or injecting fluids for pressure maintenance.²³ An operating permit is valid for the life of the well, but both the well and permit must be re-certified every five years.²⁴ A separate permit is also required before a person may store gas in or recover gas from a natural gas storage reservoir.²⁵

When evaluating a permit application, the Division must consider:

- The nature, character, and location of the lands involved; and whether the lands are rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future.

¹² Section 377.242(1), F.S.

¹³ Section 377.242(2), F.S.

¹⁴ Section 377.242(3), F.S.

¹⁵ Section 377.2408(1), F.S.

¹⁶ DEP, *Oil & Gas: Geophysical Prospecting*, available at

http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The fee to apply for a drilling permit is currently \$2,000. Chapter 62C-26.003(8), F.A.C.

²⁰ Sections 377.24 and 377.2407, F.S.

²¹ Rule 62C-26.007(4), F.A.C.

²² The fee to apply for an operating permit is currently \$2,000. Chapter 62C-26.008(3), F.A.C.

²³ Chapter 62C-26.008, F.A.C.

²⁴ *Id.*

²⁵ Section 377.24(1), F.S.

- The nature, type, and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.
- The proven or indicated likelihood of the presence of oil, gas, or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis.
- For activities and operations concerning a natural gas storage facility, whether the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.²⁶

DEP must weigh these criteria and balance environmental interests against the applicant's right to explore for oil.²⁷

Payment of Surety

Before DEP may grant a permit, the permit applicant is required to provide surety that the exploration, drilling, or production activity requested in the application will be conducted in a safe and environmentally compatible manner.²⁸ An applicant for a drilling, production, or injection well permit or a geophysical permit may provide the following types of surety to meet this requirement:

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state; or
- A surety in the form of an irrevocable letter of credit guaranteed by an acceptable financial institution.²⁹

For geophysical operations, the required surety is \$25,000 per field crew or \$100,000 per operation.³⁰ For wells, the amount of the required surety varies based on the depth of the well drilled and whether the well becomes an operating well.³¹ Currently, the initial surety required for a well that is drilled between zero and 9,000 feet deep is \$50,000, and the surety required for a well that is drilled 9,001 feet deep or more is \$100,000.³² If a drilled well becomes an operating well, the required surety for the well is twice the initial surety amount.³³ When all drilling, exploration, and production activities have ceased, the operator will be reimbursed up to the surety amount.

Alternatively, an applicant for a drilling, production, or injection well permit, or a permittee who intends to continue participating in long-term production activities, has the option to meet the surety requirement by paying an annual fee to the Minerals Trust Fund based on the following amounts:

- For the first year, or part of a year, the fee is \$4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is \$1,500 per permitted well.³⁴

The maximum fee that an applicant or permittee may be required to pay into the Minerals Trust Fund is \$30,000 per calendar year, regardless of the number of permits applied for or in effect.³⁵

²⁶ Section 377.241, F.S.

²⁷ *Coastal Petroleum Co. v. Florida Wildlife Federation, Inc.*, 766 So. 2d 226, 228 (Fla. 1st DCA 1999).

²⁸ Section 377.2425(1), F.S.

²⁹ *Id.*

³⁰ Chapter 62C-26.007(5), F.A.C.

³¹ Chapter 62C-26.002, F.A.C.

³² *Id.*

³³ *Id.*

³⁴ Section 377.2425(1)(b), F.S.

³⁵ *Id.*

Inspections

DEP is responsible for monitoring and inspecting all drilling operations, producing wells, or injecting wells.³⁶ All permitted activities are inspected by Division staff working out of two field offices. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.³⁷

Reports

An operator³⁸ is required to create reports containing various information related to wells and drilling and production activities.³⁹ At the request of the operator, the information contained in these reports is exempt from public records disclosure and must be held confidential by the Division for one year after the completion of a well.⁴⁰

Penalties

A person who violates any statute, rule, regulation, order, or permit of the Program is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property of the state.⁴¹ Further, such person is subject to the judicial imposition of a civil penalty not to exceed \$10,000 per offense.⁴² Each day during any portion of which a violation occurs constitutes a separate offense.⁴³ These penalties also apply to a person who refuses inspection by the Division.⁴⁴

Well Stimulation

Underground oil and gas often forms in certain rock formations resistant to conventional methods of drilling. Some of these rock formations are less permeable than traditional reservoirs of oil and gas. A traditional reservoir of oil and/or gas will be permeable enough to naturally allow the migration of oil and/or gas out of the reservoir rock. However, the decreased permeability of some reservoir rock formations traps oil and gas within the reservoir. The most common types of rock formations trapping oil and gas in this fashion are shale, sandstone, and methane coalbeds.⁴⁵

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.⁴⁶ Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and

³⁶ Section 377.22(2)(g), F.S.

³⁷ Section 377.242, F.S.

³⁸ "Operator" is defined as the entity who:

- a) Has the right to drill and to produce a well; or
- b) As part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

³⁹ Section 377.22(2)(h), F.S.

⁴⁰ *Id.* "Completion" refers to when a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in commercial quantities. Section 377.19(1), F.S.

⁴¹ Section 377.37(1)(a), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See generally Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547.

⁴⁶ Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

Hydraulic Fracturing

Hydraulic fracturing consists of using fluid and material to create or restore fractures in a rock formation to stimulate production. A hydraulic fracturing well is first drilled vertically. Then the well is drilled horizontally directly into the reservoir rock. The fracturing fluid and materials are pressurized and released through small perforations in the well casing. The pressurized mixture causes the rock layer to fracture. The fissures are held open by the proppants to allow natural gas and oil to flow into and out of the well. Fractured rock formations may be refractured to allow for continued flow of any remaining oil and gas. This process allows for future productivity of older wells.⁴⁷

The composition of a fracturing fluid varies with the nature of the formation, but typically contains large amounts of water, a proppant to keep the fractures open (typically sand), and chemical additives. Each hydraulic fracturing well can require between one and seven million gallons of water. The chemical additives include a friction reducer, biocides (to kill bacteria), a scale inhibitor, surfactants, and breakers.⁴⁸ Scale inhibitors prevent the buildup of scale⁴⁹ on the drilling equipment. The breakers and friction reducer help to transport the proppants into the fracture, as well as remove them. The surfactants help control water's reaction with other fluids (in this case, oil and/or gas). A typical fracture treatment will use between three and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured; most often, either 10 or 11 are used. These chemicals are selected from a list of over 250 chemicals.⁵⁰ The chemicals typically make up between 0.5 percent and 1 percent of the hydraulic fracturing fluid, by weight.

Acid Fracturing

Acid fracturing, also known as acidizing, is most often used in limestone formations and other carbonate formations because the permeability of limestone varies and is too complex for conventional hydraulic fracturing. Carbonate formations can be dissolved by acid. Acid fracturing is similar to hydraulic fracturing with some differences. A fluid is still injected at fracturing pressures, but it also includes a diluted acid, either hydrochloric acid or formic acid, to "etch" channels into the rock formation. The channels created through the rock formation can either let oil and gas escape as is, or can also be propped open with sand, as with hydraulic fracturing. "The effective fracture length is a function of the type of acid used, the acid reaction rate, and the fluid loss from the fracture into the formation."⁵¹

Well Stimulation in Florida

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.⁵² A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production,

⁴⁷ See generally Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547.

⁴⁸ *Id.*

⁴⁹ "Scale" are inorganic soluble salts that form when incompatible types of water are mixed. Scale buildup can cause costly damage to equipment parts.

⁵⁰ For a list of the chemicals most often used, see *What Chemicals Are Used*, FRAC FOCUS, <https://fracfocus.org/chemical-use/what-chemicals-are-used> (last visited March 11, 2015).

⁵¹ THE SOCIETY OF PETROLEUM ENGINEERS, *Continuous Improvements in Acid Fracturing at Lake Maracaibo*, J. PETROLEUM TECH. 54 (2006), available at http://www.slb.com/~media/Files/stimulation/industry_articles/200607_cont_imp.pdf.

⁵² Chapter 62C-29.006, F.A.C.

disposal, or injection rates.”⁵³ Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Both hydraulic fracturing and acid fracturing have been utilized in Florida. According to DEP, the last hydraulic fracturing on record was conducted in the Jay Field in 2003.⁵⁴ Acid fracturing was used for the first time in Florida in Collier County in 2013, but the operation was halted by a cease and desist order from DEP based on concerns about groundwater contamination.⁵⁵

Disclosure of Well Stimulation Chemicals

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in well stimulations. In May 2012, the Bureau of Land Management (BLM), part of the U.S. Department of the Interior, published a proposed rule that would require disclosures about chemicals used in hydraulic fracturing on federal and Indian lands.⁵⁶ BLM received a high volume of comments and published an updated proposed rule in May 2013,⁵⁷ but has yet to publish a final rule.⁵⁸

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. These provisions vary widely, but generally indicate: (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 hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic 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.⁵⁹

Oil and Gas Tax Trust Fund

Part 1 of chapter 211, F.S., contains the provisions related to taxes on oil, gas, and sulfur production in the state. A severance tax is levied upon production of oil for sale, transport, storage, profit, or commercial use.⁶⁰ The amount of the tax each person must pay is measured by the value of the oil produced and saved or sold during a month.⁶¹ The current tax rate for small well oil⁶² is five percent of the gross value.⁶³ The tax rate for tertiary oil⁶⁴ and mature field recovery oil⁶⁵ varies based on the gross

⁵³ Chapter 62C-25.002, F.A.C.

⁵⁴ DEP, *Frequent Questions about the Oil and Gas Permitting Process*, available at http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf.

⁵⁵ DEP, Collier Oil Drilling, http://www.dep.state.fl.us/secretary/oil/collier_oil.htm (last accessed March 13, 2015).

⁵⁶ BLM, U.S. Department of the Interior, *Interior Releases Draft Rule Requiring Public Disclosure of Chemicals Used in Hydraulic Fracturing on Public and Indian Lands* (May 4, 2012), available at http://www.blm.gov/wo/st/en/info/newsroom/2012/may/NR_05_04_2012.html.

⁵⁷ BLM, U.S. Department of the Interior, *Interior Releases Updated Draft Rule for Hydraulic Fracturing on Public and Indian Lands for Public Comment* (May 16, 2013), available at http://www.blm.gov/wo/st/en/info/newsroom/2013/may/nr_05_16_2013.html.

⁵⁸ Jennifer Dlouhy, *Interior Secretary: Feds won't overrule tougher state fracturing regulations*, MIDLAND REPORTER-TELEGRAM (March 3, 2015), available at http://www.mrt.com/business/oil/article_6e6b6c10-c10c-11e4-9e76-6f89418469c0.html.

⁵⁹ Brandon J. Murrill and Adam Vann, *Hydraulic Fracturing: Chemical Disclosure Requirements*, Congressional Research Service (June 19, 2012), available at <http://fas.org/sgp/crs/misc/R42461.pdf>.

⁶⁰ Section 211.02, F.S.

⁶¹ Section 211.02(1), F.S.

⁶² “Small well oil” is defined in s. 211.01(21), F.S., as oil produced from a well from which less than 100 barrels of oil per day are severed, considering only those days of the month during which production of oil from the well actually occurred.

⁶³ Section 211.02(1)(a), F.S. For purposes of determining the oil production tax, “value” means the sale price or market price of a barrel of oil at the mouth of the well in its natural, unrefined condition. Section 211.02(2)(a), F.S.

⁶⁴ “Tertiary oil” is defined in s. 211.02(3)(a), F.S., as the excess barrels of oil produced, or estimated to be produced, as a result of the actual use of a tertiary recovery method in a qualified enhanced oil recovery project, over the barrels of oil

value of the oil and applies as follows: one percent of the gross value of oil on the value of oil \$60 dollars and below; seven percent of the gross value of oil on the value of oil above \$60 and below \$80; and nine percent of the gross value of oil on the value of oil \$80 and above.⁶⁶ The tax rate for all other oil is eight percent of the gross value.⁶⁷

A severance tax is also levied upon production of gas in the state for sale, transport, profit, or commercial use.⁶⁸ The amount of the tax each person must pay is determined by the volume of gas produced and sold or used by a producer during a month.⁶⁹ For each fiscal year, the gas tax rate is determined by the gas base rate, which is currently \$0.171 per million cubic feet, multiplied by the gas base rate adjustment for the fiscal year, which varies based on the annual average of the gas fuels producer price index calculated by the U.S. Department of Labor.⁷⁰

In addition, a severance tax is levied upon production of sulfur in the state for sale, transport, storage, profit, or commercial use.⁷¹ The amount of the tax each person must pay is determined by the long tons of sulfur produced or recovered by a producer during a month from the hydrogen sulfide gas contained in oil or gas production from a well.⁷² For each fiscal year, the sulfur tax rate is determined by the sulfur base rate, which is currently \$2.71 per long ton, multiplied by the sulfur base rate adjustment for the fiscal year, which varies based on the annual average of the sulfur producer price index calculated by the U.S. Department of Labor.⁷³

The severance taxes collected on oil, gas, and sulfur production, in addition to any interest and penalties imposed for failure to timely pay these taxes, are placed in the Oil and Gas Tax Trust Fund (trust fund).⁷⁴ Each year, money is appropriated from the trust fund to the Chief Financial Officer to refund any properly approved overpayments.⁷⁵ The remaining proceeds from the trust fund are distributed between the state's General Revenue Fund; the general revenue fund of the board of county commissioners of the county where the oil, gas, or sulfur was produced; and the Minerals Trust Fund.⁷⁶ The funds credited to the state's General Revenue Fund are as follows:

- 63.5 percent of the proceeds from the severance tax on small well oil, tertiary oil, and mature field recovery oil;
- 75 percent of the proceeds from the severance tax on all other oil;
- 67.5 percent of the proceeds from the severance tax on gas; and
- 67.5 percent of the proceeds of the severance tax on sulfur.⁷⁷

which could have been produced by continued maximum feasible production methods in use prior to the start of tertiary recovery. A "qualified enhanced oil recovery project" means a project for enhancing recovery of oil that meets the requirements of 26 U.S.C. s. 43(c)(2) or substantially similar requirements.

⁶⁵ "Mature field recovery oil" is defined in s. 211.01(4), F.S., as the barrels of oil recovered from new wells that begin production after July 1, 2012, in fields that were discovered prior to 1981.

⁶⁶ Section 211.02(1)(b), F.S.

⁶⁷ Section 211.02(1)(c), F.S.

⁶⁸ Section 211.025, F.S.

⁶⁹ Section 211.025(1), F.S.

⁷⁰ Sections 211.025(1)-(3), F.S.

⁷¹ Section 211.026, F.S.

⁷² Section 211.026(1), F.S.

⁷³ Sections 211.06(1)-(3), F.S.

⁷⁴ Section 211.06, F.S.

⁷⁵ Section 211.06(1), F.S.

⁷⁶ Section 211.06(2), F.S.

⁷⁷ Section 211.06(2)(a), F.S.

STORAGE NAME: h1205.ANRS.DOCX

DATE: 3/13/2015

Public Records Exemption for Natural Gas Storage Facility

Proprietary business information that is held by DEP in accordance with its statutory duties with respect to an application for a natural gas storage facility permit is confidential and exempt from public records disclosure requirements. "Proprietary business information" is information that:

- Is owned or controlled by the applicant or a person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant's business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public; and
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by DEP.⁷⁸

Proprietary business information includes, but is not limited to:

- Trade secrets as defined in s. 688.002, F.S.⁷⁹
- Leasing plans, real property acquisition plans, exploration budgets, or marketing studies, the disclosure of which would impair the efforts of the applicant or its affiliates to contract for goods or services or to acquire real property interests on favorable terms.
- Competitive interests, which may include well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, or field utilization strategies or operating plans, the disclosure of which would impair the competitive business of the applicant providing the information.⁸⁰

Proprietary business information may be found in a document:

- Filed with DEP by the applicant or affiliated person seeking a natural gas storage facility permit; or
- Sent to DEP from another governmental entity for use by DEP in the performance of its duties. This provision applies only if the information is otherwise confidential or exempt as held by the governmental entity.⁸¹

Effect of Proposed Changes

Environmental Rapid Response Trust Fund

The bill reallocates the proceeds in the Oil and Gas Tax Trust Fund that remain after the Chief Financial Officer has been refunded for overpayments in order to fund the Environmental Rapid Response Trust Fund that is created in the bill's companion, HB 1207. The bill reduces the amount of severance taxes collected from oil, gas, and sulfur production that are credited to the state's General Revenue Fund and redistributes these funds to the Environmental Rapid Response Trust Fund. The amount of each tax credited to the Environmental Rapid Response Trust Fund is as follows:

⁷⁸ Section 377.24075, F.S.

⁷⁹ Section 688.002 defines "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

⁸⁰ *Id.*

⁸¹ *Id.*

- 3.5 percent of the proceeds from the severance tax on small well oil, tertiary oil, and mature field recovery oil;
- 5 percent of the proceeds from the severance tax on all other oil;
- 6.5 percent of the proceeds from the severance tax on gas; and
- 6.5 percent of the proceeds of the severance tax on sulfur.

As a result, the percentages of these taxes credited to the state's General Revenue Fund are reduced in the following manner:

- The percent of the proceeds from the severance tax on small well oil, tertiary oil, and mature field recovery oil is reduced from 63.5 to 60;
- The percent of the proceeds from the severance tax on all other oil is reduced from 75 to 70;
- The percent of the proceeds from the severance tax on gas is reduced from 67.5 to 61; and
- The percent of the proceeds of the severance tax on sulfur is reduced from 67.5 to 61.

The bill requires the funds in the Environmental Rapid Response Trust Fund to be used to improve the plugging of abandoned wells and to clean up the spillage of oil or any other pollutant during activities related to the drilling for and extracting of oil, gas, or other petroleum products. The bill specifies that beginning July 1 of the fiscal year after the balance of the Environmental Rapid Response Trust Fund exceeds \$100 million, the proceeds of the taxes distributed to the trust fund must be paid into the state's General Revenue Fund.

Permits for Oil and Gas Exploring, Drilling, and Extracting

The bill requires the Division, when determining whether to issue a permit for activities related to oil and gas, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state. This information may be used as a basis for permit denial or imposition of specific permit conditions, including increased monitoring or increasing the amount of the required surety to up to five times the standard amount. The bill authorizes DEP to adopt rules to implement this requirement.

The bill requires DEP, upon issuance of a permit, to notify the county in which the activities will occur of the issuance of the permit and the activities authorized by the permit.

The bill also empowers DEP, when issuing a permit for activities related to oil and gas drilling and extracting, to authorize multiple activities in a single permit.

Inspections

The bill specifies that DEP must conduct inspections during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The bill requires each permit to contain an agreement that the permit holder will not prevent inspections during these activities.

High-Pressure Well Stimulation Permits

The bill defines "high-pressure well stimulation" as a well intervention performed by injecting more than 100,000 gallons of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore.

The bill imposes on high-pressure well stimulation the same permitting requirements that apply to drilling an oil or gas well. Thus, a person who would like to perform a high-pressure well stimulation must first apply for and obtain a permit from DEP that authorizes the activity and must also pay a fee

not to exceed the actual cost of processing and inspecting for each well. While the permitting criteria in current law that apply to all oil and gas permits will now apply to high-pressure well stimulation permits, the bill also creates additional criteria that apply only to permits for high-pressure well stimulation. Specifically, the bill directs the Division, when issuing a permit, to consider whether the high-pressure well stimulation is designed to ensure that:

- The groundwater through which the well will be or has been drilled is not contaminated by the high-pressure well stimulation; and
- The high-pressure well stimulation is consistent with the public policy of the state.

The bill also applies to high-pressure well stimulation permits the requirement that an applicant or operator provide surety to DEP that the activity will be conducted in a safe and environmentally compatible manner before DEP may grant a permit. An applicant may provide the following types of surety to meet this requirement:

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state in an amount provided by rule; or
- A surety in the form of an irrevocable letter of credit in an amount provided by rule that is guaranteed by an acceptable financial institution.

Alternatively, an applicant has the option to provide surety to DEP by paying an annual fee to the Minerals Trust Fund as follows:

- For the first year, or part of a year, the fee is \$4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is \$1,500 per permitted well.
- The maximum fee that an applicant may be required to pay into the Minerals Trust Fund is \$30,000 per calendar year, regardless of the number of permits applied for or in effect.

The bill specifically authorizes DEP to issue permits for performance of a high-pressure well stimulation. The bill also requires DEP to issue orders and adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations.

Study on High-Pressure Well Stimulation

The bill requires DEP to conduct a study on high-pressure well stimulation that:

- Evaluates the underlying geologic features present in the counties where oil wells have been permitted and analyzes the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features;
- Evaluates the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources, including an assessment of the potential impacts on drinking water resources, identification of the main factors affecting the severity and frequency of impacts, and an analysis of the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards;
- Reviews and evaluates the potential for groundwater contamination from conducting high-pressure well stimulation under wells that have been previously abandoned and plugged and identifies a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation; and
- Reviews and evaluates the ultimate disposition of well stimulation after use in well stimulation processes.

The bill specifies that DEP must continue normal oil and gas business operations during the performance of the study and prohibits a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the study.

The bill requires the findings of the study to be posted on DEP's website and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2016. The bill also requires DEP to adopt rules to implement the findings of the study if it is warranted and DEP determines that additional legislation is not needed. If additional legislation is needed, DEP must provide recommendations for such legislation to the Legislature.

High-Pressure Well Stimulation Chemical Disclosure Registry

The bill requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. The bill requires a well owner or operator to report to DEP, at a minimum, the following information:

- The owner's or operator's name;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The API number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation; and
- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2)⁸² and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

If FracFocus cannot accept and make publicly available any of the required information, the bill requires DEP to post the information on its website.

The bill requires an owner or operator to report the required information to DEP within 60 days after the initiation of the high-pressure well stimulation for each well on which it is performed. The owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

The bill authorizes DEP to adopt rules to implement the chemical disclosure requirements.

Reports

The bill allows information contained in reports that relate to oil and gas wells or that disclose substances used during high-pressure well stimulations to be considered proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S., at the request of the operator.

⁸² 29 C.F.R. s. 1910.1200(g)(2) specifies the information that must be included in reports that chemical manufacturers and importers are required to prepare for the purpose of alerting employers and employees to chemical hazards in the workplace.

Preemption

The bill prohibits a county, municipality, or other political subdivision of the state from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority.

Penalties

The bill increases the maximum civil penalty that may be imposed on a person who violates any provision of chapter 377, F.S., or any rule, regulation, or order of the Division made under the chapter or who violates the terms of an oil or gas permit from \$10,000 to \$25,000 per offense. Each day during any portion of which a violation occurs constitutes a separate offense.

B. SECTION DIRECTORY:

Section 1. amends s. 211.06, F.S., relating to the Oil and Gas Tax Trust Fund.

Section 2. amends s. 377.19, F.S., relating to Oil and Gas Program definitions.

Section 3. amends s. 377.22, F.S., relating to DEP rules and orders.

Section 4. amends s. 377.44, F.S., relating to oil and gas well drilling permits.

Section 5. amends s. 377.241, F.S., relating to criteria for issuance of permits.

Section 6. amends s. 377.242, F.S., relating to permits for oil and gas drilling, exploration, and extraction.

Section 7. amends s. 377.2425, F.S., relating to providing surety for oil and gas operations.

Section 8. creates s. 377.2436, F.S., relating to a study on high-pressure well stimulation.

Section 9. amends s. 377.37, F.S., relating to penalties for oil and gas law violations.

Section 10. creates s. 377.45, F.S., relating to disclosure of high-pressure well stimulation chemicals.

Section 11. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

The bill may also have an indeterminate positive fiscal impact on the state because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the state because it requires DEP to conduct a study on the potential effects of performing high-pressure well stimulation.

The bill may also have an indeterminate negative fiscal impact on the state because it requires DEP to provide notice to a county when a permit is issued for activities that will take place in that county.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

2. Expenditures:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

The bill may also have an indeterminate negative fiscal impact on the private sector because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the authority of counties and municipalities to raise total aggregate revenues by prohibiting them from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority. According to DEP, no counties or municipalities currently operate such permitting programs.⁸³ Therefore, an exemption to the mandates provision may apply because the fiscal impact of the reduced authority is likely insignificant.

An exception to the mandates provision may also apply because the bill applies to all persons similarly situated. However, the Legislature would have to make a formal determination that the bill fulfills an important state interest.

If the exemption and exception do not apply and the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other

⁸³ According to a phone conversation with DEP staff on March 13, 2015.

pollutant during these operations. The bill also authorizes DEP to adopt rules to evaluate previous violations of permit applicants, conduct specific inspection activities, require reports for high-pressure well stimulations, and require chemical disclosure to FracFocus for high-pressure well stimulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the regulation of oil and gas
3 resources; amending s. 211.06, F.S.; revising the
4 distribution of proceeds in the Oil and Gas Tax Trust
5 Fund; allocating proceeds to the credit of the
6 Environmental Rapid Response Trust Fund; providing for
7 specified use of the proceeds; providing a condition
8 for the redistribution of proceeds credited to the
9 Environmental Rapid Response Trust Fund; amending s.
10 377.19, F.S.; applying the definitions of certain
11 terms to additional sections of chapter 377, F.S.;
12 conforming a cross-reference; defining the term "high-
13 pressure well stimulation"; amending s. 377.22, F.S.;
14 revising the rulemaking authority of the Department of
15 Environmental Protection; providing that certain
16 information may be considered proprietary business
17 information; amending s. 377.24, F.S.; requiring that
18 a permit be obtained before the performance of a high-
19 pressure well stimulation; specifying that a permit
20 may authorize single or multiple activities; amending
21 s. 377.241, F.S.; requiring the Division of Resource
22 Management to give consideration to and be guided by
23 certain additional criteria when issuing permits;
24 amending s. 377.242, F.S.; authorizing the department
25 to issue permits for the performance of a high-
26 pressure well stimulation; revising permit

27 requirements that permit holders agree not to prevent
 28 division inspections; directing the department to
 29 notify counties in which certain activities will
 30 occur; prohibiting a county, municipality, or other
 31 political subdivision of the state from adopting or
 32 establishing permitting programs for certain oil and
 33 gas activities; amending s. 377.2425, F.S.; requiring
 34 an applicant or operator to provide surety that
 35 performance of a high-pressure well stimulation will
 36 be conducted in a safe and environmentally compatible
 37 manner; creating s. 377.2436, F.S.; directing the
 38 Department of Environmental Protection to conduct a
 39 study on high-pressure well stimulation; providing
 40 study criteria; requiring the study to be submitted to
 41 the Governor and Legislature; requiring rulemaking
 42 under certain circumstances; amending s. 377.37, F.S.;
 43 increasing the maximum amount of a civil penalty;
 44 creating s. 377.45, F.S.; requiring the department to
 45 designate the national chemical registry as the
 46 state's registry; requiring well owners or operators
 47 to report certain information to the department;
 48 providing applicability; requiring the department to
 49 adopt rules; providing an effective date.

50
 51
 52

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

53 Section 1. Section 211.06, Florida Statutes, is amended to
 54 read:

55 211.06 Oil and Gas Tax Trust Fund; distribution of tax
 56 proceeds.—All taxes, interest, and penalties imposed under this
 57 part shall be collected by the department and placed in a
 58 special fund designated the "Oil and Gas Tax Trust Fund."

59 (1) There is hereby annually appropriated a sufficient
 60 amount from the Oil and Gas Tax Trust Fund for the Chief
 61 Financial Officer to refund any overpayments that have been
 62 properly approved.

63 (2) The remaining proceeds in the Oil and Gas Tax Trust
 64 Fund shall be distributed monthly by the department and shall be
 65 paid into the State Treasury as follows:

66 (a) To the credit of the General Revenue Fund of the
 67 state:

68 1. Seventy ~~Seventy-five~~ percent of the proceeds from the
 69 oil production tax imposed under s. 211.02(1)(c).

70 2. Sixty ~~Sixty-three and one-half~~ percent of the proceeds
 71 from the tax on small well oil, tertiary oil, and mature field
 72 recovery oil imposed under s. 211.02(1)(a) and (b).

73 3. Sixty-one ~~Sixty-seven and one-half~~ percent of the
 74 proceeds from the tax on gas imposed under s. 211.025.

75 4. Sixty-one ~~Sixty-seven and one-half~~ percent of the
 76 proceeds of the tax on sulfur imposed under s. 211.026.

77 (b) To the credit of the general revenue fund of the board
 78 of county commissioners of the county where produced, subject to

79 | the service charge imposed under chapter 215:

80 | 1. Twelve and one-half percent of the proceeds from the tax
81 | on oil imposed under s. 211.02(1)(c).

82 | 2. Twenty percent of the proceeds from the tax on small
83 | well oil, tertiary oil, and mature field recovery oil imposed
84 | under s. 211.02(1)(a) and (b).

85 | 3. Twenty percent of the proceeds from the tax on gas
86 | imposed under s. 211.025.

87 | 4. Twenty percent of the proceeds from the tax on sulfur
88 | imposed under s. 211.026.

89 | (c) To the credit of the Minerals Trust Fund:

90 | 1. Twelve and one-half percent of the proceeds from the
91 | tax on oil imposed under s. 211.02(1)(c).

92 | 2. Sixteen and one-half percent of the proceeds from the
93 | tax on small well oil, tertiary oil, and mature field recovery
94 | oil imposed under s. 211.02(1)(a) and (b).

95 | 3. Twelve and one-half percent of the proceeds from the
96 | tax on gas imposed under s. 211.025.

97 | 4. Twelve and one-half percent of the proceeds from the
98 | tax on sulfur imposed under s. 211.026.

99 | (d) To the credit of the Environmental Rapid Response
100 | Trust Fund:

101 | 1. Five percent of the proceeds from the tax on oil
102 | imposed under s. 211.02(1)(c).

103 | 2. Three and one-half percent of the proceeds from the tax
104 | on small well oil, tertiary oil, and mature field recovery oil

105 imposed under s. 211.02(1)(a) and (b).

106 3. Six and one-half percent of the proceeds from the tax
 107 on gas imposed under s. 211.025.

108 4. Six and one-half percent of the proceeds from the tax
 109 on sulfur imposed under s. 211.026.

110

111 The proceeds under this paragraph shall be used to improve the
 112 plugging of abandoned wells and to clean up the spillage of oil
 113 or any other pollutant during activities under chapter 377
 114 relating to the drilling for, and extracting of, oil, gas, or
 115 other petroleum products, pursuant to rules of the Department of
 116 Environmental Protection. Beginning July 1 of the fiscal year
 117 after the balance of the Environmental Rapid Response Trust Fund
 118 exceeds \$100 million, the proceeds of the taxes distributed
 119 pursuant this paragraph shall be paid into the General Revenue
 120 Fund.

121 Section 2. Section 377.19, Florida Statutes, is amended to
 122 read:

123 377.19 Definitions.—As used in ss. 377.06, 377.07, and
 124 377.10-377.45 ~~377.10-377.40~~, the term:

125 (1) "Completion date" means the day, month, and year that
 126 a new productive well, a previously shut-in well, or a
 127 temporarily abandoned well is completed, repaired, or
 128 recompleted and the operator begins producing oil or gas in
 129 commercial quantities.

130 (2) "Department" means the Department of Environmental

131 Protection.

132 (3) "Division" means the Division of Resource Management
 133 of the Department of Environmental Protection.

134 (4) "Field" means the general area that is underlaid, or
 135 appears to be underlaid, by at least one pool. The term includes
 136 the underground reservoir, or reservoirs, containing oil or gas,
 137 or both. The terms "field" and "pool" mean the same thing if
 138 only one underground reservoir is involved; however, the term
 139 "field," unlike the term "pool," may relate to two or more
 140 pools.

141 (5) "Gas" means all natural gas, including casinghead gas,
 142 and all other hydrocarbons not defined as oil in subsection (16)
 143 ~~(15)~~.

144 (6) "High-pressure well stimulation" means a well
 145 intervention performed by injecting more than 100,000 gallons of
 146 fluid into a rock formation at high pressure that exceeds the
 147 fracture gradient of the rock formation in order to propagate
 148 fractures in such formation to increase production at an oil or
 149 gas well by improving the flow of hydrocarbons from the
 150 formation into the wellbore.

151 (7)~~(6)~~ "Horizontal well" means a well completed with the
 152 wellbore in a horizontal or nearly horizontal orientation within
 153 10 degrees of horizontal within the producing formation.

154 (8)~~(7)~~ "Illegal gas" means gas that has been produced
 155 within the state from any well or wells in excess of the amount
 156 allowed by any rule, regulation, or order of the division, as

157 distinguished from gas produced within the State of Florida from
 158 a well not producing in excess of the amount so allowed, which
 159 is "legal gas."

160 (9)~~(8)~~ "Illegal oil" means oil that has been produced
 161 within the state from any well or wells in excess of the amount
 162 allowed by rule, regulation, or order of the division, as
 163 distinguished from oil produced within the state from a well not
 164 producing in excess of the amount so allowed, which is "legal
 165 oil."

166 (10)~~(9)~~ "Illegal product" means a product of oil or gas,
 167 any part of which was processed or derived, in whole or in part,
 168 from illegal gas or illegal oil or from any product thereof, as
 169 distinguished from "legal product," which is a product processed
 170 or derived to no extent from illegal oil or illegal gas.

171 (11)~~(10)~~ "Lateral storage reservoir boundary" means the
 172 projection up to the land surface of the maximum horizontal
 173 extent of the gas volume contained in a natural gas storage
 174 reservoir.

175 (12)~~(11)~~ "Native gas" means gas that occurs naturally
 176 within this state and does not include gas produced outside the
 177 state, transported to this state, and injected into a permitted
 178 natural gas storage facility.

179 (13)~~(12)~~ "Natural gas storage facility" means an
 180 underground reservoir from which oil or gas has previously been
 181 produced and which is used or to be used for the underground
 182 storage of natural gas, and any surface or subsurface structure,

183 or infrastructure, except wells. The term also includes a right
 184 or appurtenance necessary or useful in the operation of the
 185 facility for the underground storage of natural gas, including
 186 any necessary or reasonable reservoir protective area as
 187 designated for the purpose of ensuring the safe operation of the
 188 storage of natural gas or protecting the natural gas storage
 189 facility from pollution, invasion, escape, or migration of gas,
 190 or any subsequent extension thereof. The term does not mean a
 191 transmission, distribution, or gathering pipeline or system that
 192 is not used primarily as integral piping for a natural gas
 193 storage facility.

194 (14)~~(13)~~ "Natural gas storage reservoir" means a pool or
 195 field from which gas or oil has previously been produced and
 196 which is suitable for or capable of being made suitable for the
 197 injection, storage, and recovery of gas, as identified in a
 198 permit application submitted to the department under s.
 199 377.2407.

200 (15)~~(14)~~ "New field well" means an oil or gas well
 201 completed after July 1, 1997, in a new field as designated by
 202 the Department of Environmental Protection.

203 (16)~~(15)~~ "Oil" means crude petroleum oil and other
 204 hydrocarbons, regardless of gravity, which are produced at the
 205 well in liquid form by ordinary production methods, and which
 206 are not the result of condensation of gas after it leaves the
 207 reservoir.

208 (17)~~(16)~~ "Oil and gas" has the same meaning as the term

209 "oil or gas."

210 (18)~~(17)~~ "Oil and gas administrator" means the State
211 Geologist.

212 (19)~~(18)~~ "Operator" means the entity who:

213 (a) Has the right to drill and to produce a well; or

214 (b) As part of a natural gas storage facility, injects, or
215 is engaged in the work of preparing to inject, gas into a
216 natural gas storage reservoir; or stores gas in, or removes gas
217 from, a natural gas storage reservoir.

218 (20)~~(19)~~ "Owner" means the person who has the right to
219 drill into and to produce from any pool and to appropriate the
220 production for the person or for the person and another, or
221 others.

222 (21)~~(20)~~ "Person" means a natural person, corporation,
223 association, partnership, receiver, trustee, guardian, executor,
224 administrator, fiduciary, or representative of any kind.

225 (22)~~(21)~~ "Pool" means an underground reservoir containing
226 or appearing to contain a common accumulation of oil or gas or
227 both. Each zone of a general structure which is completely
228 separated from any other zone on the structure is considered a
229 separate pool as used herein.

230 (23)~~(22)~~ "Producer" means the owner or operator of a well
231 or wells capable of producing oil or gas, or both.

232 (24)~~(23)~~ "Product" means a commodity made from oil or gas
233 and includes refined crude oil, crude tops, topped crude,
234 processed crude petroleum, residue from crude petroleum,

235 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
 236 residuum, gas oil, casinghead gasoline, natural gas gasoline,
 237 naphtha, distillate, condensate, gasoline, waste oil, kerosene,
 238 benzine, wash oil, blended gasoline, lubricating oil, blends or
 239 mixtures of oil with one or more liquid products or byproducts
 240 derived from oil or gas, and blends or mixtures of two or more
 241 liquid products or byproducts derived from oil or gas, whether
 242 hereinabove enumerated or not.

243 (25)~~(24)~~ "Reasonable market demand" means the amount of
 244 oil reasonably needed for current consumption, together with a
 245 reasonable amount of oil for storage and working stocks.

246 (26)~~(25)~~ "Reservoir protective area" means the area
 247 extending up to and including 2,000 feet surrounding a natural
 248 gas storage reservoir.

249 (27)~~(26)~~ "Shut-in bottom hole pressure" means the pressure
 250 at the bottom of a well when all valves are closed and no oil or
 251 gas has been allowed to escape for at least 24 hours.

252 (28)~~(27)~~ "Shut-in well" means an oil or gas well that has
 253 been taken out of service for economic reasons or mechanical
 254 repairs.

255 (29)~~(28)~~ "State" means the State of Florida.

256 (30)~~(29)~~ "Temporarily abandoned well" means a permitted
 257 well or wellbore that has been abandoned by plugging in a manner
 258 that allows reentry and redevelopment in accordance with oil or
 259 gas rules of the Department of Environmental Protection.

260 (31)~~(30)~~ "Tender" means a permit or certificate of

261 clearance for the transportation or the delivery of oil, gas, or
 262 products, approved and issued or registered under the authority
 263 of the division.

264 (32)~~(31)~~ "Waste," in addition to its ordinary meaning,
 265 means "physical waste" as that term is generally understood in
 266 the oil and gas industry. The term "waste" includes:

267 (a) The inefficient, excessive, or improper use or
 268 dissipation of reservoir energy; and the locating, spacing,
 269 drilling, equipping, operating, or producing of any oil or gas
 270 well or wells in a manner that results, or tends to result, in
 271 reducing the quantity of oil or gas ultimately to be stored or
 272 recovered from any pool in this state.

273 (b) The inefficient storing of oil; and the locating,
 274 spacing, drilling, equipping, operating, or producing of any oil
 275 or gas well or wells in a manner that causes, or tends to cause,
 276 unnecessary or excessive surface loss or destruction of oil or
 277 gas.

278 (c) The producing of oil or gas in a manner that causes
 279 unnecessary water channeling or coning.

280 (d) The operation of any oil well or wells with an
 281 inefficient gas-oil ratio.

282 (e) The drowning with water of any stratum or part thereof
 283 capable of producing oil or gas.

284 (f) The underground waste, however caused and whether or
 285 not defined.

286 (g) The creation of unnecessary fire hazards.

287 (h) The escape into the open air, from a well producing
 288 both oil and gas, of gas in excess of the amount that is
 289 necessary in the efficient drilling or operation of the well.

290 (i) The use of gas for the manufacture of carbon black.

291 (j) Permitting gas produced from a gas well to escape into
 292 the air.

293 (k) The abuse of the correlative rights and opportunities
 294 of each owner of oil and gas in a common reservoir due to
 295 nonuniform, disproportionate, and unratable withdrawals, causing
 296 undue drainage between tracts of land.

297 (33)~~(32)~~ "Well site" means the general area around a well,
 298 which area has been disturbed from its natural or existing
 299 condition, as well as the drilling or production pad, mud and
 300 water circulation pits, and other operation areas necessary to
 301 drill for or produce oil or gas, or to inject gas into and
 302 recover gas from a natural gas storage facility.

303 Section 3. Subsection (2) of section 377.22, Florida
 304 Statutes, is amended to read:

305 377.22 Rules and orders.—

306 (2) The department shall issue orders and adopt rules
 307 pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the~~
 308 ~~provisions of~~ this chapter. Such rules and orders shall ensure
 309 that all precautions are taken to prevent the spillage of oil or
 310 any other pollutant in all phases of the drilling for, and
 311 extracting of, oil, gas, or other petroleum products, including
 312 high-pressure well stimulations, or during the injection of gas

313 into and recovery of gas from a natural gas storage reservoir.
 314 The department shall revise such rules from time to time as
 315 necessary for the proper administration and enforcement of this
 316 chapter. Rules adopted and orders issued in accordance with this
 317 section are for, but not limited to, the following purposes:

318 (a) To require the drilling, casing, and plugging of wells
 319 to be done in such a manner as to prevent the pollution of the
 320 fresh, salt, or brackish waters or the lands of the state and to
 321 protect the integrity of natural gas storage reservoirs.

322 (b) To prevent the alteration of the sheet flow of water
 323 in any area.

324 (c) To require that appropriate safety equipment be
 325 installed to minimize the possibility of an escape of oil or
 326 other petroleum products in the event of accident, human error,
 327 or a natural disaster during drilling, casing, or plugging of
 328 any well and during extraction operations.

329 (d) To require the drilling, casing, and plugging of wells
 330 to be done in such a manner as to prevent the escape of oil or
 331 other petroleum products from one stratum to another.

332 (e) To prevent the intrusion of water into an oil or gas
 333 stratum from a separate stratum, except as provided by rules of
 334 the division relating to the injection of water for proper
 335 reservoir conservation and brine disposal.

336 (f) To require a reasonable bond, or other form of
 337 security acceptable to the department, conditioned upon properly
 338 drilling, casing, producing, and operating each well, and

339 properly plugging ~~the performance of the duty to plug properly~~
 340 each dry and abandoned well and the full and complete
 341 restoration by the applicant of the area over which geophysical
 342 exploration, drilling, or production is conducted to the similar
 343 contour and general condition in existence before ~~prior to~~ such
 344 operation.

345 (g) To require and carry out a reasonable program of
 346 monitoring and inspecting ~~or inspection of~~ all drilling
 347 operations, high-pressure well stimulations, producing wells, ~~or~~
 348 injecting wells, and well sites, including regular inspections
 349 by division personnel. Inspections will be required during the
 350 testing of blowout preventers, during the pressure testing of
 351 the casing and casing shoe, and during the integrity testing of
 352 the cement plugs in plugging and abandonment operations.

353 (h) To require the making of reports showing the location
 354 of all oil and gas wells; the making and filing of logs; the
 355 taking and filing of directional surveys; the filing of
 356 electrical, sonic, radioactive, and mechanical logs of oil and
 357 gas wells; if taken, the saving of cutting and cores, the cuts
 358 of which shall be given to the Bureau of Geology; ~~and~~ the making
 359 of reports with respect to drilling, ~~and~~ production, and high-
 360 pressure well stimulations; and the disclosure of chemicals and
 361 other materials added during high-pressure well stimulations to
 362 a chemical disclosure registry created or identified by the
 363 department ~~records~~. However, such information, or any part
 364 thereof, at the request of the operator: 7

365 1. Shall be exempt from ~~the provisions of~~ s. 119.07(1) and
 366 held confidential by the division for ~~a period of~~ 1 year after
 367 the completion of a well.

368 2. May be considered proprietary business information as
 369 defined in s. 377.24075(1)(a)-(e).

370 (i) To prevent wells from being drilled, operated, or
 371 produced in such a manner as to cause injury to neighboring
 372 leases, property, or natural gas storage reservoirs.

373 (j) To prevent the drowning by water of any stratum, or
 374 part thereof, capable of producing oil or gas in paying
 375 quantities and to prevent the premature and irregular
 376 encroachment of water which reduces, or tends to reduce, the
 377 total ultimate recovery of oil or gas from any pool.

378 (k) To require the operation of wells with efficient gas-
 379 oil ratio, and to fix such ratios.

380 (l) To prevent "blowouts," "caving," and "seepage," in the
 381 sense that conditions indicated by such terms are generally
 382 understood in the oil and gas business.

383 (m) To prevent fires.

384 (n) To identify the ownership of all oil or gas wells,
 385 producing leases, refineries, tanks, plants, structures, and
 386 storage and transportation equipment and facilities.

387 (o) To regulate the "shooting," perforating, ~~and~~ chemical
 388 treatment, and high-pressure stimulations of wells.

389 (p) To regulate secondary recovery methods, including the
 390 introduction of gas, air, water, or other substance into

391 producing formations.

392 (q) To regulate gas cycling operations.

393 (r) To regulate the storage and recovery of gas injected
394 into natural gas storage facilities.

395 (s) If necessary for the prevention of waste, as herein
396 defined, to determine, limit, and prorate the production of oil
397 or gas, or both, from any pool or field in the state.

398 (t) To require, either generally or in or from particular
399 areas, certificates of clearance or tenders in connection with
400 the transportation or delivery of oil or gas, or any product.

401 (u) To regulate the spacing of wells and to establish
402 drilling units.

403 (v) To prevent, so far as is practicable, reasonably
404 avoidable drainage from each developed unit which is not
405 equalized by counterdrainage.

406 (w) To require that geophysical operations requiring a
407 permit be conducted in a manner which will minimize the impact
408 on hydrology and biota of the area, especially environmentally
409 sensitive lands and coastal areas.

410 (x) To regulate aboveground crude oil storage tanks in a
411 manner which will protect the water resources of the state.

412 (y) To act in a receivership capacity for fractional
413 mineral interests for which the owners are unknown or unlocated
414 and to administratively designate the operator as the lessee.

415 (z) To evaluate the history of past adjudicated violations
416 committed by permit applicants or the applicants' affiliated

417 entities of any substantive and material rule or law pertaining
 418 to the regulation of oil or gas.

419 Section 4. Subsections (1), (2), and (4) of section
 420 377.24, Florida Statutes, are amended to read:

421 377.24 Notice of intention to drill well; permits;
 422 abandoned wells and dry holes.—

423 (1) Before drilling a well in search of oil or gas, before
 424 performing a high-pressure well stimulation, or before storing
 425 gas in or recovering gas from a natural gas storage reservoir,
 426 the person who desires to drill for, store, or recover gas, ~~or~~
 427 drill for oil or gas, or perform a high-pressure well
 428 stimulation shall notify the division upon such form as it may
 429 prescribe and shall pay a reasonable fee set by rule of the
 430 department not to exceed the actual cost of processing and
 431 inspecting for each well or reservoir. The drilling of any well,
 432 the performance of any high-pressure well stimulation, and the
 433 storing and recovering of gas are prohibited until such notice
 434 is given, the fee is paid, and a ~~the~~ permit is granted. A permit
 435 may authorize a single activity or multiple activities.

436 (2) An application for the drilling of a well in search of
 437 oil or gas, for the performance of a high-pressure well
 438 stimulation, or for the storing of gas in and recovering of gas
 439 from a natural gas storage reservoir~~7~~ in this state must include
 440 the address of the residence of the applicant~~7~~ or applicants,
 441 which must be the address of each person involved in accordance
 442 with the records of the Division of Resource Management until

443 such address is changed on the records of the division after
 444 written request.

445 (4) Application for permission to drill or abandon any
 446 well or perform a high-pressure well stimulation may be denied
 447 by the division for only just and lawful cause.

448 Section 5. Subsections (5) and (6) are added to section
 449 377.241, Florida Statutes, to read:

450 377.241 Criteria for issuance of permits.—The division, in
 451 the exercise of its authority to issue permits as hereinafter
 452 provided, shall give consideration to and be guided by the
 453 following criteria:

454 (5) For high-pressure well stimulations, whether the high-
 455 pressure well stimulation as proposed is designed to ensure
 456 that:

457 (a) The groundwater through which the well will be or has
 458 been drilled is not contaminated by the high-pressure well
 459 stimulation; and

460 (b) The high-pressure well stimulation is consistent with
 461 the public policy of this state as specified in s. 377.06.

462 (6) As a basis for permit denial or imposition of specific
 463 permit conditions, including increased bonding up to five times
 464 the applicable limits and increased monitoring, the history of
 465 past adjudicated violations committed by the applicant or an
 466 affiliated entity of the applicant of any substantive and
 467 material rule or law pertaining to the regulation of oil or gas,
 468 including violations that occurred outside the state.

469 Section 6. Section 377.242, Florida Statutes, is amended
 470 to read:

471 377.242 Permits for drilling or exploring and extracting
 472 through well holes or by other means.—The department is vested
 473 with the power and authority:

474 (1)(a) To issue permits for the drilling for, exploring
 475 for, performance of a high-pressure well stimulation, or
 476 production of, oil, gas, or other petroleum products ~~that which~~
 477 are to be extracted from below the surface of the land,
 478 including submerged land, only through the well hole drilled for
 479 oil, gas, and other petroleum products.

480 1. No structure intended for the drilling for, or
 481 production of, oil, gas, or other petroleum products may be
 482 permitted or constructed on any submerged land within any bay or
 483 estuary.

484 2. No structure intended for the drilling for, or
 485 production of, oil, gas, or other petroleum products may be
 486 permitted or constructed within 1 mile seaward of the coastline
 487 of the state.

488 3. No structure intended for the drilling for, or
 489 production of, oil, gas, or other petroleum products may be
 490 permitted or constructed within 1 mile of the seaward boundary
 491 of any state, local, or federal park or aquatic or wildlife
 492 preserve or on the surface of a freshwater lake, river, or
 493 stream.

494 4. No structure intended for the drilling for, or

495 production of, oil, gas, or other petroleum products may be
 496 permitted or constructed within 1 mile inland from the shoreline
 497 of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary
 498 or within 1 mile of any freshwater lake, river, or stream unless
 499 the department is satisfied that the natural resources of such
 500 bodies of water and shore areas of the state will be adequately
 501 protected in the event of accident or blowout.

502 5. Without exception, after July 1, 1989, no structure
 503 intended for the drilling for, or production of, oil, gas, or
 504 other petroleum products may be permitted or constructed south
 505 of 26°00'00" north latitude off Florida's west coast and south
 506 of 27°00'00" north latitude off Florida's east coast, within the
 507 boundaries of Florida's territorial seas as defined in 43 U.S.C.
 508 s. 1301. After July 31, 1990, no structure intended for the
 509 drilling for, or production of, oil, gas, or other petroleum
 510 products may be permitted or constructed north of 26°00'00"
 511 north latitude off Florida's west coast to the western boundary
 512 of the state bordering Alabama as set forth in s. 1, Art. II of
 513 the State Constitution, or located north of 27°00'00" north
 514 latitude off Florida's east coast to the northern boundary of
 515 the state bordering Georgia as set forth in s. 1, Art. II of the
 516 State Constitution, within the boundaries of Florida's
 517 territorial seas as defined in 43 U.S.C. s. 1301.

518 (b) Subparagraphs (a)1. and 4. do not apply to permitting
 519 or construction of structures intended for the drilling for, or
 520 production of, oil, gas, or other petroleum products pursuant to

521 an oil, gas, or mineral lease of such lands by the state under
 522 which lease any valid drilling permits are in effect on the
 523 effective date of this act. In the event that such permits
 524 contain conditions or stipulations, such conditions and
 525 stipulations shall govern and supersede subparagraphs (a)1. and
 526 4.

527 (c) The prohibitions of subparagraphs (a)1.-4. ~~in this~~
 528 ~~subsection~~ do not include "infield gathering lines," provided no
 529 other placement is reasonably available and all other required
 530 permits have been obtained.

531 (2) To issue permits to explore for and extract minerals
 532 which are subject to extraction from the land by means other
 533 than through a well hole.

534 (3) To issue permits to establish natural gas storage
 535 facilities or construct wells for the injection and recovery of
 536 any natural gas for storage in natural gas storage reservoirs.

537
 538 Each permit shall contain an agreement by the permitholder that
 539 the permitholder will not prevent inspection by division
 540 personnel at any time, including during installation and
 541 cementing of casing, testing of blowout preventers, pressure
 542 testing of the casing and casing shoe, and integrity testing of
 543 the cement plugs in plugging and abandonment operations. The
 544 provisions of this section prohibiting permits for drilling or
 545 exploring for oil in coastal waters do not apply to any leases
 546 entered into before June 7, 1991.

547 (4) Upon issuance of a permit under this section, the
 548 department shall notify the county in which the activities will
 549 occur of the issuance of the permit and the activities
 550 authorized by the permit.

551 (5) To avoid unnecessary duplication, a county,
 552 municipality, or other political subdivision of the state may
 553 not adopt or establish programs to accomplish the purposes of
 554 this section.

555 Section 7. Subsection (1) of section 377.2425, Florida
 556 Statutes, is amended to read:

557 377.2425 Manner of providing security for geophysical
 558 exploration, drilling, and production.—

559 (1) Before ~~Prior to~~ granting a permit for conducting ~~to~~
 560 ~~conduct~~ geophysical operations; drilling of exploratory,
 561 injection, or production wells; producing oil and gas from a
 562 wellhead; performing a high-pressure well stimulation; or
 563 transporting oil and gas through a field-gathering system, the
 564 department shall require the applicant or operator to provide
 565 surety that these operations will be conducted in a safe and
 566 environmentally compatible manner.

567 (a) The applicant for a drilling, production, high-
 568 pressure well stimulation, or injection well permit or a
 569 geophysical permit may provide the following types of surety to
 570 the department for this purpose:

571 1. A deposit of cash or other securities made payable to
 572 the Minerals Trust Fund. Such cash or securities so deposited

573 shall be held at interest by the Chief Financial Officer to
 574 satisfy safety and environmental performance provisions of this
 575 chapter. The interest shall be credited to the Minerals Trust
 576 Fund. Such cash or other securities shall be released by the
 577 Chief Financial Officer upon request of the applicant and
 578 certification by the department that all safety and
 579 environmental performance provisions established by the
 580 department for permitted activities have been fulfilled.

581 2. A bond of a surety company authorized to do business in
 582 the state in an amount as provided by rule.

583 3. A surety in the form of an irrevocable letter of credit
 584 in an amount as provided by rule guaranteed by an acceptable
 585 financial institution.

586 (b) An applicant for a drilling, production, high-pressure
 587 well stimulation, or injection well permit, or a permittee who
 588 intends to continue participating in long-term production
 589 activities of such wells, has the option to provide surety to
 590 the department by paying an annual fee to the Minerals Trust
 591 Fund. For an applicant or permittee choosing this option the
 592 following shall apply:

593 1. For the first year, or part of a year, of a drilling,
 594 production, or injection well permit, or change of operator, the
 595 fee is \$4,000 per permitted well.

596 2. For each subsequent year, or part of a year, the fee is
 597 \$1,500 per permitted well.

598 3. The maximum fee that an applicant or permittee may be

599 required to pay into the trust fund is \$30,000 per calendar
 600 year, regardless of the number of permits applied for or in
 601 effect.

602 4. The fees set forth in subparagraphs 1., 2., and 3.
 603 shall be reviewed by the department on a biennial basis and
 604 adjusted for the cost of inflation. The department shall
 605 establish by rule a suitable index for implementing such fee
 606 revisions.

607 (c) An applicant for a drilling or operating permit for
 608 operations planned in coastal waters that by their nature
 609 warrant greater surety shall provide surety only in accordance
 610 with paragraph (a), or similar proof of financial responsibility
 611 other than as provided in paragraph (b). For all such
 612 applications, including applications pending at the effective
 613 date of this act and notwithstanding ~~the provisions of~~ paragraph
 614 (b), the Governor and Cabinet in their capacity as the
 615 Administration Commission, at the recommendation of the
 616 department ~~of Environmental Protection~~, shall set a reasonable
 617 amount of surety required under this subsection. The surety
 618 amount shall be based on the projected cleanup costs and natural
 619 resources damages resulting from a maximum oil spill and adverse
 620 hydrographic and atmospheric conditions that would tend to
 621 transport the oil into environmentally sensitive areas, as
 622 determined by the department ~~of Environmental Protection~~.

623 Section 8. Section 377.2436, Florida Statutes, is created
 624 to read:

625 377.2436 Study on high-pressure well stimulation.-
 626 (1) The department shall conduct a study on high-pressure
 627 well stimulation. The study shall:
 628 (a) Evaluate the underlying geologic features present in
 629 the counties where oil wells have been permitted and analyze the
 630 potential impact that high-pressure well stimulation and
 631 wellbore construction may have on the underlying geologic
 632 features.
 633 (b) Evaluate the potential hazards and risks that high-
 634 pressure well stimulation poses to surface water or groundwater
 635 resources. The study shall assess the potential impacts of high-
 636 pressure well stimulation on drinking water resources and
 637 identify the main factors affecting the severity and frequency
 638 of impacts and shall analyze the potential for the use or reuse
 639 of recycled water in well stimulation fluids while meeting
 640 appropriate water quality standards.
 641 (c) Review and evaluate the potential for groundwater
 642 contamination from conducting high-pressure well stimulation
 643 under wells that have been previously abandoned and plugged and
 644 identify a setback radius from previously plugged and abandoned
 645 wells that could be impacted by high-pressure well stimulation.
 646 (d) Review and evaluate the ultimate disposition of well
 647 stimulation after use in well stimulation processes.
 648 (2) The department shall continue normal oil and gas
 649 business operations during the performance of the study. There
 650 shall not be a moratorium on the evaluation and issuance of

651 permits for conventional drilling, exploration, conventional
 652 completions, or conventional workovers during the performance of
 653 the study.

654 (3) The study is subject to independent scientific peer
 655 review.

656 (4) The findings of the study shall be submitted to the
 657 Governor, the President of the Senate, and the Speaker of the
 658 House of Representatives by March 1, 2016, and shall be
 659 prominently posted on the department website.

660 (5) The department shall adopt rules to implement the
 661 findings of the study if such rules are warranted by the study
 662 and the department determines that additional legislation is not
 663 needed. If the department determines legislation is needed to
 664 protect groundwater or surface water resources, the department
 665 shall provide recommendations for such legislation to the
 666 Legislature.

667 Section 9. Paragraph (a) of subsection (1) of section
 668 377.37, Florida Statutes, is amended to read:

669 377.37 Penalties.—

670 (1)(a) A ~~Any~~ person who violates any provision of this law
 671 or any rule, regulation, or order of the division made under
 672 this chapter or who violates the terms of any permit to drill
 673 for or produce oil, gas, or other petroleum products referred to
 674 in s. 377.242(1) or to store gas in a natural gas storage
 675 facility, or any lessee, permitholder, or operator of equipment
 676 or facilities used in the exploration for, drilling for, or

677 production of oil, gas, or other petroleum products, or storage
 678 of gas in a natural gas storage facility, who refuses inspection
 679 by the division as provided in this chapter, is liable to the
 680 state for any damage caused to the air, waters, or property,
 681 including animal, plant, or aquatic life, of the state and for
 682 reasonable costs and expenses of the state in tracing the source
 683 of the discharge, in controlling and abating the source and the
 684 pollutants, and in restoring the air, waters, and property,
 685 including animal, plant, and aquatic life, of the state.
 686 Furthermore, such person, lessee, permitholder, or operator is
 687 subject to the judicial imposition of a civil penalty ~~in an~~
 688 ~~amount~~ of not more than \$25,000 ~~\$10,000~~ for each offense.
 689 However, the court may receive evidence in mitigation. Each day
 690 during any portion of which such violation occurs constitutes a
 691 separate offense. Nothing herein shall give the department the
 692 right to bring an action on behalf of any private person.

693 Section 10. Section 377.45, Florida Statutes, is created
 694 to read:

695 377.45 High-pressure well stimulation chemical disclosure
 696 registry.-

697 (1) (a) The department shall designate the national
 698 chemical registry, known as FracFocus, developed by the Ground
 699 Water Protection Council and the Interstate Oil and Gas Compact
 700 Commission, as the state's registry for chemical disclosure for
 701 all wells on which high-pressure well stimulations are
 702 performed. The department shall provide a link to FracFocus

703 | through the department's website.

704 | (b) In accordance with department rule, a well owner or
 705 | operator shall report to the department, at a minimum, the
 706 | following information:

- 707 | 1. The owner's or operator's name;
- 708 | 2. The date of completion of the high-pressure well
 709 | stimulation;
- 710 | 3. The county in which the well is located;
- 711 | 4. The API number for the well;
- 712 | 5. The well name and number;
- 713 | 6. The longitude and latitude of the wellhead;
- 714 | 7. The total vertical depth of the well;
- 715 | 8. The total volume of water used in the high-pressure
 716 | well stimulation; and
- 717 | 9. Each chemical ingredient that is subject to 29 C.F.R.
 718 | s. 1910.1200(g)(2) and the ingredient concentration in the high
 719 | pressure well stimulation fluid by mass for each well on which a
 720 | high-pressure well stimulation is performed.

721 | (c) If the chemical disclosure registry cannot accept and
 722 | make publicly available any information specified in this
 723 | section, the department shall post the information on the
 724 | department's website.

725 | (2) A well owner or operator shall:

726 | (a) Report the information required under subsection (1)
 727 | to the department within 60 days after the initiation of the
 728 | high-pressure well stimulation for each well on which such high-

729 pressure well stimulation is performed; and

730 (b) Notify the department if any chemical ingredient not
 731 previously reported is intentionally included and used for the
 732 purpose of performing a high-pressure well stimulation.

733 (3) This section does not apply to an ingredient that:

734 (a) Is not intentionally added to the high-pressure well
 735 stimulation; or

736 (b) Occurs incidentally or is otherwise unintentionally
 737 present in a high-pressure well stimulation.

738 (4) The department shall adopt rules to administer this
 739 section.

740 Section 11. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove lines 53-120

T I T L E A M E N D M E N T

Remove lines 3-9 and insert:
resources; amending s.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

6 Remove lines 358-369 and insert:
 7 of which shall be given to the Bureau of Geology; and the making
 8 of reports with respect to drilling and production records.
 9 However, such information, or any part thereof, at the request
 10 of the operator, shall be exempt from ~~the provisions of s.~~
 11 ~~119.07(1) and held confidential by the division for a period of~~
 12 ~~1 year after the completion of a well.~~

14 -----
 15 **T I T L E A M E N D M E N T**

16 Remove lines 15-17 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1205 (2015)

Amendment No. 2

17 Environmental Protection; amending s. 377.24, F.S.; requiring
18 that



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove lines 547-551 and insert:

(4) To avoid unnecessary duplication, a county,

T I T L E A M E N D M E N T

Remove lines 28-30 and insert:

division inspections; prohibiting a county, municipality,
or other



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

6 Remove line 704 and insert:

7 (b) In accordance with department rule, a service
8 provider, vendor, well owner, or

10 Remove line 725 and insert:

11 (2) A service provider, vendor, well owner, or operator
12 shall:

15 **T I T L E A M E N D M E N T**

16 Remove line 46 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1205 (2015)

Amendment No. 4

17 state's registry; requiring service providers, vendors,
18 well owners, or operators

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1209 Public Records/High-pressure Well Stimulation Chemical Disclosure Registry
SPONSOR(S): Rodrigues
TIED BILLS: HB 1205 **IDEN./SIM. BILLS:** SB 1582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore <i>AM</i>	Blalock <i>MFB</i>
2) Government Operations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

HB 1205 requires the Department of Environmental Protection (DEP) to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. An owner or well operator is required to report specified information relating to high-pressure well stimulations to DEP, including each chemical ingredient and its concentration used in the high-pressure well stimulation fluid, within 60 days of initiating the well stimulation. The chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

This bill, which is linked to the passage of HB 1205 or similar legislation, creates a public records exemption for trade secrets relating to high-pressure well stimulations held by DEP in connection with the online high-pressure well stimulation chemical disclosure registry.

The bill requires a person submitting trade secret information to DEP who wishes to maintain confidentiality of that information to request that the information be kept confidential and exempt, provide a basis to DEP for the claim of trade secret, and clearly mark each page of a document containing information claimed to be a trade secret as "trade secret." If DEP receives a public records request for information claimed as a trade secret under this bill, DEP must promptly notify the person who submitted the information. That person then has 30 days to file a court action to seek an order barring disclosure of the information. DEP may not release the information if any such action is pending. Failure to file an action within 30 days constitutes a waiver of any claim to confidentiality. The bill does not direct DEP to determine what is or is not a trade secret.

The bill authorizes confidential and exempt trade secrets to be disclosed to another governmental entity in order for such entity to properly perform its statutory duties and responsibilities. In addition, such trade secrets may be disclosed when relevant in any proceeding relating to high-pressure well stimulations.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record of public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

House Bill 1205, Regulation of Oil and Gas Resources

HB 1205 requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. A well owner or operator must report to DEP, at a minimum, the following information:

- The owner's or operator's name;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The API number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation; and
- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

If FracFocus cannot accept and make publicly available any of the required information, DEP must post the information on its website.

HB 1205 requires an owner or operator to report the required information to DEP within 60 days after the initiation of a high-pressure well stimulation for each well on which it is performed. The owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

Effect of Proposed Changes

The bill, which is linked to the passage of HB 1205 or similar legislation, creates a public records exemption for trade secrets³ relating to high-pressure well stimulations held by DEP in connection with the online high-pressure well stimulation chemical disclosure registry. The bill provides that such trade secrets are confidential and exempt⁴ from public records requirements.

The bill requires a person submitting trade secret information to DEP who wishes to maintain confidentiality of such information to request that it be kept confidential and exempt, provide a basis to DEP for the claim of trade secret, and clearly mark each page of a document containing information claimed to be a trade secret as "trade secret." If DEP receives a public records request for a document that is marked trade secret, DEP must promptly notify the person who submitted the information as a trade secret. The notice must inform such person that the person has 30 days following receipt of the notice to file an action in circuit court seeking a determination whether the information in question contains trade secrets and an order barring public disclosure of the information. If the person files an action within 30 days after receipt of the notice, DEP may not release the documents pending the outcome of the legal action. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and DEP must release the document as requested. The bill does not direct DEP to determine what is or is not a trade secret.

The bill authorizes confidential and exempt trade secrets to be disclosed to another governmental entity in order for such entity to properly perform its statutory duties and responsibilities. In addition, such

³ The bill provides that the public records exemption applies to trade secrets as defined in s. 812.081(1)(c), F.S. That paragraph defines the term "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

trade secrets may be disclosed when relevant in any proceeding relating to high-pressure well stimulations. Those involved in any proceeding relating to high-pressure well stimulations, including an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of any trade secret information released at such proceeding.

The bill also specifies that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. amends s. 377.45, F.S, relating to disclosure of high-pressure well stimulation chemicals.

Section 2. provides a statement of public necessity.

Section 3. provides a contingent effective date to match the effective date of HB 1205 or similar legislation, if such legislation is adopted in the same legislative session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on DEP because staff responsible for complying with public records requests could require training related to creation of the public records exemption. In addition, DEP could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to information submitted to DEP that is a trade secret. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. The bill does not contain a provision requiring retroactive application. As such, the public records exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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

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

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

24 377.45 High-pressure well stimulation chemical disclosure
 25 registry.-

26 (4) (a) Trade secrets, as defined in s. 812.081(1)(c),

27 relating to high-pressure well stimulations held by the
 28 department in connection with the online high-pressure well
 29 stimulation chemical disclosure registry, are confidential and
 30 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 31 Constitution if the person submitting such trade secret to the
 32 department:

33 1. Requests that the trade secret be kept confidential and
 34 exempt;

35 2. Informs the department of the basis for the claim of
 36 the trade secret; and

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

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

53 release the document as requested.

54 (c) Confidential and exempt trade secrets may be
 55 disclosed:

56 1. To another governmental entity in order for such entity
 57 to properly perform its statutory duties and responsibilities;
 58 or

59 2. When relevant in any proceeding under this part. Those
 60 involved in any proceeding under this section, including, but
 61 not limited to, an administrative law judge, a hearing officer,
 62 or a judge or justice, must maintain the confidentiality of any
 63 trade secret information revealed at such proceeding.

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

68 Section 2. The Legislature finds that it is a public
 69 necessity that trade secrets, as defined in s. 812.081(1)(c),
 70 Florida Statutes, relating to high-pressure well stimulations
 71 held by the Department of Environmental Protection in connection
 72 with the online high-pressure well stimulation chemical
 73 disclosure registry be made confidential and exempt from s.
 74 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 75 State Constitution. Trade secrets must be held confidential and
 76 exempt from public records requirements because the disclosure
 77 of such information would create an unfair competitive advantage
 78 for persons receiving such information, which would adversely

79 impact the service company, chemical supplier, or well owner or
 80 operator that provides chemical ingredients for a well or wells
 81 on which high-pressure well stimulations are performed. If such
 82 confidential and exempt information regarding trade secrets were
 83 released pursuant to a public records request, others would be
 84 allowed to take the benefit of the trade secrets without
 85 compensation or reimbursement to the service company, chemical
 86 supplier, or well owner or operator.

87 Section 3. This act shall take effect on the same date
 88 that HB 1205 or similar legislation takes effect, if such
 89 legislation is adopted in the same legislative session or an
 90 extension thereof and becomes law.



Amendment No. |

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Subsection (4) of section 377.45, Florida
 8 Statutes, as created by HB 1205, 2015 Regular Session, is
 9 renumbered as subsection (5), and a new subsection (4) is added
 10 to that section to read:

11 377.45 High-pressure well stimulation chemical disclosure
12 registry.—

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

15 1. Is owned or controlled by the applicant or a person
16 affiliated with the applicant.



Amendment No. |

17 2. Is intended to be private and is treated by the
18 applicant as private because disclosure would harm the applicant
19 or the applicant's business operations.

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

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

26 5. Includes:

27 a. Trade secrets as defined in s. 688.002.

28 b. Leasing plans, real property acquisition plans,
29 exploration budgets, or marketing studies, the disclosure of
30 which would impair the efforts of the applicant or its
31 affiliates to contract for goods or services or to acquire real
32 property interests on favorable terms.

33 c. Competitive interests, which may include well design or
34 completion plans, geological or engineering studies related to
35 storage reservoir performance characteristics, or field
36 utilization strategies or operating plans, the disclosure of
37 which would impair the competitive business of the applicant
38 providing the information.

39 (b) Proprietary business information relating to high-
40 pressure well stimulations held by the department in connection
41 with the online high-pressure well stimulation chemical
42 disclosure registry are confidential and exempt from s.

167423 - HB 1209 strike all.docx

Published On: 3/16/2015 5:48:32 PM



Amendment No. 1

43 119.07(1) and s. 24(a), Art. I of the State Constitution if the
44 person submitting such information to the department:

45 1. Requests that the proprietary business information be
46 kept confidential and exempt;

47 2. Informs the department of the basis for claiming the
48 information is proprietary business information; and

49 3. Clearly marks each page of a document or specific
50 portion of a document containing information claimed to be
51 proprietary business information as "proprietary business
52 information."

53 (c) If the department receives a public records request
54 for a document that is marked proprietary business information
55 under this section, the department must promptly notify the
56 person who submitted the information as proprietary business
57 information. The notice must inform such person that the person
58 has 10 days following receipt of such notice to file an action
59 in circuit court seeking a determination whether the document in
60 question contains proprietary business information and an order
61 barring public disclosure of the document. If the person files
62 an action within 10 days after receipt of notice of the public
63 records request, the department may not release the documents
64 pending the outcome of the legal action. The failure to file an
65 action within 10 days constitutes a waiver of any claim of
66 confidentiality, and the department shall release the document
67 as requested.



Amendment No. 1

68 (d) Confidential and exempt proprietary business
69 information may be disclosed:

70 1. To another governmental entity if the receiving entity
71 agrees in writing to maintain the confidential and exempt status
72 of the information and has verified in writing its legal
73 authority to maintain such confidentiality.

74 2. When relevant in any proceeding under this part. Those
75 involved in any proceeding under this section, including, but
76 not limited to, an administrative law judge, a hearing officer,
77 or a judge or justice, must maintain the confidentiality of any
78 proprietary business information revealed at such proceeding.

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

83 Section 2. The Legislature finds that it is a public
84 necessity that proprietary business information relating to
85 high-pressure well stimulations held by the Department of
86 Environmental Protection in connection with the online high-
87 pressure well stimulation chemical disclosure registry be made
88 confidential and exempt from s. 119.07(1), Florida Statutes, and
89 s. 24(a), Article I of the State Constitution. Proprietary
90 business information must be held confidential and exempt from
91 public records requirements because the disclosure of such
92 information would create an unfair competitive advantage for
93 persons receiving such information, which would adversely impact



Amendment No. 1

94 the service company, chemical supplier, or well owner or
 95 operator that provides chemical ingredients for a well or wells
 96 on which high-pressure well stimulations are performed. If such
 97 confidential and exempt information regarding proprietary
 98 business information were released pursuant to a public records
 99 request, others would be allowed to take the benefit of the
 100 proprietary business information without compensation or
 101 reimbursement to the service company, chemical supplier, or well
 102 owner or operator.

103 Section 3. This act shall take effect on the same date
 104 that HB 1205 or similar legislation takes effect, if such
 105 legislation is adopted in the same legislative session or an
 106 extension thereof and becomes law.

107 -----
 108
 109 **T I T L E A M E N D M E N T**

110 Remove everything before the enacting clause and insert:
 111 An act relating to public records; amending s. 377.45,
 112 F.S.; defining the term "proprietary business information";
 113 providing an exemption from public records requirements for
 114 proprietary business information contained within
 115 information relating to high-pressure well stimulations
 116 obtained by the Department of Environmental Protection in
 117 connection with the department's online high-pressure well
 118 stimulation chemical disclosure registry; providing
 119 procedures and requirements with respect to the granting of



Amendment No. 1

120 confidential and exempt status; providing for disclosure
121 under specified circumstances; providing for future
122 legislative review and repeal of the exemption under the
123 Open Government Sunset Review Act; providing a statement of
124 public necessity; providing a contingent effective date.