

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1205 Regulation of Oil and Gas Resources

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee; Rodrigues and Pigman

**TIED BILLS:** HB 1207, CS/CS/HB 1209 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 2 N, As CS	Moore	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 4 N, As CS	Helping	Massengale
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:

- 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 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 and provides an appropriation for the study;
- Requires certain individuals 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;
- 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;
- 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; and
- Authorizes DEP to adopt rules to implement these changes.

The bill has a significant negative fiscal impact on the state, an indeterminate but likely insignificant fiscal impact on local governments, and an indeterminate negative fiscal impact on the private sector. (See Fiscal Analysis & Economic Impact Statement.)

This bill may be a county or municipality mandate pursuant to Art. VII, section 18 of the Florida Constitution. See Section III.A.1 of the analysis.

### FULL ANALYSIS

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

**STORAGE NAME:** h1205c.ANRAS

**DATE:** 4/8/2015

## 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.<sup>1</sup> The Sunniland Trend began producing in 1943 and is located in Lee, Hendry, Collier, and Dade counties.<sup>2</sup> The Jay Field, located in Escambia and Santa Rosa counties, began producing in 1970.<sup>3</sup> 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.<sup>4</sup> Natural gas production has decreased as well, from 52 billion cubic feet (BCF) in 1978 to approximately 21 BCF in 2014.<sup>5</sup> There are currently 161 active oil and gas wells in Florida.<sup>6</sup>

##### 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).<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The statutes enumerate various purposes for which DEP must adopt rules.<sup>11</sup>

##### *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.<sup>12</sup>
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.<sup>13</sup>

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

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

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

<sup>7</sup> 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.

<sup>8</sup> Section 377.06, F.S.

<sup>9</sup> Section 377.22(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 377.242(1), F.S.

<sup>13</sup> Section 377.242(2), F.S.

- 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.<sup>14</sup>

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.<sup>15</sup> Geophysical operations consist of using various methods to locate geologic structures in the ground that could contain oil or gas.<sup>16</sup> These methods include gravity surveys, magnetic surveys, and seismic surveys.<sup>17</sup> 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.<sup>18</sup> 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,<sup>19</sup> and obtain a separate permit authorizing the drilling before the drilling commences.<sup>20</sup> These drilling permits are valid for one year and may be renewed for an additional year provided no substantive changes are requested.<sup>21</sup> After a well is drilled, a separate operating permit must be obtained and fee paid<sup>22</sup> before a person may use the well for its intended purpose, such as producing oil, disposing of saltwater, or injecting fluids for pressure maintenance.<sup>23</sup> An operating permit is valid for the life of the well, but both the well and permit must be re-certified every five years.<sup>24</sup> A separate permit is also required before a person may store gas in or recover gas from a natural gas storage reservoir.<sup>25</sup>

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.
- 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.<sup>26</sup>

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

### *Payment of Surety*

<sup>14</sup> Section 377.242(3), F.S.

<sup>15</sup> Section 377.2408(1), F.S.

<sup>16</sup> DEP, *Oil & Gas: Geophysical Prospecting*, available at

[http://www.dep.state.fl.us/water/mines/oil\\_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf](http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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

<sup>20</sup> Sections 377.24 and 377.2407, F.S.

<sup>21</sup> Rule 62C-26.007(4), F.A.C.

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

<sup>23</sup> Chapter 62C-26.008, F.A.C.

<sup>24</sup> *Id.*

<sup>25</sup> Section 377.24(1), F.S.

<sup>26</sup> Section 377.241, F.S.

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

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.<sup>28</sup> 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.<sup>29</sup>

For geophysical operations, the required surety is \$25,000 per field crew or \$100,000 per operation.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> If a drilled well becomes an operating well, the required surety for the well is twice the initial surety amount.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

### *Inspections*

DEP is responsible for monitoring and inspecting all drilling operations, producing wells, or injecting wells.<sup>36</sup> 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.<sup>37</sup>

### *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.<sup>38</sup> Further, such person is subject to the judicial imposition of a civil penalty not to exceed \$10,000 per offense.<sup>39</sup> Each day during any portion of which a violation occurs constitutes a separate offense.<sup>40</sup> These penalties also apply to a person who refuses inspection by the Division.<sup>41</sup>

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<sup>28</sup> Section 377.2425(1), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Chapter 62C-26.007(5), F.A.C.

<sup>31</sup> Chapter 62C-26.002, F.A.C.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Section 377.2425(1)(b), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 377.22(2)(g), F.S.

<sup>37</sup> Section 377.242, F.S.

<sup>38</sup> Section 377.37(1)(a), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

## 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.<sup>42</sup>

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.<sup>43</sup> 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 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.<sup>44</sup>

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.<sup>45</sup> Scale inhibitors prevent the buildup of scale<sup>46</sup> 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.<sup>47</sup> 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

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<sup>42</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547).

<sup>43</sup> Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

<sup>44</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547).

<sup>45</sup> *Id.*

<sup>46</sup> "Scale" are inorganic soluble salts that form when incompatible types of water are mixed. Scale buildup can cause costly damage to equipment parts.

<sup>47</sup> 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).

function of the type of acid used, the acid reaction rate, and the fluid loss from the fracture into the formation.”<sup>48</sup>

### *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.<sup>49</sup> 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, disposal, or injection rates.”<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

### *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.<sup>53</sup> BLM received a high volume of comments and published an updated proposed rule in May 2013,<sup>54</sup> but has yet to publish a final rule.<sup>55</sup>

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.<sup>56</sup>

## **Effect of Proposed Changes**

### 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

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<sup>48</sup> 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](http://www.slb.com/~media/Files/stimulation/industry_articles/200607_cont_imp.pdf).

<sup>49</sup> Chapter 62C-29.006, F.A.C.

<sup>50</sup> Chapter 62C-25.002, F.A.C.

<sup>51</sup> 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](http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf).

<sup>52</sup> DEP, Collier Oil Drilling, [http://www.dep.state.fl.us/secretary/oil/collier\\_oil.htm](http://www.dep.state.fl.us/secretary/oil/collier_oil.htm) (last accessed March 13, 2015).

<sup>53</sup> 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](http://www.blm.gov/wo/st/en/info/newsroom/2012/may/NR_05_04_2012.html).

<sup>54</sup> 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](http://www.blm.gov/wo/st/en/info/newsroom/2013/may/nr_05_16_2013.html).

<sup>55</sup> 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](http://www.mrt.com/business/oil/article_6e6b6c10-c10c-11e4-9e76-6f89418469c0.html).

<sup>56</sup> 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>.

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 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 stimulations 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. See CONSTITUTIONAL ISSUES: Other.

The bill provides an appropriation for the purpose of performing the study.

## 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 service provider, vendor, or well owner or operator to report to DEP, at a minimum, the following information:

- The name of the service provider, vendor, or well owner or operator;
- 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)<sup>57</sup> 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 a service provider, vendor, or well 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 service provider, vendor, or well 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.

### 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. 377.19, F.S., relating to Oil and Gas Program definitions.

Section 2. amends s. 377.22, F.S., relating to DEP rules and orders.

Section 3. amends s. 377.44, F.S., relating to oil and gas well drilling permits.

Section 4. amends s. 377.241, F.S., relating to criteria for issuance of permits.

Section 5. amends s. 377.242, F.S., relating to permits for oil and gas drilling, exploration, and extraction.

Section 6. amends s. 377.2425, F.S., relating to providing surety for oil and gas operations.

Section 7. creates s. 377.2436, F.S., relating to a study on high-pressure well stimulation.

Section 8. amends s. 377.37, F.S., relating to penalties for oil and gas law violations.

Section 9. creates s. 377.45, F.S., relating to disclosure of high-pressure well stimulation chemicals.

Section 10. provides an appropriation.

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<sup>57</sup> 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.

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 has a significant negative fiscal impact on the state because it requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations. According to DEP, this study will cost approximately \$1 million.<sup>58</sup> The bill provides \$1 million to DEP in nonrecurring funds from the General Revenue Fund for the purpose of performing the study.

### 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(b) of the Florida Constitution may apply because this bill may reduce the authority of counties and municipalities to raise total aggregate revenues as such authority existed on February 1, 1989, 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.<sup>59</sup> Therefore, an exemption to the

<sup>58</sup> According to an email from DEP staff received on March 18, 2015.

<sup>59</sup> According to a phone conversation with DEP staff on March 13, 2015.

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:

### Separation of Powers

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties.<sup>60</sup> Legislative power involves the exercise of policy-related discretion over the content of law.<sup>61</sup> Thus, the Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties.<sup>62</sup> The Florida Supreme Court has stated, “administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>63</sup> In addition, the Court has held that the Legislature may delegate confined rule-making authority to agencies, but the Legislature may not give agencies authority to determine what the law should be.<sup>64</sup>

The bill may implicate the separation of powers doctrine because it requires DEP to adopt rules to implement the findings of the study on the effects of high-pressure well stimulations, if the department determines that additional legislation is not needed.

## 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 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.

In addition, the bill requires DEP to adopt rules to implement the findings of the study on the effects of high-pressure well stimulations. See CONSTITUTIONAL ISSUES: Other.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 56 of the bill, the definition of “Division” means the Division of Resource Management. There is no such Division in DEP.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Agriculture & Natural Resources Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove provisions that revise the distribution of proceeds in the Oil and Gas Tax Trust Fund;
- Remove language that created a public records exemption not intended by the bill;
- Remove the requirement for DEP to notify a county when a permit is issued that authorizes activities in that county; and
- Add a service provider and vendor as individuals who must report information related to high-pressure well stimulations to DEP.

<sup>60</sup> *Florida State Bd. Of Architecture v. Wasserman*, 377 So. 2d 653 (Fla. 1979).

<sup>61</sup> *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

<sup>62</sup> *Florida Dep’t. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So. 2d 199 (Fla. 1998).

<sup>63</sup> *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

<sup>64</sup> *Sarasota Cnty. v. Barg*, 302 So.2d 737 (Fla. 1974); *Florida Welding & Erection Serv., Inc. v. American Mut. Ins. Co. of Boston*, 285 So.2d 386 (Fla. 1973); *Mahon v. County of Sarasota*, 177 So.2d 665 (Fla. 1965).

On April, 7, 2015, The Agriculture & Natural Resources Appropriations Subcommittee adopted one amendment to provide \$1 million to DEP in nonrecurring funds from the General Revenue Fund for the purpose of performing the high-pressure well stimulation study.

This analysis is drafted to the committee substitute to the committee substitute as passed by the Agriculture & Natural Resources Appropriations Subcommittee.