

CS/HB 745

2013

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 relating to hydraulic
5 fracturing treatments held by the Department of
6 Environmental Protection in connection with the
7 department's online hydraulic fracturing chemical
8 registry; providing procedures and requirements with
9 respect to maintaining the confidentiality of such
10 trade secrets; providing for disclosure under
11 specified circumstances; providing for future
12 legislative review and repeal of the exemption under
13 the Open Government Sunset Review Act; providing a
14 statement of public necessity; providing a contingent
15 effective date.

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

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19 Section 1. Subsection (4) of section 377.45, Florida
20 Statutes, as created by HB 743, 2013 Regular Session, is
21 renumbered as subsection (5), and a new subsection (4) is added
22 to that section, to read:

23 377.45 Hydraulic fracturing chemical registry.—

24 (4) (a) Trade secrets, as defined in s. 812.081(1)(c),
25 relating to hydraulic fracturing treatments held by the
26 department in connection with the online hydraulic fracturing
27 chemical registry, are confidential and exempt from s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution if the person

29 submitting such trade secret to the department:

30 1. Requests that the trade secret be kept confidential and
31 exempt;

32 2. Informs the department of the basis for the claim of
33 trade secret; and

34 3. Clearly marks each page of a document or specific
35 portion of a document containing information claimed to be a
36 trade secret as "trade secret."

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

51 (c) Confidential and exempt trade secrets may be
52 disclosed:

53 1. To another governmental entity in order for such entity
54 to properly perform its statutory duties and responsibilities;
55 or

56 2. When relevant in any proceeding under this part. Those

57 involved in any proceeding under this section, including, but
58 not limited to, an administrative law judge, a hearing officer,
59 or a judge or justice, must maintain the confidentiality of any
60 trade secret information revealed at such proceeding.

61 (d) This paragraph is subject to the Open Government
62 Sunset Review Act in accordance with s. 119.15 and shall stand
63 repealed on October 2, 2018, unless reviewed and saved from
64 repeal through reenactment by the Legislature.

65 Section 2. The Legislature finds that it is a public
66 necessity that trade secrets, as defined in s. 812.081(1)(c),
67 Florida Statutes, relating to hydraulic fracturing treatments
68 held by the Department of Environmental Protection in connection
69 with the online hydraulic fracturing chemical registry be made
70 confidential and exempt from s. 119.07(1), Florida Statutes, and
71 s. 24(a), Article I of the State Constitution. Trade secrets
72 must be held confidential and exempt from public records
73 requirements because the disclosure of such information would
74 create an unfair competitive advantage for persons receiving
75 such information, which would adversely impact the service
76 company, chemical supplier, or well owner or operator that
77 provides chemical ingredients for a well or wells on which
78 hydraulic fracturing treatments are performed. If such
79 confidential and exempt information regarding trade secrets were
80 released pursuant to a public records request, others would be
81 allowed to take the benefit of the trade secrets without
82 compensation or reimbursement to the service company or chemical
83 supplier or well owner or operator.

84 Section 3. This act shall take effect on the same date

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85 | that HB 743 or similar legislation takes effect, if such
86 | legislation is adopted in the same legislative session or an
87 | extension thereof and becomes law.