

# PUBLICATION

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## North Carolina Legislators Look to Criminalize Disclosure of Fracking Fluids

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**As many states and the federal government look towards calling for greater disclosure and regulation of the chemicals used in hydraulic fracturing, state senators in North Carolina appear to be pushing against the tide in seeking legislation to criminalize the disclosure of fracking chemicals designated as trade secrets or confidential. In late May, the North Carolina Senate passed the “Energy Modernization Act,” which designates state geologists custodians of confidential information about fracking fluids and makes releasing such information “knowingly or negligently” a misdemeanor. As drafted, the legislation permits disclosure of otherwise protected information to healthcare providers, the public safety department or the fire chief in cases of emergency, and further requires the reporting of any banned fluids to the state Mining and Energy Commission. The bill has now moved on to the state's House of Representatives for consideration.**

Fracking chemicals are currently exempt from the Clean Water Act and other federal disclosure laws, though the federal government recently requested public comment on whether to draft federal rules for chemical manufacturers to disclose more details about fracking fluids. Meanwhile, a number of states have passed or are in the process of developing their own regulations requiring drillers to disclose the substances used in fracking operations. Such regulations, however, allow companies to claim “trade secrets” and protect certain chemicals from public disclosure, the primary concern for drillers being the disclosure of the specific formulas used in individual wells. In this regard, North Carolina's proposed legislation is not a complete outlier in its protection of company trade secrets and confidential information. But, the use of criminal penalties to regulate disclosure is a new tactic, and one that certainly signals state cooperation for companies seeking to protect fracking chemicals and information from public disclosure. Bill supporters insist that the legislation will help to attract resource development to the state. Bill opponents maintain that such added severity to disclosure violations will only deepen public suspicion of industry and fracking operations. Which camp is correct remains to be seen, but North Carolina has certainly found a spot for itself in the hydraulic fracturing debate.