

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 248

INTRODUCER: Senator Gaetz

SUBJECT: Economic Recovery from the Deepwater Horizon Disaster

DATE: January 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

On April 20, 2010, the Transocean drilling rig known as Deepwater Horizon (DWH) exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers. An estimated 4.2 million barrels of crude oil spewed from the well before it was capped July 15, 2010. BP PLC, the company operating the rig, has paid in excess of \$1.2 billion in claims and grants to Florida residents, businesses, and institutions, as of Dec. 22, 2010.

SB 248 seeks to address many of the negative economic impacts resulting from the oil spill. It amends the state economic development incentives in ss. 220.191, 288.106, and 288.108, F.S., to provide waivers to certain business requirements in specified Northwest Florida counties. It also creates a 3-month-long sales-tax holiday for marine-related purchases in Northwest Florida, and appropriates \$10 million to the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) to develop a strategy to diversify and expand economic opportunities in Northwest Florida.

This bill also:

- Tolls the expiration dates of certain building permits and authorizations, and extends their duration by 6 months, under emergency situations;
- Allows holders of leases of sovereignty submerged lands to apply to the state for reimbursement of lease fees paid, under specified circumstances;
- Directs Florida’s Board of Trustees of the Internal Improvement Trust Fund to report to the Legislature whether existing multi-state compacts should be modified so as to address issues arising from the DWH oil spill and similar catastrophes; and

- Directs the deposit of federal funds collected from the companies responsible for the DWH oil spill and appropriated to Florida into applicable trust funds managed by OTTED and the Florida Department of Environmental Protection (DEP).

The bill will have a negative, but undetermined fiscal impact on state sales-and-use tax revenue collections during a 3-month period in 2011 and potentially on state corporate income tax revenue collections over an extended period.

SB 248 takes effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 220.191, 253.02, 288.106, and 288.108. This bill creates section 252.363 of the Florida Statutes.

II. Present Situation:

Brief Background on DWH Explosion

At approximately 10:00 PM on April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers.¹ With the resulting leakage of crude oil and natural gas from the well site, the Deepwater Horizon disaster is now considered by many to be the largest single environmental disaster in United States history.

At the time of the explosion, the Deepwater Horizon rig was moored approximately 45 miles southeast of the Louisiana coast. Drilling operations were being conducted at a sea depth of 5,000 feet and had progressed more than 18,000 feet below the sea floor where commercial oil deposits were discovered. The site, known as the Mississippi Canyon Block 252, is estimated to hold as much as 100 million barrels of product.²

On April 22, 2010, the Deepwater Horizon rig capsized and sank. Two days later, underwater cameras detected crude oil and natural gas leaking from the surface riser pipes attached to the well-head safety device known as the blowout preventer. The blowout preventer malfunctioned and failed to shut off flow out of the well-head.

Initial estimates assessed leakage at 1,000 barrels per day. The estimate was subsequently revised to 5,000 barrels per day.³ The estimates were further revised twice more and now stand at between 35,000 and 60,000 barrels per day.⁴

¹ *Rig Disaster: Timeline*, WALL ST. J., <http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html> (last visited January 9, 2011).

² Christopher Helman, *BP's Gulf Well: One of America's Biggest Oil Fields?*, FORBES, Aug. 2010, available at <http://www.forbes.com/2010/08/16/americas-biggest-oil-fields-business-energy-oil-fields.html>.

³ *E.g. Rig Disaster: Timeline*, *supra* note 1

⁴ DEEPWATER HORIZON INCIDENT JOINT INFORMATION CENTER, *Restore the Gulf, U.S. Scientific Team Draws on New Data, Multiple Scientific Methodologies to Reach Updated Estimate of Oil Flows from BP's Well*, June 15, 2010, <http://www.restorethegulf.gov/release/2010/06/15/us-scientific-team-draws-new-data-multiple-scientific-methodologies-reach-updated> (last visited January 9, 2011).

BP PLC was the operator of Deepwater Horizon and has recognized its role as the principal responsible party for the disaster. BP has pledged to fully cover the cost of response, recovery, and damages.

Governor Crist declared a state of emergency on April 30, 2010, as a result of the spreading oil spill in the Gulf of Mexico and included Escambia, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties in the emergency declaration.⁵ The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties.⁶ Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.⁷

Florida's emergency response system began immediate operations which have significantly increased in size since the initial emergency declaration.

On December 22, 2010, BP reported that it had invested over \$1 billion in Florida:⁸

BP Payments and Investments – Florida

January 6, 2011



Florida Government Payments	\$66,600,000
Payments to Individuals and Businesses	\$1,219,200,000
BP Claims Process -- \$81,600,000 ¹	
Gulf Coast Claims Facility -- \$1,137,600,000 ²	
Vessels of Opportunity Payments ³	\$73,200,000
Tourism Payments	\$32,000,000
NRDA Payments	\$8,000,000
Research Payments	\$10,000,000
Behavioral Health Payments	\$3,000,000
Social Service Payments	\$300,000
TOTAL	\$1,412,300,000

¹ Through 8-22-2010. ² Through 1-5-2011. ³ Through 12-25-2010.

⁵ Fla. Exec. Order No. 10-99 (April 30, 2010).

⁶ Fla. Exec. Order No. 10-100 (May 3, 2010).

⁷ Fla. Exec. Order No. 10-106 (May 20, 2010).

⁸ BP, *BP Florida Gulf Response, BP Investments and Payments - Florida, Jan. 6, 2011*, <http://www.floridagulfresponse.com/go/doc/3059/984543/> (last visited Jan. 9, 2011).

Still, the ultimate cost to Florida in terms of response costs, damage to Florida's economy and business community, individual workers who have lost jobs, decrease in property values, and restoration of environmental damage remains to be determined and is expected to rise as cleanup and recovery continues.

Civil Penalties under Federal Law

Liability for damages from a spill from an offshore facility is capped at \$75 million per incident, except in limited circumstances, under the OPA. On December 15, 2010, the federal government filed suit against BP and 8 other companies asking that the companies be held liable without limitation under OPA for all removal costs and damages caused by the spill, including damages to natural resources. The lawsuit also seeks civil penalties under the Clean Water Act. "Under the Clean Water Act alone, BP faces fines of up to \$1,100 for each barrel of oil spilled. If BP were found to have committed gross negligence or willful misconduct, the fine could be up to \$4,300 per barrel. That means that based on the government's estimate of 206 million gallons (4.2 million barrels) released by the well, BP could face civil fines of between \$5.4 billion and \$21.1 billion."⁹ However, BP disputes the estimate of the amount of oil spilled into the Gulf, saying that it is overstated by 20 to 50 percent.¹⁰ The federal Justice Department is also doing a criminal investigation into BP, Transocean, and Halliburton.

"The Clean Water Act civil penalty provision associated with oil spills provides that penalties recovered under the Act must be deposited into the Oil Spill Liability Trust Fund. The Fund, in turn, is designed, among other things, to ensure that there are available funds for clean-up, response, and restoration efforts for future oil spills. The Fund is available to pay compensation for removal costs and damages if a responsible party does not do so and to pay compensation in excess of the responsible parties' liability."¹¹

Several members of Congress, the President, and the Secretary of the Navy have recommended that Congress pass legislation that dedicates a significant amount of any civil penalties collected be directed to the areas impacted by the Deepwater Horizon oil spill instead of being placed into the Oil Spill Liability Trust Fund for future purposes. Some proposals recommend that a council be formed to distribute the money, and others additionally propose that some money be given

⁹ *Government Sues BP for Gulf Oil Spill: U.S. Justice Department Files Lawsuit Against Nine Companies Involved in Disaster*, HUFFINGTON POST, Dec. 15, 2010, http://www.huffingtonpost.com/2010/12/15/government-sues-bp-for-gu_n_797197.html (last visited Jan. 9, 2011). See also Jerry Markon, *BP, 8 Other Firms Sued by Justice Dept. Over Gulf Oil Spill*, WASH. POST, Dec. 15, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/15/AR2010121503894.html> (last visited Jan. 9, 2011); and *Government sues BP, 8 Others in Gulf Oil Spill*, ASSOC. PRESS, Dec. 15, 2010, available at http://www.msnbc.msn.com/id/40684304/ns/us_news-crime_and_courts/ (last visited Jan. 9, 2011).

¹⁰ *BP Disputes Size of Spill*, ASSOC. PRESS, Dec. 4, 2010, available at <http://www2.tbo.com/content/2010/dec/04/T2NEWS04-bp-disputes-size-of-spill/news-nationworld/> (last visited Jan. 9, 2011).

¹¹ DEEPWATER HORIZON INCIDENT JOINT INFORMATION CENTER, AMERICA'S GULF COAST: A LONG TERM RECOVERY PLAN AFTER THE DEEPWATER HORIZON OIL SPILL 3, Sept. 2010, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf> (last visited Jan. 9, 2011). This document also contains a summary of the provisions of the Clean Water Act and the OPA. (*emphasis added*).

directly to the impacted states. Also, the proposals recommend that the money should be used for economic as well as environmental recovery efforts.¹²

Discussion of this bill's provisions

Because SB 248 addresses a range of issues, the “Present Situation” and “Effect of Proposed Changes” for each section of the bill will be explained in **Section III** below.

III. Effect of Proposed Changes:

Section 1: Waiver of certain Capital Investment Tax Credit (CITC) Requirements

Section 1 amends s. 220.191, F.S., to waive the requirement that businesses seeking the credit in Escambia, Bay, Gulf, and Franklin counties be on the state’s high-impact industry list.

Present Situation

The CITC was created by the Legislature in 1998 to attract and grow capital-intensive industries that generally pay high wages. The incentive is an annual credit, provided for up to 20 years, against an eligible business’ corporate income tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project. Eligible capital costs include all expenses incurred in the acquisition, pre-construction and construction activities, installation, and equipping of a project from the beginning of construction through commencement of operations.

To participate in the program, a new or expanding company must apply to Enterprise Florida, Inc., (EFI) the state’s business recruitment entity, and be certified by the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) prior to the commencement of operations. There are three categories of CITC projects:

- A high-impact business, which:
 - Operates within a “high-impact” industry sector, currently defined in statute as including, but not limited to, aviation, aerospace, automotive, and silicon technology industries,¹³ and
 - Creates at least 100 new jobs.
- A business defined as a “qualified target industry” (QTI) pursuant to s. 288.106, F.S., and which is induced by this incentive program to:
 - Create or retain at least 1,000 jobs, of which at least 100 of those jobs are new and which pay an average annual wage of at least 130 percent of the average annual private-sector wage in the state or region, and
 - Make a cumulative capital investment of at least \$100 million after July 1, 2005.
- A new or expanded headquarters facility which:

¹² *Id.* at 5; H.R. 6112, 111th Cong. (2010) (limits funds to environmental recovery efforts); and S. 3792, 111th Cong. (2010) (limits funds to environmental recovery efforts). The Congressional bills were filed prior to the release of the Secretary of the Navy’s report.

¹³ ENTERPRISE FLORIDA, INC., 2009 INCENTIVES REPORT: A PROGRESS REPORT ON PROGRAMS FUNDED FROM THE ECONOMIC DEVELOPMENT INCENTIVES ACCOUNT 27 (2009) *available at* http://www.eflorida.com/uploadedFiles/Florida_Knowledge_Center/My_eFlorida_EFI_and_Partners/Floridas_Economic_Perspective/2009%20Incentives%20Report.pdf. (Free registration required.) (last visited Jan. 9, 2011). EFI’s 2009 INCENTIVES REPORT lists the industries under this CITC category as semiconductor manufacturing, transportation equipment manufacturing, information technology, life sciences, financial services, corporate headquarters, and clean energy.

- Locates in an enterprise zone or a brownfield area;
- Is induced by this incentive program to create at least 1,500 jobs that pay an average wage that is at least 200 percent of the average annual private-sector wage in the state or region; and
- Makes a cumulative capital investment of at least \$250 million.

Generally, the amount of the annual credit is up to 5 percent of the eligible capital costs generated by a qualifying project, for up to 20 years, except that the QTI businesses in the second category may take the tax credit for a maximum of 5 years.

The annual credit may not exceed a specified percentage of the annual corporate income tax or premium tax liability generated by the project, based on the amount of the company's capital investment. For example, a company that made a minimum capital investment of \$100 million would be able to apply the value of its annual tax credit to erase 100 percent of its tax liability that year.¹⁴

Under no circumstance can the total tax credits awarded exceed the cumulative investment; nor can credits be taken in excess of the tax liability in a given tax year. Also, unused credits may be carried forward for up to 20 years.

According to DOR, in tax year 2008, \$4.055 million in CITC were claimed on tax returns and \$11.75 million in 2009.¹⁵

As of December 2009, there are 16 active CITC projects, which have committed to make total cumulative capital investments of \$2.2 billion in Florida and create 6,520 jobs paying an average annual wage of \$55,076.¹⁶

Effect of Proposed Changes

SB 248 waives the high-impact industry sector requirement for businesses that relocate from another state to Bay, Escambia, Franklin, or Gulf counties between April 4, 2011 and April 4, 2013.

In effect, any type of business that creates at least 100 new jobs within the 2-year period would be eligible for credits against its state corporate income tax liabilities, based on the level of its capital investment, over a 20-year period.

The requirements for the two other categories of CITC eligibility are unchanged.

Section 2: Tolling/Extension of Certain Permits and Authorizations

Section 2 creates s. 252.363, F.S., to toll the expiration dates of certain permits and authorizations, and extends by 6 months such permits, in areas where the Governor has declared a state of emergency.

¹⁴ Section 220.191(2)(c), F.S., allows the transfer of tax credits earned under this program by a solar panel manufacturing facility that meets specific job creation and salary requirements. This option has not been utilized.

¹⁵ Email from DOR staff to Senate Commerce and Tourism Committee (Dec. 30, 2010) (on file with Senate Commerce and Tourism Committee).

¹⁶ ENTERPRISE FLORIDA, INC., *supra* note 13, at 28.

Present Situation

Emergency Orders

A state of emergency is declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that an imminent threat of emergency exists. The state of emergency continues until the Governor terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. The declaration of a state of emergency indicates the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination. An executive order or proclamation disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation is filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.

Permit Extensions

According to the Department of Environmental Protection, permits issued by the Department of Environmental Protection or a water management district under part IV of chapter 373 (a.k.a. environmental resource permits or ERP) are typically issued with a 5-year construction period although longer periods may be requested. Requests to extend that period require an application and payment of a processing fee, which for DEP is \$80. Extension requests are generally routinely approved so long as there has been no change in site conditions, other than that associated with permitted work.

Development agreements can be entered into for up to 20 years and extended even longer by agreement between the governing body and the developer.¹⁷ Local governments regularly issue a wide variety of development permits and building permits that have varying durations.

Pursuant to ch. 2009-96, L.O.F., certain state and local permits, approvals, and development orders, having an expiration date of September 1, 2008 through January 1, 2012, are extended for 2 years following the date of expiration. A developer must notify the agency or local government by December 31, 2009, in writing with a request to extend the expiration date for 2 years for the following:

- Permits issued by DEP or a WMD;
- Local government permits, including development orders, building permits, zoning permits, subdivision plat approvals, special exceptions, variances, and any other approval affecting the development of land; and
- Development of Regional Impact (DRI) development orders and building permits.

The permit extension language created caveats for certain contingencies. This extension does not apply to:

- U.S. Army Corps of Engineers permits;
- Permit-holders that are not complying with the terms of their permits; or
- Permits that would interfere with court orders.

¹⁷ Section 163.3229, F.S.

This section also gives local governments leeway to adjust permit extensions if the extension would result in unsafe or unsanitary conditions.

Ch. 2010-147, L.O.F. provided a 2-year extension similar to ch. 2009-96, L.O.F., except that it:

- Clarified the type of permits eligible;
- Stated that the 2-year extension in this bill is in addition to the 2-year extension in ch. 2009-96, L.O.F.; and
- Gave permit holders until December 31, 2010, to apply for the extension.

Effect of Proposed Changes

Section 252.363, F.S., is created to toll permits during a state of emergency and add an additional 6 months to existing permits. The permit extension only applies within the geographic area for which the declaration of emergency applies.

The permits that are tolled include development orders and building permits. The type of permit covered by this language includes all local government building permits from permits as small as repaving a driveway to development orders as large as a development of regional impact (the bill explicitly includes build out dates for developments of regional impact), which may have impacts on more than one local government. The language also covers permits issued under part IV of chapter 373, F.S., relating to management and storage of surface waters. These permits are primarily Environmental Resource Permits, but part IV of chapter 323, F.S., includes:

- Permits for the construction or alteration of storm water management systems, dams, impoundments, or reservoirs;
- Dry storage facilities for 10 or more vessels;
- Port conceptual permits;
- Mitigation bank permits;
- Local government infrastructure mitigation permits; and
- Certain surface water and wetland permits.

If a permit holder wants to obtain the benefits of this extension, they will need to notify the permitting authority in writing within 90 days of the termination of the declaration of emergency. This provision gives notice to the permitting authority so that they will know which permits receive the extension.

The extension will not apply to:

- U.S. Army Corps of Engineers permits;
- Permit-holders that are not complying with the terms of their permits; or
- Permits that would interfere with court orders.

The laws, rules, and ordinances in effect at the time the permit is issued will govern the permit unless those laws, rules, or ordinances will create an immediate threat to public health or safety. The bill also reserves to local governments the authority to require permitted properties to be maintained in a safe and sanitary condition.

Section 3: Multi-state Compact Review

Section 3 amends s. 253.02, F.S., to direct the Board of Trustees to evaluate existing multi-state compacts to which Florida is a signatory and recommend to the Legislature if any changes are needed.

Present Situation

Florida is a member of the Emergency Management Assistance Compact (EMAC). In 1992, when Hurricane Andrew devastated Florida, it became apparent that even with the federal emergency response and resources, states would need to call upon one another in times of emergencies. As a result, the Southern Governors' Association (SGA) coordinated with Virginia's Department of Emergency Services to develop a state-to-state mutual aid agreement. The agreement was called the Southern Regional Emergency Management Assistance Compact, which was adopted in 1993. In January 1995, the SGA voted to open membership to any state or territory in the United States that wished to join. The broadened agreement was called the EMAC. In 1996, EMAC became Public Law (PL-104-321) when the U.S. Congress ratified EMAC. All 50 states, Puerto Rico, the U.S. Virgin Islands, Guam, and the District of Columbia have ratified the compact. The Florida Legislature ratified it in 1996, creating part III of chapter 252, F.S.¹⁸

The primary purpose of the compact is to provide mutual assistance and sharing of resources during times of natural or manmade disasters, technical hazard, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.¹⁹ The compact requires each state to make emergency plans and develop interstate procedures, where practical, to better coordinate emergency responses for emergencies.

Pursuant to s. 253.03 (7), F.S., the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees or Board), have the responsibility to administer, manage, and dispose of sovereignty lands. Sovereignty submerged lands are those lands lying waterward of the mean high-water line.²⁰ The Board of Trustees is responsible for the creation of an overall and comprehensive plan of development of state-owned lands so as to ensure maximum benefit and use.²¹ The Deepwater Horizon oil spill impacted sovereignty submerged land administered by the Board of Trustees.

Effect of Proposed Changes

The bill requires the Board of Trustees to evaluate the adequacy of the existing multistate compact to address the Deepwater Horizon oil spill or similar future events. The Board must determine whether the compact should be modified or another multistate compact developed and entered into. Further, the Board must report its findings to the Legislature by February 1, 2012, and update the report annually for five years thereafter.

Section 4: Waiver of Certain Qualified Target Industry (OTI) Incentive Requirements

Section 4 amends s. 288.106, F.S., to waive certain eligibility requirements in the Qualified Target Industry incentive program for businesses that relocate to specified Northwest Florida counties.

¹⁸ Ch. 96-244, L.O.F. (1996)

¹⁹ Section 252.922(2), F.S.

²⁰ Section 177.28(1), F.S.

²¹ Section 253.03(7)(a), F.S.

Present Situation

The QTI Incentive Tax Refund Program²² was created in 1994 as part of a retooling of Florida's economic development efforts. The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs.

Eight industry sectors have been designated as "targeted industries:" manufacturing; finance and insurance services; wholesale trade; information industries; professional, scientific and technical services; management services; administrative and support services; and clean energy. Within each sector are several specific types of targeted businesses.

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the basic refund is \$3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED). The per-employee refund amount can be as high as \$11,000, if multiple conditions are met.²³

The QTI incentive is a refund against seven state taxes and the local ad valorem tax paid by eligible businesses.²⁴ Most commonly, businesses have used the QTI to obtain reimbursements for ad valorem, state sales tax, and state corporate income tax liabilities.

A key feature of the QTI incentive is that the business must agree to pay at least 115 percent of the average private-sector wage of the state, the county or the standard metropolitan area in which the business is or will be located,²⁵ but exceptions may be granted under specific criteria.²⁶ And, typically, a cash or in-kind match is required from the local government, although this can be waived for rural counties or under other circumstances.

As a cash refund, the QTI incentive is paid by OTTED only after the yearly agreement conditions have been met. The duration of a QTI agreement is 3 to 4 years.

As of June 30, 2009,²⁷ some 880 business projects have been recommended for the QTI incentive; 848 have been approved by the former Department of Commerce or OTTED; and 730 have entered into QTI agreements with the state. Of those 730 projects, 260 remain "active," meaning they are eligible to receive tax refunds through the QTI program. These 260 projects have committed to create 45,043 jobs, paying an average wage of \$44,916.²⁸

Effect of Proposed Changes

²² Section 288.106, F.S.

²³ Section 288.106 (3)(a) and (b), F.S.

²⁴ Section 288.106(3)(d), F.S., lists the eligible taxes as the state corporate income tax, state insurance premium tax, state sales and use tax, state intangibles tax, state emergency and other excise taxes, state communications tax, and ad valorem taxes as defined in s. 220.03(1), F.S.

²⁵ Section 288.106(4)(b)1.a., F.S.

²⁶ Section 288.106(4)(b)1.b., F.S.

²⁷ ENTERPRISE FLORIDA, INC., *supra* note 13, at 13.

²⁸ EFI is using \$39,856 as the average annual statewide private-sector wage, effective Jan. 1, 2011, as the basis for evaluating QTI applications. As a comparison, 115 percent of that is \$45,834. (unpublished chart, on file with the Senate Commerce and Tourism Committee).

SB 248 allows any QTI business that has relocated from another state to Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, or Walton counties between April 4, 2011, and April 4, 2013, to receive a \$6,000 per-employee tax refund over the term of its agreement with OTTED. This is double the basic refund.

The bill also exempts these businesses from the 115-percent wage requirement for the period between April 4, 2011, and April 4, 2013, and from the local-match requirement.

Section 5: Waiver for High-Impact Performance Grants

Section 5 amends s. 288.108, F.S., to eliminate, for 2 years, the requirement that a business actually represent a high-impact industry sector in order to receive a state grant under this program.

Present Situation

Created by the Legislature in 1997, the High-Impact Performance Grant program sought to attract businesses that create highly-skilled, high-wage jobs in Florida and make a substantial capital investment in their operations here. Such businesses might be under-represented in Florida, so their recruitment was expected to add diversity to the state's economy and attract complementary businesses within their industry sectors.

Section 288.108, F.S., does not define "high-impact industry sectors;" instead, OTTED and EFI are directed to identify them. OTTED's current list includes: clean energy, life sciences, financial services, corporate headquarters, transportation equipment manufacturing, and semiconductor manufacturing.

Eligible businesses must invest at least a cumulative \$50 million and create at least 50 full-time jobs in Florida within 3 years of its designation. For research and development facilities, the thresholds are a minimum, cumulative investment of \$25 million and the creation of at least 25 full-time jobs.

Under this program, the incentive is a grant, subject to legislative appropriation. A business receives half of the grant upon certification by OTTED, and the remaining funds are distributed when the business has commenced full operations and has met the investment and employment requirements.

The grant amount is a range based on a business' levels of investment and job creation.²⁹ For example, a business that invests \$50 million and creates 50 jobs could receive a grant in an amount between \$500,000 and \$1 million; a business that creates 800 jobs and invests \$800 million could receive a grant between \$10 million and \$12 million.

The maximum amount of high-impact grants that OTTED can award in any fiscal year is \$30 million, but the Legislature has never appropriated that much specifically to the program. In fact, the Legislature typically appropriates a sum to the Economic Development Trust Fund³⁰ to be shared by the QTI program, the Qualified Defense and Space Contractor Incentive Program, and the high-impact performance grant program. For FY 10-11, the appropriation was \$16.5

²⁹ Section 288.108(3), F.S.

³⁰ Section 288.095, F.S., which caps the annual appropriation at \$35 million for specified programs.

million, and the high-impact performance grant program was not included as being eligible for this funding.

According to EFI's statistics, since the program's inception 14 companies have applied and seven have entered into agreements with OTTED. Of those seven, three companies still have active projects while two have completed their projects and agreements with OTTED. Those five companies invested a cumulative \$1 billion in Florida, and created 2,145 jobs paying an average of \$52,000 annually.³¹

Effect of Proposed Changes

SB 248 would waive the high-impact industry sector requirement for businesses that relocate from another state to Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, or Walton counties between April 4, 2011, and April 4, 2013. The level of investment and job-creation requirements would be retained.

Section 6: Creation of a Commission on Oil Spill Coordination

Section 6 creates the Commission on Oil Spill Response Coordination.

Present Situation

The EMAC, discussed in section 3, is a significant tool for intergovernmental coordination. However, there has been concern that federal-state and interstate coordination could be improved.

Effect of Proposed Changes

SB 248 creates the Commission on Oil Spill Response Coordination. It would include representative for each of the Cabinet members as well as representatives of any state agency that directly and materially responded to the Deepwater Horizon disaster. The commission is tasked with identifying ways in which federal law could be improved with respect to offshore drilling and protection of public health and safety as well as environment and natural resources. The commission would identify whether a Gulf-wide disaster relief fund would have merit and whether there is a need for a unified and uniform advocacy process for damage claims. The commission will evaluate the need for changes to interstate coordination agreements. The commission is given license to address other issues to assess where improvements are needed.

The Board of Trustees of the Internal Improvement Trust Fund shall deliver the report to the President of the Senate, the Speaker of the House of Representatives, the Secretary of Environmental Protection, and the director of OTTED by September 1, 2012.

Section 7: State sales-tax holiday on marine-related purchases in Northwest Florida

Section 7 creates a 2-month-long state sales tax exemption on the purchase of marine vessels and other specified marine-related merchandise in seven Northwest Florida counties from 12:01 a.m., April 4, 2011, through midnight, June 30, 2011.

Present Situation

³¹ ENTERPRISE FLORIDA, INC., *supra* note 13, at 27.

Ch. 112, F.S., governs the imposition and collection of state sales and use taxes (SUT). The state tax rate is 6 percent on retail sales of most types of tangible personal property, admissions, transient lodging, commercial rentals, and motor vehicles. There are a number of exemptions and exclusions from the state sales tax, specified in various sections of ch. 212, F.S., as well as credits and deductions against sales tax liability. There also is at least one cap on sales tax liability, enacted in 2010: s. 212.05(5), F.S., specifies that “notwithstanding any other provision of this chapter, the maximum amount of tax imposed under this chapter and collected on each sale or use of a boat in this state may not exceed \$18,000.”

In recent years, the Legislature has enacted “sales-tax holidays” of varying durations for “back to school” clothing, classroom supplies, and educational tools, and separately for hurricane-survival supplies. These “holidays” were in effect statewide.

Effect of Proposed Changes

SB 248 attempts to reinvigorate the marine industry and marine-related retailers in Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, and Walton counties by imposing a 2-month-long “sales-tax holiday” on specified purchases. Eligible purchases are:

- “Commercial vessel” as defined in s. 327.02, F.S.;
- “Recreational vessel” as defined in s. 327.02, F.S.; and
- “Marine equipment,” defined as:
 - Radios designed for use on boats;
 - Global positioning systems;
 - Radar devices;
 - Antennae;
 - Boat engines and machine parts designed for boat engines;
 - Bilge pumps;
 - Commercial fishing nets;
 - Life vests and marine safety equipment; and
 - Anchors and anchoring accessories.

The Department of Revenue (DOR) is authorized to adopt emergency rules, pursuant to ss. 120.536(1) and 120.54, F.S., to implement and administer this “sales tax holiday.” Also, DOR will be appropriated an undetermined sum of nonrecurring general revenue to pay its applicable expenses.

Section 8: Strategic Economic Diversification Plan for Northwest Florida

Section 8 appropriates \$10 million to OTTED and directs it to use the funds to help develop and implement an economic strategic plan for Northwest Florida.

Present Situation

The Legislature abolished the Florida Department of Commerce in 1996, with the passage of a 182-page bill that revamped Florida’s economic development governance structure, and created or reorganized a number of entities with specialized tasks. One of the new entities was Office of Tourism, Trade, and Economic Development (OTTED),³² created under the Governor’s auspices to perform what had been the defunct department’s governance functions. Over the years,

³² Section 14.2015, F.S., is the primary statute citing OTTED’s responsibilities.

OTTED's responsibilities have evolved, but it remains the Governor's lead agency and moderator for economic development oversight.

OTTED's activities include: oversight of rural economic development programs; the film and entertainment incentive program; the enterprise zone program; space and military incentive programs; professional sports incentives; and all of the business incentives available under ch. 288, F.S. It also operates as contract manager in the dispensing of state funds to EFI, Visit Florida, Space Florida, the Florida Sports Foundation, and others. Finally, OTTED dispenses funds from the Economic Development Trust Fund for various incentive programs, including QTI, the high-impact business performance grant, and the Quick Action Closing Fund.

Effect of Proposed Changes

SB 248 appropriates \$10 million in nonrecurring state general revenue to OTTED to develop and implement an "innovative economic development program" for Northwest Florida. This program must promote:

- Research and development;
- Commercialization of research;
- Economic diversification; and
- Job creation.

Further, OTTED is directed to collaborate with Northwest Florida's educational institutions, economic development organizations, and local governments, as well as with relevant state agencies, to create a framework and strategy for this new program.

It is unclear if OTTED can use any of the \$10 million appropriation for development of the program; instead, it appears that the funds will be dispensed preferentially to counties and municipalities within Northwest Florida that, at a minimum provide expedited permitting to promote research and development, promote commercialization of this research, and promote economic diversification and job creation.

The appropriation shall be placed in reserve by the Executive Office of the Governor and may be released as authorized by law or the Legislative Budget Commission (LBC), which means that neither OTTED nor the Governor will be directly approving expenditures of the \$10 million.

The legislation does not specify a deadline by which OTTED must develop and implement the new program.

Section 9: Use of Federal Funds and Other Oil-Spill Related Compensation

Section 9 directs that any federal funds received by Florida for the purposes of ameliorating or repairing the environmental or economic damage caused by DWH oil spill, or any payments from the corporations involved in the oil spill, be deposited in the appropriate trust funds of DEP and OTTED to carry out specified purposes.

Present Situation

The DEP is expending resources to conduct environmental damage assessments from the Deepwater Horizon oil spill. BP has provided the state with \$8 million for environmental damage assessment thus far. If additional oil spill related money is received from BP or the

federal government, it will be deposited into the appropriate trust fund, and then spent after legislative authorization is received. Funds received from the federal government or BP for oil spill impacts may have certain caveats related to their use. Not utilizing these funds for these intended uses may jeopardize future fund transfers from these entities to the state.

Effect of Proposed Changes

The bill authorizes the DEP to expend funds received from BP or the federal government. The moneys may be used for scientific research and environmental restoration activities. The bill designates the DEP as the lead agency to expend such funds.

Although the federal funds are likely to be legally restricted to environmental cleanup and restoration, settlements from BP and its partners may be eligible for economic development purposes. If that is indeed the case, then SB 248 specifies such funds shall be used to grant economic incentives directed to the areas of Florida adversely impact by the DWH oil spill and to finance initiatives that will expand and diversify the economies of those areas.

DEP will be the lead agency for expending funds designated for environmental restoration efforts, while OTTED will take the lead on expending the funds earmarked for economic-development purposes.

These funds will be deposited in the applicable state trust funds, which means for OTTED, the Economic Development Trust Fund.

Section 10: Submerged-land leases

Section 10 allows holders of leases of sovereignty (state-owned) submerged lands to apply to the state for reimbursement of lease fees paid, under specified circumstances.

Present Situation

Pursuant to s. 253.03 (7), F.S., the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) have the responsibility to administer, manage, and dispose of sovereignty lands. As part of this duty, in association with the Department of Environmental Protection (department), the board executes leases for the use of state-owned lands, including sovereignty submerged lands. Chapter 18-21, F.A.C., is the rule that guides the Board of Trustees in fulfilling its responsibility to administer state-owned sovereignty submerged lands for the citizens of Florida.

A sovereignty submerged land leaseholder is required to pay an annual lease fee based on the size of the leased area, or six percent of the revenue generated on the lease area, whichever is greater. The lease fee is due each year on the day the lease was executed. The lease fee includes a six percent transient rental tax and any discretionary sale surtax required in the county where the lease is located.

A leaseholder pays the base fee at the beginning of a lease period and reports the revenue at the end of the lease period; this figure is used to calculate the annual lease payment. If no revenue is generated, only the base fee is required. If the amount of revenue generated requires the leaseholder to pay six percent, the base fee already paid will be credited towards the six percent

due. Any outstanding balance must be paid by the leaseholder. Sovereignty submerged land leases from all marinas and docks generated \$11,886,339 in fiscal year 2009-2010.

Pursuant to s. 17.20, F.S, the Department of Environmental Protection (DEP) is required to report any lessee that is not paying fees to the Chief Financial Officer (CFO). The account is then sent to collections by the department's Bureau of Finance and Accounting.

Leaseholders may apply directly for reimbursement from the responsible party for economic losses from the Deepwater Horizon oil Spill. Lease fees can be considered in such applications.

Effect of Proposed Changes

The bill authorizes sovereignty submerged land leaseholders to apply to the DEP for reimbursement or credit of lease fees paid, or for the payment of lease fees by the responsible party or other independent claims process resulting in a credit to the leaseholder. The leaseholder must be in substantial compliance with the terms of the lease and must have received a payment for an economic loss due to the Deepwater Horizon oil spill, which did not include reimbursement of lease fees paid. Reimbursements and credits are limited to fees paid or due during the declared state of emergency in the county where the lease is located. The lessee submits an application, provided online by the DEP, and documentation to the CFO through the DEP. The CFO coordinates claim processing and payment with the responsible party, and the CFO forwards funds to the DEP. The DEP is not required to issue refunds or credits unless reimbursement for such claims is first received from the responsible party. In the event that funds are received that do not adequately cover all process claims for reimbursement or credit, lessees will receive a pro rata share of their claim for the fiscal year in which their claim was processed. The DEP is required to report to the Legislature on the implementation of this section by February 15 each year until 2014. The independently administered claims process officially closes in August 2013.

Effective Date

Section 11 specifies this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Because this bill names certain local governments explicitly, a question might be raised regarding whether this is a general law or a local law. The Florida Constitution imposes

special requirements on local laws and prohibits local laws on specified subjects.³³ If a bill is determined to be a local bill, the notice of intention to seek enactment must be published in the manner provided by general law or the bill must be conditioned to become effective only upon approval by vote of the electors of the area affected.³⁴

The distinction between a local law and a general law is not always clear:

A statute relating to subdivisions of the state or to subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a ‘general law’; while a statute relating to particular subdivisions or portions of the state, or to particular places of classified localities, is a ‘local law’ . . .³⁵

“In the enactment of general laws . . . political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.”³⁶ A general law operates uniformly, not because it operates on every person in the state, but because every person brought within the circumstances that the law provides for is fairly and equally affected by it.³⁷ Even though the conditions of the subject on which a statute operates do not exist in all parts of the state, the law may be general and of uniform operation if it operates uniformly on the specified subject and conditions wherever they exist in the state.³⁸ Thus, a statute relating to a subdivision of the state, based on proper distinctions and differences that inhere in or are peculiar or appropriate to a class, is a general law.³⁹ This bill relates to the Deepwater Horizon oil spill. The bill names those counties most directly affected by the spill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 248 has several provisions that may reduce collections to the State Treasury:

- The largest impact may result from Section 7’s two-month sales tax holiday for marine-related purchases in seven Northwest Florida counties would reduce the state’s general revenue, but by how much is indeterminate at this time.
- Section 8’s \$10 million general revenue appropriation to OTTED in the current fiscal year also will reduce the balance in the State Treasury.
- The waiver of certain requirements for the CITC incentive program, in Section 1 of the bill, may reduce the amount of corporate income tax collections over a 20-

³³ Art. III, §§ 11 & 12, Fla. Const. (including the prohibition that there be no local law pertaining to the assessment or collection of taxes for state or county purposes).

³⁴ Art III, § 10, Fla. Const.

³⁵ *State ex rel. Buford v. Daniel*, 99 So. 804 (Fla. 1924).

³⁶ Art. III, § 11(b), Fla. Const.

³⁷ *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879 (Fla. 1983); *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992).

³⁸ *State ex rel. Landis v. Harris*, 163 So. 237 (Fla. 1934).

³⁹ *Department of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879 (Fla. 1983).

year period, depending on how many non-Florida businesses take advantage of the waiver to relocate here and make the capital investment and job-creation commitments.

- Refunds of sovereign submerged land lease fees, pursuant to Section 10 of the bill, also may impact the state treasury.

However, waiver of eligibility requirements for the QTI (Section 4) and high-impact performance grant (Section 5) incentive programs will not directly affect the state treasury in FY 10-11, since those programs are funded by annual appropriation and because of the time-lag between when an eligible business signs an incentive agreement with OTTED. Also, QTI is a refund program, wherein an eligible business must document to OTTED the number of hires and wages paid in the previous year related to receiving the agreed-upon refund.

Reducing the qualifying criteria for QTI refunds and HIPI grants could result in greater demand for these programs, and thus the Legislature may decide to increase the annual appropriations to OTTED to pay for these incentives. If increased appropriations are not made, then OTTED may decide to pro-rate appropriated funds to accommodate the newly eligible businesses, which means lower incentive awards to all eligible businesses.

Also, there is no appropriation for the high-impact performance grant program in the FY 10-11 General Appropriations Act.

DOR is researching many of the tax collection issues, and the Revenue Estimating Conference also will be asked to review the fiscal impact all of the provisions of SB 248.

B. Private Sector Impact:

Indeterminate. To the extent that changes to existing economic-development incentives in sections 1, 4 and 5 of the bill persuade non-Florida businesses to relocate to the specified counties within the next two years, then those businesses' employee costs will be less and their corporate tax liabilities will be smaller.

Also, if SB 248 stimulates the Northwest Florida economy as proponents intend, then more businesses in that area may return to economic health or even expand, rehiring laid-off employees or adding new jobs, and make business-related purchases, ultimately triggering more economic activity.

A refund or credit of submerged land lease fees may ease the financial hardship on leaseholders of sovereignty submerged lands that suffered economic losses from the Deepwater Horizon oil spill. Larger docking facilities and marinas may receive significant refunds or credits if funds can be recovered from the responsible party.

C. Government Sector Impact:

DOR and OTTED have responsibilities under several provisions of SB 248 that will increase their workloads.

For the multistate compact, the costs for staff time to conduct the evaluation and report the findings to the Legislature are unknown but are expected to be met with existing resources.

According to the Department of Environmental Protection, it is anticipated that approximately \$2,470,718 could be requested from the responsible party through the CFO for payment to the DEP. This estimate is based on Emergency Order (EO) 4/30/10 - 8/28/10 and EO 10/28/10. The costs for staff time to administer the application and reimbursement program are unknown at this time but are expected to be met with existing resources.

While lease fees also generate tax revenue for the state and local governments, the impact of this bill will be revenue neutral because refunds or credits will be paid from monies collected from the responsible party.

VI. Technical Deficiencies:

Section 1, which creates a waiver of some CITC program requirements, is applicable for non-Florida businesses that relocate to Bay, Escambia, Franklin, or Gulf counties. Three other provisions of the bill related to economic development incentives reference three additional Northwest Florida counties: Okaloosa, Santa Rosa, and Walton.

Section 7 raises a concern regarding what will happen if this section becomes law after April 4, 2011, when the sales tax break goes into effect.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.