The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Tuesday, January 11, 2011
TIME: 8:30 —10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 90** Gaetz	Financial Emergencies; Requires a plan of a county or municipality to improve the efficiency, accountability, and coordination of the delivery of local government services to include a structural and services consolidation plan if the county or municipality is subject to review and oversight by the Governor. Authorizes a financial emergency review board for a local government entity or district school board to consult with other governmental entities for the consolidation of all administrative direction and support services, etc. CA 01/11/2011 ED GO BC	
2	**SM 214** Gaetz	Deepwater Horizon Oil Spill/Tax Relief; Urges the Congress of the United States to support the tax-relief provisions of H.R. 5699 and S. 3934, relating to the Deepwater Horizon Oil Spill of 2010. CA 01/11/2011 BC	
3	**SM 216** Gaetz	Deepwater Horizon Oil Disaster/Federal Income Tax; Urges the Congress of the United States to exempt from federal income tax payments made to victims of the Deepwater Horizon oil disaster and to extend the net operating loss carryback period from 2 years to 5 years. CA 01/11/2011 BC	
4	**SM 218** Gaetz	Deepwater Horizon Oil Disaster/Penalties; Urges the Congress of the United States to dedicate penalties collected from parties responsible for the Deepwater Horizon oil disaster to repairing the environmental and economic damage caused by the disaster. CA 01/11/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SM 220** Gaetz	Unemployment Assistance/Oil Spill; Urges the Congress of the United States to enact a law providing unemployment assistance for individuals who become unemployed as a result of an oil spill. CA 01/11/2011 BC	
6	**SB 248** Gaetz	Economic Recovery/Deepwater Horizon Disaster; Waives the requirement that a facility located in certain counties of this state be in a high-impact sector in order to qualify for the capital investment tax credit. Tolls and extends the expiration dates of certain building permits or other authorizations following the declaration of a state of emergency by the Governor. Provides a special incentive under the tax refund program for a limited time for a qualified target industry business that relocates from another state to certain counties in this state, etc. CA 01/11/2011 BC	
7	**SB 106** Ring	Public Records/Public Owned Performing Arts Center; Creates an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous. Creates such exemption for information identifying a donor or prospective donor to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act, etc. CA 01/11/2011 CM GO	
8	**SB 172** Bennett (Identical H 93)	Security Cameras; Reenacts a specified provision relating to prohibited standards for security cameras. Provides for retroactive operation of the act. Provides for an exception under specified circumstances. CA 01/11/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 174** Bennett	Growth Management; Reenacts provisions relating to the definition of "urban service area" and "dense urban land area" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act. Reenacts provisions relating to certain required and optional elements of a comprehensive plan, concurrency requirements for transportation facilities, a required notice for a new or increased impact fee, the process for adopting a comprehensive plan or plan amendment, etc. CA 01/11/2011 GO BC	
10	**SB 176** Bennett	Affordable Housing; Reenacts a specified provision relating to the state allocation pool used to confirm private activity bonds. Reenacts a specified provision relating to lands that are owned by a community land trust and used to provide affordable housing. Reenacts a specified provision relating to a tax exemption provided to organizations that provide low-income housing. Reenacts a specified provision relating to a property exemption for affordable housing owned by a nonprofit entity, etc. CA 01/11/2011 GO BC	
11	Presentation by the Florida League of Cities on their 2011 Legislative Agenda.		
12	Presentation by the Florida Association of Counties on their 2011 Legislative Agenda.		

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 90
INTRODUCER:	Senator Gaetz
SUBJECT:	Financial Emergencies
DATE:	January 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			ED	
3.			GO	
4.			BC	
5.				
6.				

I. Summary:

This bill requires counties and municipalities that are in a state of financial emergency and therefore subject to review and oversight by the Governor, to include a structure and services consolidation plan in local government plans that seek to improve the efficiency, accountability, and coordination of delivering local government services under s. 163.07, F.S.

This bill also authorizes financial emergency review boards for local governmental entities and district school boards to consult with other governmental entities for the consolidation of all administrative direction and support services when the entity is declared to be in a state of financial emergency. The bill further allows the Governor or Commissioner of Education to require local government entities and district school boards to develop a plan for consolidation in the entity's financial emergency plan.

This bill substantially amends sections 163.07 and 218.503, of the Florida Statutes.

II. Present Situation:

Efficiency and Accountability in Local Government Services

Section 163.07, F.S., provides procedures that allow and encourage local governments to adopt plans that seek to improve the efficiency, accountability and coordination of delivering local government services.[1] Such plans are initiated by a resolution that is adopted by a majority vote of the governing body(s) of:

- Each of the counties involved,

[1] Section 163.07(2), F.S.

- The majority of the municipalities within each county, *or*
- The municipality or combination of municipalities that represent a majority of the municipal population in each county.[2]

The resolution must establish a commission composed of representatives from the county, municipality, and any affected special districts, who are responsible for developing a plan to deliver local government services in accordance with the purposes of this section.[3] The adopted plan must:

- Designate the area and local government services that are subject to the plan.
- Describe the existing organizational and financial structure of such services, and provide for the reorganization thereof.
- Designate the local agency that is responsible for delivering each service.
- Designate services that should be delivered regionally or countywide, without restricting the power of a municipality to finance and deliver services.
- Provide means to reduce the costs of providing local government services and enhance service provider accountability.
- Include a multi-year capital outlay plan for infrastructure.
- Specifically describe any expansion of municipal boundaries that would further the goals of this section.
- Provide procedures for modifying or terminating the plan.
- Specify any modifications to any special acts that are necessary in order to effectuate the plan.
- Provide an effective date.[4]

Any plan that is developed pursuant to s. 163.07, F.S., must conform to current local government comprehensive plans and must be approved by a majority vote of the governing body(s):

- In each of the counties involved,
- Of a majority of municipalities in each county, *and*
- Of the municipality(s) that represent a majority of the municipal population in each county.[5]

After the plan is approved the governing bodies in the participating county(s) and municipality(s), the plan must also be approved by a majority of the voters in each county, and a majority of the voters of the municipalities that represent a majority of the municipal population of each county, through a countywide voter referendum.[6] Any plan that calls for the merger or dissolution of special districts, or for municipal annexation must comply with the statutory provisions in chapters 189 and 171, F.S, respectively.[7]

[2] Section 163.07(2), F.S.
[3] *Id.*
[4] Section 163.07(3)(a) –(j), F.S.
[5] Section 163.07(4) - (5)(a), F.S.
[6] Section 163.07 (5)(b), F.S.
[7] Section 163.07(6) – (7)

Financial Emergency

The Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act[8], located in Part V, of ch. 218, F.S., was enacted to preserve and protect the fiscal solvency of local government entities,[9] charter schools, and district school boards that are in a state of financial emergency. Under the provisions of this act, a local governmental entity, charter school, charter technical career center, or district school board that meets one of the statutory indicators of financial distress is required to notify the Governor or Commissioner of Education and the Legislative Auditing Committee.[10]

Statutory indicators of financial distress include any one of the following conditions:

- Failure within the same fiscal year in which due, to pay short-term loans or failure to make bond debt service or other long term debt payments when due, as a result of a lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.
- Failure to transfer the following at the appropriate time, due to a lack of funds:
    - Taxes withheld on the income of employees; or
    - Employer and employee contributions for federal social security or for employees' pension, retirement or benefit plan.
- Failure for one day period, to pay wages and salaries owed to employees, or retirement benefits owed to former employees due to a lack of funds.
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, for which sufficient local government, charter school, charter technical career center, or district school board resources, are not able to cover.[11]

Upon notification that one or more of these conditions are met, the Governor or Commissioner of Education, as appropriate, must then determine whether state assistance is needed in order to resolve or prevent the local government entity's financial condition.[12] If state assistance is needed, then the entity is determined to be in a state of financial emergency.[13]

Once an entity is determined to be in a state of financial emergency, the Governor or Commissioner of Education has the power to implement certain remedial measures to assist the entity in resolving the financial emergency.[14] Pursuant to subsection (3) of s. 218.503, F.S., the Governor or Commissioner of Education may:

- Require the local governmental entity or district school board's budget to be approved by the Governor or Commissioner of Education respectively.

[8] The full title of this act is the "Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act".
[9] Section 218.502, F.S., defines local government entity to mean "a county, municipality, or special district".
[10] Section 218.503(1)-(2), F.S. **Note:** a charter school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee; a charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee; and the district school board shall notify the Commissioner of Education and the Legislative Auditing Committee.
[11] Section 218.503(1)(a) –(e), F.S. ". . . as reported on the balance sheet or statement of net on the general purpose or fund financial statements."
[12] Section 218.503(3), F.S.
[13] *Id.*
[14] Section 218.503 (3), F.S.

- Authorize and provide for the repayment of a state loan to the local governmental entity.
- Prohibit the local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt while they are in a state of financial emergency.
- Inspect and review the local governmental entity or district school board's records, information, reports, and assets.
- Consult with local governmental entity and district school board officials and auditors to discuss the necessary procedures to bring the books of account, accounting systems, financial procedures and reports into compliance with state requirements.
- Provide technical assistance to the local governmental entity or district school board.
- Establish a financial emergency board that would oversee local government or district school board activities, which shall be appointed by the Governor or State Board of Education as appropriate.
- Require and approve a plan to be prepared by the local governmental entity or district school board that prescribes the necessary actions to adjust the entity's debt. [15]

Subsection (5) of s. 218.503, F.S., prohibits a local government entity or district school board from applying under the bankruptcy provisions of the United States Constitution without prior approval from the Governor for local governmental entities or the Commissioner of Education for district school boards.[16]

A.) Financial Emergency Board

In implementing measures to assist a local government entity or district school board declared to be in a state of financial emergency, the Governor, or the Commissioner of Education, may establish a financial emergency board to oversee local government or district school board activities.[17] The Governor or the State Board of Education, as appropriate, shall appoint members and select a chair to serve on the board. Once established, the board may:

- Review the entity's records, reports, and assets;
- Consult with the local entity officials and auditors and with state officials regarding the necessary steps to bring the entity's books of account, accounting systems, financial procedures and reports into compliance with state requirements; and
- Review the entity's operations, management, efficiency, productivity, and financing of functions and operations.[18]

Any "recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action."[19]

B.) Financial Emergency Plan

Upon declaration of a state of financial emergency, the Governor or Commissioner of Education may require the respective local governmental entity or district school board to develop a plan,

[15] Section 218.503(3)(a)-(h), F.S.
[16] Section 218.503(5), F.S.
[17] Section 218.503 (3)(g)1., F.S.
[18] Section 218.503 (3)(g)1. a.-c., F.S.
[19] Section 218.503 (3)(g)2., F.S.

subject to the Governor or Commissioner's approval, that prescribes remedial actions to adjust the entity's current financial state.[20] The adopted plan must include, but need not be limited to:

- Provision(s) for the full payment of obligations outlined in subsection (1) of s. 218.503, F.S., designated as priority items, that are currently due or will become due.[21]
- The establishment of priority budgeting or zero-based budgeting, in order to eliminate items that are not affordable.
- The prohibition of a level of operations which can be sustained only with nonrecurring revenues.[22]

III. Effect of Proposed Changes:

Section 1 creates subsection (6) in s. 163.07, F.S., to require county or municipal plans that seek to improve the efficiency, accountability, and coordination of the delivery of local government services, to include a structural and services consolidation plan if the county or municipality is subject to review and oversight by the Governor pursuant to s. 218.503, F.S.

Section 2 amends paragraph (g) of s. 218.503(3), F.S., to authorize financial emergency boards appointed by the Governor or Commissioner of Education, as appropriate, after a declaration of a state of financial emergency, to consult with other governmental entities for the consolidation of all the administrative direction and support services. Such services include, but are not limited to, services for:

- Asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

This section also amends paragraph (h) of s. 218.503(3), F.S., to require local governmental entities or district school boards that have been instructed by the Governor or Commissioner of Education to develop plans after being declared in a state of financial emergency, to include the consolidation, sourcing, or discontinuance of all administrative direction and support services as part of the entity's adopted plan. Such services include, but are not limited to, services for:

- Asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Section 3 provides that this act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[20] Section 218.503 (3)(h), F.S.
[21] Note- subsection (1) of s. 218.503, F.S., as previously discussed above, addresses the indicators of financial distress.
[22] Section 218.503 (3)(h)1.-3., F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Counties and municipalities that elect to adopt and efficiency and accountability plan and that are under the review and oversight of the Governor due to financial emergency will be required to include a structural and services consolidation plan as part of any adopted efficiency and accountability plan under s. 163.07, F.S.

Local government entities and district school boards that are declared by the Governor or Commissioner of Education to be in a state of financial emergency will be required to include the consolidation, sourcing or discontinuance of all administrative direction and support services as part of the entity's adopted financial emergency plan.

Financial emergency boards acting on behalf of an entity that has been declared to be in a state of financial emergency will be authorized to consult with other governmental entities for the consolidation of all administrative direction and support services.

VI. Technical Deficiencies:

The sponsor may want to clarify the term, "structural and services consolidation plan", located on lines 117-118 of the bill.

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.

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 117 - 118

and insert:

Governor pursuant to s. 218.503 must include a plan for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

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

And the title is amended as follows:

Delete lines 6 - 7

and insert:

local government services to include a plan for the consolidation of all administrative direction and support services if the county or

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete line 277
and insert:
4. Provisions implementing the consolidation, sourcing, or discontinuance of all

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 17
and insert:
develop a plan implementing the consolidation,

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sourcing, or

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:	SM 214
INTRODUCER:	Senator Gaetz
SUBJECT:	Deepwater Horizon Oil Spill/Tax Relief
DATE:	January 4, 2011 REVISED:

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

I. Summary:

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. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010.

SM 214 urges Congress to support certain tax-relief provisions of H.R. 5699 and S. 3934, introduced in the 111th Congress, relating to the Deepwater Horizon Oil Spill of 2010.

II. Present Situation:

Initial Deepwater Horizon Explosion

At approximately 10:00 p.m. 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

[1] Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html (last visited 12/20/2010).

deposits were discovered. The site, known as the Mississippi Canyon Block 252, is estimated to hold as much as 110 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] Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating different rates from the official government estimates. The actual daily rate of leakage was somewhere between 35,000 and 60,000 barrels per day. "The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico."[4] As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline.[5]

Florida Response

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.[6] 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.[7] Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.[8]

Florida's emergency response system began immediate operations, which continued through the capping of the well.[9] The 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.

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[2] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at http://www.oilspillcommission.gov/sites/default/files/documents/Containment%20Working%20Paper%2011%2022%2010.pdf%20 (last visited 12/22/2010).

[3] WSJ.com Deepwater Horizon Rig Disaster – Timeline.

[4] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at http://www.oilspillcommission.gov/sites/default/files/documents/Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper%2010%206%2010.pdf%20 (last visited 12/22/2010). "By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem."

[5] Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 12/23/2010).

[6] Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.

[7] Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.

[8] Office of the Governor, Executive Order Number 10-106, dated May 20, 2010.

[9] The operations transitioned to a monitoring status on August 27, 2010.

As reported by the Governor's Gulf Oil Spill Economic Recovery Task Force at their monthly meeting in October 2010, state and local government institutions in Florida have been granted $130 million in funding from BP to support environmental response and economic recovery efforts.[10]

Award	Amount
1. Response and Recovery Costs	
a. Booming/Consultant Cost	$40,000,000
b. State Response Cost	$10,000,000
2. Tourism	$32,000,000
3. Natural Resource Damage Assessment	$8,000,000
4. Employment and Training Activities	$7,000,000
5. Research Impact on Gulf of Mexico	$10,000,000
6. Mental Health Care	$3,000,000
7. Fish and Shell Fish Testing and Marketing	$20,000,000

On December 29, 2010, BP reported that it had invested over $1 billion in Florida:[11]

BP Payments and Investments – Florida
December 29, 2010

Florida Government Payments	$66,600,000
Payments to Individuals and Businesses	$1,102,800,000
BP Claims Process -- $81,600,000 [1]	
Gulf Coast Claims Facility -- $1,021,200,000 [2]	
Vessels of Opportunity Payments [3]	$73,200,000
Tourism Grants	$32,000,000
NRDA Grants	$8,000,000
Research Grant	$10,000,000
Behavioral Health	$3,000,000
Community Contributions	$300,000
TOTAL	**$1,295,900,000**

[1] Through 8-22-2010. [2] Through 12-28-2010. [3] Through 12-25-2010.

Ongoing Response Efforts

While oil leaked from the Deepwater Horizon rig site, efforts were focused both on stopping the leaking well and on recovering and cleaning up the oil that had leaked out.

[10] Governor's Gulf Oil Spill Economic Recovery Task Force, created by Executive Order No. 10-101. See the October 28, 2010 Report for detailed information on funding from BP.
[11] BP Investments and Payments - Florida, Dec 29, 2010, available at http://www.floridagulfresponse.com/go/doc/3059/979815/ (last visited on 1/5/11).

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. "At its peak, efforts to stem the spill and combat its effects included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and the participation of scores of federal, state, and local agencies."[12] BP hired local boats and crews for the Vessels of Opportunity program. Boats and crews participating in the program were paid for their services, which included a variety of activities, including oil recovery, transportation of supplies, wildlife rescue, and boom deployment and recovery. BP reports that about 3,500 vessels were put into service during the life of the program, with thousands of boats deployed on a daily basis, and that over $500 million was paid across all the Gulf States.[13] The program concluded in Florida in September 2010. Additionally BP hired locals as part of its cleanup crews on the beaches and shores in Florida; almost 15,000 oil spill related jobs were advertised and 46,486 referrals were made through the Agency for Workforce Innovation and regional workforce boards as of the last situation report by the Department of Environmental Protection on August 26, 2010.[14]

From April until July, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Allen announced that the well was "effectively dead," as the "static kill" was completed (drilling intersected the original well site nearly 18,000 feet below the surface and filled the well with mud and cement).[15] On August 26, 2010, Governor Crist signed an executive order that continued the state of emergency for Escambia, Franklin, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties through October 27, 2010.[16]

Once the well was killed, there was further debate on the amount of oil remaining in the Gulf of Mexico. The federal government accounted for 100 percent of the oil through an "Oil Budget" that accounted for oil in 7 categories:[17]

- Direct Recovery from Wellhead (17%)
- Burned (5%)
- Skimmed (3%)
- Chemically Dispersed (8%)
- Naturally Dispersed (16%)
- Evaporated or Dissolved (25%)
- Residual (or "remaining") (26%)

[12] America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, U.S. Secretary of the Navy, General Ray Mabus, available at http://www.oilspillcommission.gov/sites/default/files/documents/Mabus_Report.pdf%20 (last visited 12/23/2010).
[13] BP, Florida News, Vessels of Opportunity Program to Close in Florida, available at http://www.floridagulfresponse.com/go/doc/3059/899263/ (last visited 12/23/2010).
[14] Situation Report #114 (Final).
[15] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.
[16] Office of the Governor, Executive Order Number 10-191, dated August 26, 2010.
[17] As of August 4, 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3.

Some scientific reports found that there was a large underwater plume of oil unaccounted for by the government Oil Budget; additionally, surrounding the well site, some scientists have found that the plume contains high concentrations of natural gas. Other reports found oil lying on or mixed into the sediments of the ocean floor.[18] As recently as October 2010, underwater deposits of oil and tar were found in Pensacola Pass.[19]

Net Operating Loss Carryback Period

Legislation was introduced in Congress to allow any taxpayer who has a qualified oil-spill loss to use a federal 5-year net operating loss carryback for federal tax purposes.[20] Under current law, the net operating loss carryback period allows businesses to amend tax returns from the previous 2 years to account for losses and receive a refund for past taxes paid.

Legislation was also introduced in Congress seeking to enact law that would allow fishing- and tourism-related businesses to carry back their losses from the oil spill for an additional 3 taxable years ("Gulf Coast net operating loss carryback").[21] The Gulf Coast net operating loss carryback would allow Gulf Coast fishing- and tourism-related businesses with $5 million or less in revenue to look back 5 years. Losses otherwise eligible for the carryback period would be reduced by any amounts the business receives from BP for lost profits and earning capacity.

Congress previously enacted a similar rule for businesses following Hurricane Katrina in 2005 and the Midwestern storms, tornadoes, and floods in 2009. Farming losses permanently qualify for a 5-year carryback period.

Housing Stipends

Individuals employed in the cleanup efforts of the Deepwater Horizon Oil Spill were eligible for housing stipends to cover lodging expenses acquired during the course of their employment. Under Federal law, housing allowances are generally treated as taxable income, unless specifically excluded under the IRS Code (i.e. clergy, military).[22] Certain employers with a trade or business located in the Gulf Oil Spill Recovery Zone have paid housing stipends during the Deepwater Horizon Oil Spill cleanup process. Currently, there is no available data indicating how much has been paid in housing stipends.[23]

Work Opportunity Tax Credit

The Work Opportunity Tax Credit (WOTC) is a federal income tax credit program administered by the U.S. Department of Labor and the state workforce agencies (in Florida, the state workforce agency is the Agency for Workforce Innovation). "The main objective of this program

[18] As of September 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.
[19] Oil Spill: BP Targets Submerged Oil, Pensacola News Journal, November 15, 2010, available at http://www.pnj.com/article/20101115/NEWS01/11150309/Oil-Spill-BP-targets-submerged-oil (last visited 12/23/2010).
[20] H.R.5699, introduced by Representative Jeff Miller in the 111th Congress.
[21] Senator Nelson introduced an amendment to H.R. 4213 to achieve this purpose; see also, S. 3934, sponsored by Senators Wicker (MS), Cochran (MS), and Vitter (LA).
[22] U.S. Department of Treasury, Internal Revenue Service, Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers, available at http://www.irs.gov/faqs/faq/0,,id=199753,00.html *See also* Publication 3, Armed Forces Tax Guide, at 4, available at http://www.irs.gov/pub/irs-pdf/p3.pdf (last visited on 1/6/2011).
[23] Email from Michelle Dennard to Joyce Pugh, Florida Senate Committee on Commerce and Tourism (Jan. 6, 2011) (on file with the Senate Committee on Community Affairs).

is to enable the targeted employees to gradually move from economic dependency into self-sufficiency as they earn a steady income and become contributing taxpayers, while the participating employers are compensated by being able to reduce their federal income tax liability."[24] The WOTC is intended to lower an employer's cost of doing business.

Employers must request and receive certification from the state workforce agency before claiming a WOTC on federal income tax returns. The state workforce agency is responsible for certifying that the employee is a new hire that is a member of one of the WOTC target groups consisting of individuals who have consistently faced significant barriers to employment. There are several target groups for this tax credit:

- Qualified Temporary Assistance to Needy Families Recipients
- Qualified Veterans/Disabled Veterans
- Qualified Ex-felons
- Designated Community Residents residing in an Empowerment Zone (Hurricane Katrina victims)
- Vocational Rehabilitation Referrals
- Qualified Summer Youths
- Qualified Food Stamp Recipients
- Qualified Supplemental Security Income Recipients
- Long-Term Family Assistance Recipients
- Qualified Unemployed Veterans
- Qualified Disconnected Youth

For most target groups, the WOTC can be as much as $2,400, which is based on qualified wages paid to the new employee for the first year of employment. Generally, qualified wages are capped at $6,000. The credit is 25% of qualified first-year wages for those employed at least 120 hours and 40% for those employed 400 hours or more. To qualify employers for the WOTC, the new hire must begin work after December 31, 2005, and before September 1, 2011.[25] There is no limit to the number of qualified employees for which an employer can take the credit.

Congress has enacted a special WOTC for certain impacted groups in the past. After Hurricane Katrina, hired employees that were victims of Hurricane Katrina were eligible for the WOTC.

Tax Penalties on Early Withdrawals of Retirement Plans

Most retirement distributions that are paid from a qualified retirement plan or nonqualified (deferred) annuity contract to a participant before he/she reaches the age 59½, are subject to a 10% additional tax penalty for early withdrawal.[26] This additional tax only applies to the portion of the distribution that the participant must include in his/her gross income, and does not apply to

[24] For more information, see U.S. Department of Labor – Work Opportunity Tax Credit, available at http://www.doleta.gov/business/incentives/opptax/ (last visited 1/4/2011); and Agency for Workforce Innovation, Office of Workforce Services – Work Opportunity Tax Credit Program Fact Sheet, available at http://floridajobs.org/wotc/WOTC_QuickFacts_March2009.pdf (last visited 1/4/2011).

[25] U.S. Department of Labor – Work Opportunity Tax Credit Brochure, available at http://www.doleta.gov/business/incentives/opptax/PDF/WOTC_Program_ARRA_Brochure.pdf (last visited 1/4/2011).

[26] U.S. Department of Treasury, Internal Revenue Service, Publication 575, Pension and Annuity Income: Special Additional Taxes, Taxes on Early Distributions, at 30 available at http://www.irs.gov/pub/irs-pdf/p575.pdf (last visited 1/5/2011).

any portions of a distribution that are tax free, or for "corrective distributions of excess deferrals, excess contributions, or excess aggregate contributions."[27]
According to the Internal Revenue Service (IRS), a qualified retirement plan includes:

- A qualified employee plan
  - Including a qualified cash or deferred arrangement (CDA) under the Internal Revenue Code section 401(k),
- A qualified employee annuity plan,
- A tax-sheltered annuity plan (403(b) plan), or
- An eligible state or local government section 457 deferred compensation plan
  - To the extent that any distribution is attributable to amounts the plan received in a direct transfer or rollover from one of the other plans listed here or an IRA.[28]

Deferred annuity contracts that are otherwise subject to the additional 10% tax penalty for early distributions may receive a 5% tax rate instead. "This 5% tax rate applies to distributions under a written election providing a specific schedule for the distribution of [the participant's] interest in the contract if, as of March 1, 1986, [the participant] had begun receiving payments under the election."[29]

Exceptions to the Early Withdrawal Tax Penalty
There are certain exceptions to the early distribution tax penalty, depending upon the type of retirement plan. Beginning with general exceptions, the 10% additional tax penalty does not apply to early distributions that are:

- Part of a series of substantially equal periodic payments that are made at least annually, for the participant's life or life expectancy, or joint lives or joint life expectancies of the participant and his/her designated beneficiary,[30]
- Made because the participant is totally and permanently disabled, or
- Made on or after the death of the plan participant or contract holder.[31]

The IRS also outlines additional exceptions that specifically apply to distributions from qualified retirement plans; these include early distributions that are:

- From a qualified retirement plan after the plan participant's separation from service in or after the year he/she reaches age 55 (or age 50 for qualified public safety employees),
- From a qualified retirement plan to an alternate payee under a qualified domestic relations order,
- From a qualified retirement plan that are equal to, or less than the participant's deductible medical expenses (the amount of your medical expenses that is more than 7.5% of your adjusted gross income), whether or not the participant itemizes his/her deductions,

[27] *Id.*
[28] *Id.*
[29] *Id.* (alteration in original).
[30] The IRS publication notes that if the distribution is "from a qualified retirement plan, the payments must begin after separation from service".
[31] Information obtained from the U.S. Department of Treasury, *See supra* note 23, at 31 (alteration in original) (citation omitted).

- From an employer plan under a written election that provides a specific schedule for distributions of the participant's interest if, as of March 1, 1986, the participant had separated from service and begun receiving payments under the election,
- From an employee stock ownership plan, for dividends on employer securities held by the plan,
- From a qualified retirement plan due to an IRS levy of the plan,
- From elective deferral accounts under 401(k) or 403(b) plans, or similar arrangements, that are qualified reservist distributions,
- From a governmental defined benefit pension plan to a public safety employee, and
- Provided to qualified reservists.[32]

Additional exceptions that apply specifically to nonqualified annuity contracts include early distributions from a(n):

- Deferred annuity contract to the extent allocable to investment in the contract prior to August 14, 1982,
- Deferred annuity contract under a qualified personal injury settlement,
- Deferred annuity contract purchased by the participant's employer upon termination of a qualified employee plan or qualified employee annuity plan and held by the employer until the participant's separation from service, and
- Immediate annuity contract. [33]

Federal Cap on Deductions for Charitable Contributions

Taxpayers are permitted to deduct the value of charitable contributions that are made to qualified organizations from their income taxes. The IRS outlines five types of organizations that can constitute as a qualified organization:

- Community chests, corporations, trusts, funds, or foundations that are organized under the laws of the United States, any state, or the District of Columbia that is organized and operated for the following purposes:
    - Religion, charity, education, science, literary, and for the prevention of cruelty to children or animals.
- War veterans' organizations.
- Domestic fraternal societies, orders and associations operating under the lodge system.
- Certain nonprofit cemetery companies/corporations.
- The United States, any state, the District of Columbia, a U.S. possession or a political subdivision therein, or an Indian tribal government or subdivision performing governmental functions.[34]

The Federal Government limits the amount of charitable contributions certain taxpayers can deduct from their income taxes, depending upon the taxpayer and the type of charity or organization. As of 2009, this charitable contribution limit applies to taxpayers who have an

[32] Information obtained from the U.S. Department of Treasury, *See supra* note 23 (alteration in original) (citation omitted).
[33] *Id.*
[34] Information obtained from the U.S. Department of Treasury, Internal Revenue Service, Publication 526, Charitable Contributions, available at http://www.irs.gov/pub/irs-pdf/p526.pdf (last visited on 1/5/2011).

adjusted gross income that is more than $166,800 or $83,400 for married taxpayers who file separately. [35]

Generally the federal cap on deductions for charitable contributions is 50%, meaning that the taxpayer's charitable contributions cannot exceed more than 50% of his or her gross income for that year.[36] According to the IRS, the following organizations are classified as 50% limit organizations, of which the 50% cap applies:

1. Churches, and conventions or associations of churches.
2. Educational organizations with a regular faculty and curriculum that normally have a regularly enrolled student body that attends classes on site.
3. Hospitals and certain medical research organizations associated with hospitals.
4. Organizations that operate only to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, state and municipal colleges and universities that normally receive substantial support from the U.S., any state, or political subdivisions therein, or from the general public.
5. The U.S. or any state, the District of Columbia, a U.S. possession or a political subdivision thereof, or an Indian tribal government or any of its subdivisions performing substantial governmental functions.
6. "Publicly supported"[37] corporations, trusts, or community chests, funds, or foundations organized and operated only for charitable, religious, educational, scientific, or literary purposes, or to prevent cruelty to children or animals, or to foster certain national or international amateur sports competition.
7. Organizations that may not qualify as "publicly supported", but that meet other tests showing they respond to the needs of the general public, not a limited number of donors or other persons.
8. Most organizations operated or controlled by, and operated for the benefit of, those organizations described herein.
9. Private operating foundation.
10. Private non-operating foundations that make qualifying distributions of 100% of contributions within 2½ months following the year they receive the contribution.
11. A private foundation whose contributions are pooled into a common fund, if the foundation would be described in (8) above but for the right of substantial contributors to name the public charities that receive contributions from the fund.[38]

Charitable gifts to organizations that are not amongst the list of 50% limit organizations, such as "veterans' organizations, fraternal societies, nonprofit cemeteries and certain private non-operating foundations" have a lower deduction limit of 30%.[39]

[35] *Id.* at 13.
[36] *Id.*
[37] The IRS defines "publicly supported" organization to mean that the organization "normally must receive a substantial part of their support, other than income from their exempt activities, from direct or indirect contributions from the general public or from governmental units". *See supra* note 31, at 13.
[38] Information obtained from the U.S. Department of Treasury, *supra* note 31, at 13-14 (alteration in original) (citation omitted).
[39] *Id.* at 14.

Gifts of property that would otherwise be subject to capital gains taxes are treated differently by the IRS. Gifts of capital gains property that are provided to a 50% limit organization have a 30% cap, whereas gifts to non-50% limit organizations, have a 20% cap.[40]

Taxpayers that have provided charitable contributions that exceed the adjusted gross income limit for the year are permitted to "carryover" any excess contributions over the next 5 years until the excess amount is used up.[41]

III. Effect of Proposed Changes:

SM 214 urges Congress to support certain tax-relief provisions of H.R. 5699 and S. 3934, introduced in the 111th Congress, relating to the Deepwater Horizon Oil Spill of 2010. Specifically, the memorial urges Congress to adopt the following provisions:

- Exempt from federal taxation as income, any insurance payouts arising from the oil spill, and payments for damages attributable to the oil spill under s. 1002 of the Oil Pollution Act of 1990, 33 U.S.C. 2702, which were reinvested in the Oil Spill Recovery Zone;
- Recognize any taxpayer who has a qualified oil-spill loss as eligible to use the federal 5-year net operating loss carryback for federal tax purposes;
- Exempt from federal taxation, the housing stipends paid to persons who are employed in the cleanup efforts, and award a tax credit to employers who paid the stipends;
- Award an Employee Retention Tax Credit to qualified employers in the affected Gulf Coast area;
- Waive the tax penalty on early withdrawals of certain retirement plans if the proceeds are used as specified;
- Relax the cap on federal deductions for charitable contributions dedicated to the cleanup efforts; and
- Award a Work Opportunity Tax Credit for the hiring of qualified recovery zone employees.

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[40] *Id.*
[41] *Id.* at 17.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If Congress were to enact legislation supported by the memorial, individuals and businesses in Florida would receive certain federal tax reliefs provided therein.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.

728166

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete line 27
and insert:
That certain provisions of H.R. 5699 and S. 3934, initiated in the 111th Congress, or similar legislation, which

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 4
and insert:
of H.R. 5699 and S. 3934, initiated in the 111th

728166

Congress, or similar legislation, relating to the Deepwater

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:	SM 216
INTRODUCER:	Senator Gaetz
SUBJECT:	Deepwater Horizon Oil Disaster/Federal Income Tax
DATE:	January 4, 2011 REVISED:

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

I. Summary:

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. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010. BP, p.l.c. ("BP"), and the Gulf Coast Claims Facility have been making payments to individuals and business negatively impacted by the oil spill.

SM 216 urges Congress to enact legislation that gives tax relief to individuals and businesses affected by the Deepwater Horizon oil spill. Specifically, Congress is requested to:

- Exempt claim payments from BP or the Gulf Coast Claims Facility from federal income taxes; and
- Extend the net operating loss carryback for fishing- and tourism-related businesses for an additional 3 taxable years (from 2 years to 5 years), which would allow businesses with $5 million or less in revenues to amend tax returns from the previous 5 years and receive a refund for taxes paid.

II. Present Situation:

Deepwater Horizon Oil Spill

At approximately 10:00 p.m. 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

[1] Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html (last visited 12/20/2010).

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 110 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] Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating much different rates from the official government estimates. The actual daily rate of leakage was somewhere between 35,000 and 60,000 barrels per day. "The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico."[4] As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline.[5]

From April until July 2010, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Allen announced that the well was "effectively dead," as the "static kill" was completed (drilling intersected the original well site nearly 18,000 feet below the surface and filled the well with mud and cement).[6]

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[2] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at http://www.oilspillcommission.gov/sites/default/files/documents/Containment%20Working%20Paper%2011%2022%2010.pdf%20 (last visited 12/22/2010).

[3] WSJ.com Deepwater Horizon Rig Disaster – Timeline.

[4] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at http://www.oilspillcommission.gov/sites/default/files/documents/Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper%2010%206%2010.pdf%20 (last visited 12/22/2010). "By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem."

[5] Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 12/23/2010).

[6] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

Florida Response

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.[7] 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.[8] Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.[9]

Florida's emergency response system began immediate operations, which continued through the capping of the well.[10] The 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.

On December 29, 2010, BP reported that it had invested over $1 billion in Florida:[11]

BP Payments and Investments – Florida
December 29, 2010

Florida Government Payments	$66,600,000
Payments to Individuals and Businesses	$1,102,800,000
BP Claims Process -- $81,600,000 [1]	
Gulf Coast Claims Facility -- $1,021,200,000 [2]	
Vessels of Opportunity Payments [3]	$73,200,000
Tourism Grants	$32,000,000
NRDA Grants	$8,000,000
Research Grant	$10,000,000
Behavioral Health	$3,000,000
Community Contributions	$300,000
TOTAL	**$1,295,900,000**

[1] Through 8-22-2010. [2]Through 12-28-2010. [3] Through 12-25-2010.

Responsibility and Payment of Claims

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

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[7] Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.
[8] Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.
[9] Office of the Governor, Executive Order Number 10-106, dated May 20, 2010. On August 26, 2010, Governor Crist signed an executive order that continued the state of emergency for Escambia, Franklin, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties through October 27, 2010. Office of the Governor, Executive Order Number 10-191, dated August 26, 2010.
[10] The operations transitioned to a monitoring status on August 27, 2010.
[11] BP Investments and Payments - Florida, Dec 29, 2010, available at http://www.floridagulfresponse.com/go/doc/3059/979815/ (last visited on 1/5/11).

Under the Oil Pollution Act of 1990 (OPA) "responsible parties," including lessees of offshore facilities, are strictly liable for removal costs and certain damages resulting from a spill. However, OPA caps liability for damages from a spill from an offshore facility to $75 million per incident, except in limited circumstances. Through August 2010, BP administered the processing and payment of claims. Under OPA, the responsible parties are responsible for all removal costs and applicable damages incurred by individuals, business, and state and local governments as a result of the oil spill. Claims include: property damage, economic loss, rental income, and bodily injury.

BP also provided interim advance payments to claimants who were not receiving their ordinary income or profit while cleanup was underway, and who demonstrated financial hardship). Additionally, no person asserting a claim or receiving payment for interim benefits was asked or required to sign a release or waive any rights to assert additional claims, to file an individual legal action, or to participate in other legal actions associated with the Deepwater Horizon oil spill.

Agreeing to a request by the President of the United States, BP committed $20 billion to a trust fund designed to provide compensation for damages incurred by individuals and businesses, as well as for certain government claims. Responsibility for adjudicating individual and business claims against BP to be paid out of this fund was turned over to an independent claims facility run by Kenneth Feinberg, who on August 23, 2010, opened the Gulf Coast Claims Facility to manage the process.[12] From August 23, 2010, through November 23, 2010, claimants could submit claims to the Gulf Coast Claims Facility for "emergency advance payments" to receive emergency relief for damages caused by the oil spill.[13]

Claims covered by the Gulf Coast Claims Facility include:[14]

- Removal and clean up costs: costs that result from actions taken to prevent, minimize, mitigate, or cleanup damages or anticipated damages from the oil spill;
- Damages to real or personal property: any physical injury or damage to:
  - Land and buildings, houses, or objects affixed or attached to the land, or
  - Equipment, boats, cars, furniture, or objects not affixed or attached to the land, and any property not considered real property;
- Lost earnings or profits:
  - Lost Earnings: a loss of or reduction in one's ability to earn wages or income because of the oil spill – for example, if a person was not able to engage in his or her normal job because of the oil spill or made less money than usual because of the oil spill;
  - Lost Profits: loss of income or profits by a business – for example, if a business experienced a temporary or permanent loss or reduction in profits due to the oil spill, or if it was forced to operate under different conditions than those that existed prior to the oil spill;

[12] America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, U.S. Secretary of the Navy, General Ray Mabus, available at http://www.oilspillcommission.gov/sites/default/files/documents/Mabus_Report.pdf%20 (last visited 12/23/2010).
[13] Gulf Coast Claims Facility, Frequently Asked Questions, Section 2, available at http://gulfcoastclaimsfacility.com/faq (last visited 12/22/2010).
[14] Id. at Section 9.

- Loss of subsistence use of natural resources: when an individual or business can no longer use a natural resource to obtain food, shelter, clothing, medicine, or other minimum necessities of life because the natural resource has been injured, destroyed or lost because of the oil spill – for example, if an individual who uses fish or other wildlife for food but can no longer do so because of the oil spill;
- Physical injury or death: an injury to the body proximately caused by the oil spill or the explosion and fire associated with the Deepwater Horizon incident, or by the cleanup of the oil spill; an injury that relates to emotional or mental health is not a physical injury and is not an eligible claim.

Currently, the Gulf Coast Claims Facility is offering claimants a "quick payment final claim" of $5,000 for individuals and $25,000 for businesses without having to submit any more documentation or undergo further claim review; however the quick payment also requires the claimant to sign a release and covenant not to sue. This payment option requires a claimant to release and waive any claims against BP and all other potentially responsible parties with regard to the oil spill or to submit any claim for payment to the National Pollution Funds Center, the Coast Guard office responsible for evaluating and approving Oil Pollution Act claims.[15]

Claimants can also seek a "full review final payment." This option pays for all past and future losses caused by the oil spill. Again, with the full review final payment the claimant must sign a release that releases all of the claimant's past and future damages in exchange for a liquidated amount. Additionally, certain types of payments that claimants may have received will be deducted from the final payment amount, including:

- Any prior payments by BP, the Coast Guard, or the Gulf Coast Claims Facility;
- Payments for lost earnings or profits, any amounts received from unemployment compensation, severance pay, or other employment benefit since the oil spill;
- Amounts received from insurance or other programs as replacement income;
- Amounts received from insurance for losses on injuries (for claims for removal and clean up costs, damage to real or personal property, loss of subsistence use of natural resources, or physical injury or death); and
- Amounts needed to pay any liens, garnishments, or other attachments received by the Gulf Coast Claims Facility on the claimant.

However, amounts a claimant has received from charities will not be deducted from the full review final payment.[16]

Claimants can also seek interim payment claims, which are paid once a quarter for documented past losses caused by the oil spill. These types of payments are available under the Gulf Coast Claims Facility program concludes on August 22, 2013. Also, claimants receiving these payments do not have to sign releases.[17]

[15] Id. at Section 3.
[16] Id. at Section 4.
[17] Id. at Section 5.

As of January 4, 2011, the Gulf Coast Claims Facility has processed approximately 469,374 claims and paid out an estimated $2.89 billion. In Florida:[18]

Gulf Coast Claims Facility – Florida Statistics		
Total Claims (who may have more than one claim type): • Individual Claims: • Business Claims:		156,667 122,426 34,251
	Amount Paid	**Number of Claims**
Totals:	$1,095,431,476	81,296
Total Individual Claims Paid:	$437,618,200	58,683
Total Business Claims Paid:	$657,813,276	22,613
Removal and Cleanup Costs:	$138,000	23
Real or Personal Property:	$187,100	40
Lost Earning or Profits:	$1,095,093,633.14	81,224
Loss of Subsistence Use of Natural Resources:	$0	0
Physical Injury/Death:	$12,742.86	9

States, parishes, counties, local governments, and other political subdivisions that incurred expenses responding to the oil spill and oil spill cleanup have a separate dedicated claims process.

Taxes on Claims

The Internal Revenue Service (IRS) has determined that claims paid for lost wages, income, and profits, certain property damages claims, and payments for emotional distress are taxable.[19] When BP was processing the claims itself, company representatives stated that BP would report any claims it pays to the IRS. Additionally, the Gulf Coast Claims Facility website states that it "will report payments made annually to federal and state taxing authorities, using a Form 1099 or state form equivalent." A copy of that form is also sent to the claimant.[20]

[18] Gulf Coast Claims Facility, Florida Program Statistics, available at http://www.gulfcoastclaimsfacility.com/GCCF_Florida_Status_Report.pdf (last visited on 1/5/11).
[19] IRS, Gulf Oil Spill Information Center, available at http://www.irs.gov/newsroom/article/0,,id=224887,00.html (last visited 12/23/2010).
[20] Gulf Coast Claims Facility, Frequently Asked Questions, #67.

On June 15, 2010, Attorney General Bill McCollum sent a letter to U.S. Congressional members asking them to consider legislation that would exempt oil spill claim payments made to Floridians by BP from 2010 federal income taxes.[21]

There is precedence for Congress to exempt payments related to a disaster from the federal income tax. For example, the payments from the September 11 Victim Compensation Fund of 2001 were exempted from taxation.

H.R. 5598, from the 111th Congress, would have exempted oil spill claim payments from taxation. This bill was sponsored by Representatives Melancon (LA), Boyd (FL), and Ros-Lehtinen (FL).

Net Operating Loss Carryback Period

Legislation was also introduced in Congress to enact law that would allow fishing- and tourism-related businesses to carry back their losses from the oil spill for an additional 3 taxable years ("Gulf Coast net operating loss carryback").[22] Under current law, the net operating loss carryback period allows businesses to amend tax returns from the previous 2 years to account for losses and receive a refund for past taxes paid.

The Gulf Coast net operating loss carryback would allow Gulf Coast fishing- and tourism-related businesses with $5 million or less in revenue to look back 5 years. Losses otherwise eligible for the carryback period would be reduced by any amounts the business receives from BP for lost profits and earning capacity.

Congress previously enacted a similar rule for businesses following Hurricane Katrina in 2005, and the Midwestern storms, tornadoes, and floods in 2009. Farming losses permanently qualify for a 5-year carryback period.

III. Effect of Proposed Changes:

SM 216 urges Congress to enact legislation that gives tax relief to individuals and businesses affected by the Deepwater Horizon oil spill. Specifically Congress is requested to:

- Exempt from federal income tax, those claim payments from BP or the Gulf Coast Claims Facility made to individuals and businesses as a result of the Deepwater Horizon oil disaster for:
  - Lost wages, income, and profits; and
  - Property damage.
- Extend the net operating loss carryback for fishing- and tourism-related businesses for an additional 3 taxable years (from 2 years to 5 years), which would allow fishing- and tourism-related businesses with $5 million or less in revenues to amend tax returns from the previous 5 years and receive a refund for taxes paid.

[21] Letter available at http://myfloridalegal.com/webfiles.nsf/WF/MRAY-86FKCM/$file/TaxReliefLtr.pdf (last visited 12/23/2010).

[22] Senator Nelson introduced an amendment to H.R. 4213 to achieve this purpose; see also, S. 3934, sponsored by Senators Wicker (MS), Cochran (MS), and Vitter (LA).

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If Congress were to enact legislation supported by this memorial, individuals and businesses in Florida would receive a tax relief.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.

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:	SM 218
INTRODUCER:	Senator Gaetz
SUBJECT:	Deepwater Horizon Oil Disaster/Penalties
DATE:	January 4, 2011
REVISED:	

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

I. Summary:

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. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010. The federal government sued nine 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.

SM 218 urges Congress to enact legislation that permits any civil penalties recovered under the Clean Water Act due to the Deepwater Horizon oil disaster to be distributed in the following manner:

(1) Deposited into a newly created Gulf Coast Recovery Fund, managed by a Gulf Coast Recovery Council to provide long-term environmental and economic recovery in the Gulf;
(2) Directed to the five Gulf States to enable each state to pursue their own recovery efforts; and
(3) Remaining funds deposited into the Oil Spill Liability Trust Fund for future recovery efforts.

II. Present Situation:

Initial Deepwater Horizon Explosion

At approximately 10:00 p.m. 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 110 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] Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating much different rates from the official government estimates. The actual daily rate of leakage was somewhere between 35,000 and 60,000 barrels per day. "The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico."[4] As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline.[5]

Florida Response

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.[6] The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco,

[1] Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html (last visited 12/20/2010).
[2] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at http://www.oilspillcommission.gov/sites/default/files/documents/Containment%20Working%20Paper%2011%2022%2010.pdf%20 (last visited 12/22/2010).
[3] WSJ.com Deepwater Horizon Rig Disaster – Timeline.
[4] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at http://www.oilspillcommission.gov/sites/default/files/documents/Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper%2010%206%2010.pdf%20 (last visited 12/22/2010). "By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem."
[5] Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 12/23/2010).
[6] Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.

Pinellas, Hillsborough, Manatee, and Sarasota counties.[7] Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.[8]

Florida's emergency response system began immediate operations, which continued through the capping of the well.[9] The cost to Florida in terms of response costs, damage to Florida's economy and business community, individual workers who have lost jobs, decreases in property values, and restoration of environmental damage remains to be determined and is expected to rise as cleanup and recovery continues.

As reported by the Governor's Gulf Oil Spill Economic Recovery Task Force at their monthly meeting in October 2010, state and local government institutions in Florida have been granted $130 million in funding from BP, p.l.c. ("BP"), to support environmental response and economic recovery efforts.[10]

Award	Amount
1. Response and Recovery Costs	
a. Booming/Consultant Cost	$40,000,000
b. State Response Cost	$10,000,000
2. Tourism	$32,000,000
3. Natural Resource Damage Assessment	$8,000,000
4. Employment and Training Activities	$7,000,000
5. Research Impact on Gulf of Mexico	$10,000,000
6. Mental Health Care	$3,000,000
7. Fish and Shell Fish Testing and Marketing	$20,000,000

On December 29, 2010, BP reported that it had invested over $1 billion in Florida:[11]

BP Payments and Investments – Florida
December 29, 2010

Florida Government Payments	$66,600,000
Payments to Individuals and Businesses	$1,102,800,000
BP Claims Process -- $81,600,000 [1]	
Gulf Coast Claims Facility -- $1,021,200,000 [2]	
Vessels of Opportunity Payments [3]	$73,200,000
Tourism Grants	$32,000,000
NRDA Grants	$8,000,000
Research Grant	$10,000,000
Behavioral Health	$3,000,000
Community Contributions	$300,000
TOTAL	**$1,295,900,000**

[1] Through 8-22-2010. [2] Through 12-28-2010. [3] Through 12-25-2010.

[7] Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.
[8] Office of the Governor, Executive Order Number 10-106, dated May 20, 2010.
[9] The operations transitioned to a monitoring status on August 27, 2010.
[10] Governor's Gulf Oil Spill Economic Recovery Task Force, created by Executive Order No. 10-101. See the October 28, 2010, Report for detailed information on funding from BP.
[11] BP Investments and Payments - Florida, Dec 29, 2010, available at http://www.floridagulfresponse.com/go/doc/3059/979815/ (last visited on 1/5/11).

Ongoing Response Efforts

While oil leaked from the Deepwater Horizon rig site, efforts were focused both on stopping the leaking well and on recovering and cleaning up the oil that had leaked out.

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. "At its peak, efforts to stem the spill and combat its effects included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and the participation of scores of federal, state, and local agencies."[12] BP hired local boats and crews for the Vessels of Opportunity program. Boats and crews participating in the program were paid for their services, which included a variety of activities, including oil recovery, transportation of supplies, wildlife rescue, and boom deployment and recovery. BP reports that about 3,500 vessels were put into service during the life of the program, with thousands of boats deployed on a daily basis, and that over $500 million was paid across all the Gulf States.[13] The program concluded in Florida in September 2010. Additionally BP hired locals as part of its cleanup crews on the beaches and shores in Florida; almost 15,000 oil spill related jobs were advertised and 46,486 referrals were made through the Agency for Workforce Innovation and regional workforce boards as of the last situation report by the Department of Environmental Protection on August 26, 2010.[14]

From April until July, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Allen announced that the well was "effectively dead," as the "static kill" was completed (drilling intersected the original well site nearly 18,000 feet below the surface and filled the well with mud and cement).[15] On August 26, 2010, Governor Crist signed an executive order that continued the state of emergency for Escambia, Franklin, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties through October 27, 2010.[16]

Once the well was killed, there was further debate on the amount of oil remaining in the Gulf of Mexico. The federal government accounted for 100 percent of the oil through an "Oil Budget" that accounted for oil in 7 categories:[17]

- Direct Recovery from Wellhead (17%)
- Burned (5%)
- Skimmed (3%)
- Chemically Dispersed (8%)
- Naturally Dispersed (16%)

[12] America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, U.S. Secretary of the Navy, General Ray Mabus, available at http://www.oilspillcommission.gov/sites/default/files/documents/Mabus_Report.pdf%20 (last visited 12/23/2010).
[13] BP, Florida News, Vessels of Opportunity Program to Close in Florida, available at http://www.floridagulfresponse.com/go/doc/3059/899263/ (last visited 12/23/2010).
[14] Situation Report #114 (Final).
[15] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.
[16] Office of the Governor, Executive Order Number 10-191, dated August 26, 2010.
[17] As of August 4, 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3.

- Evaporated or Dissolved (25%)
- Residual (or "remaining") (26%)

Some scientific reports found that there was a large underwater plume of oil unaccounted for by the government Oil Budget; additionally, surrounding the well site, some scientists have found that the plume contains high concentrations of natural gas. Other reports found oil lying on or mixed into the sediments of the ocean floor.[18] As recently as October 2010, underwater deposits of oil and tar were found in Pensacola Pass.[19]

Responsibility and Payment of Claims

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

Under the Oil Pollution Act of 1990 (OPA) "responsible parties," including lessees of offshore facilities, are strictly liable for removal costs and certain damages resulting from a spill. However, OPA caps liability for damages from a spill from an offshore facility to $75 million per incident, except in limited circumstances. Through August 2010, BP administered the processing and payment of claims. Under OPA, the responsible parties are responsible for all removal costs and applicable damages incurred by individuals, business, and state and local governments as a result of the oil spill. Claims include: property damage, economic loss, rental income, and bodily injury.

Agreeing to a request by the President of the United States, BP committed $20 billion to a trust fund designed to provide compensation for damages incurred by individuals and businesses, as well as for certain government claims. Responsibility for adjudicating individual and business claims against BP to be paid out of this fund was turned over to an independent claims facility run by Kenneth Feinberg, who on August 23, 2010, opened the Gulf Coast Claims Facility to manage the process.[20]

As of January 4, 2011, the Gulf Coast Claims Facility has processed approximately 469,374 claims and paid out an estimated $2.89 billion; Florida represents over 156,000 of those claims, and about $1 billion of the funds distributed.[21]

States, parishes, counties, local governments, and other political subdivisions that incurred expenses responding to the oil spill and oil spill cleanup have a separate dedicated claims process.

[18] As of September 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.
[19] Oil Spill: BP Targets Submerged Oil, Pensacola News Journal, November 15, 2010, available at http://www.pnj.com/article/20101115/NEWS01/11150309/Oil-Spill-BP-targets-submerged-oil (last visited 12/23/2010).
[20] America's Gulf Coast.
[21] Gulf Coast Claims Facility, Program Statistics, available at http://gulfcoastclaimsfacility.com/reports (last visited 1/5/2011).

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."[22] However, BP disputes the estimate of the amount of oil spilled into the Gulf, saying that it is overstated by 20 to 50 percent.[23]

The federal Justice Department is also holding 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 cleanup, 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" (*emphasis added*).[24]

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 directly to the impacted states. The proposals also recommend that the money be used for long-term environmental and economic recovery efforts.[25]

III. Effect of Proposed Changes:

SM 218 urges Congress to enact legislation that permits any civil penalties recovered under the Clean Water Act due to the Deepwater Horizon oil disaster to be distributed in the following manner:

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[22] Government Sues BP for Gulf Oil Spill: U.S. Justice Department Files Lawsuit Against Nine Companies Involved in Disaster, The Associated Press, December 15, 2010, available at http://www.huffingtonpost.com/2010/12/15/government-sues-bp-for-gu_n_797197.html (last visited 12/23/2010). See also BP, 8 Other Firms Sued by Justice Dept. Over Gulf Oil Spill, The Washington Post, December 15, 2010, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/12/15/AR2010121503894.html (last visited 12/23/2010).

[23] BP Disputes Size of Spill, The Associated Press, December 4, 2010, available at http://www2.tbo.com/content/2010/dec/04/T2NEWS04-bp-disputes-size-of-spill/news-nationworld/ (last visited 12/23/2010).

[24] America's Gulf Coast, p. 3. This document also contains a summary of the provisions of the Clean Water Act and the OPA.

[25] See America's Gulf Coast, p. 5; H.R. 6112 (limits funds to environmental recovery efforts); and S. 3792 (limits funds to environmental recovery efforts). The Congressional bills were filed prior to the release of the Secretary of the Navy's report.

(1) Deposited into a newly created Gulf Coast Recovery Fund, managed by a Gulf Coast Recovery Council to provide long-term environmental and economic recovery in the Gulf;
(2) Directed to the five Gulf States to enable each state to pursue their own recovery efforts; and
(3) Deposited into the Oil Spill Liability Trust Fund for future recovery efforts.

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If Congress enacts law providing for any civil penalty money to help in both environmental and economic recovery efforts, the state could direct that money towards helping Florida businesses impacted by the oil spill.

C. Government Sector Impact:

If Congress enacts law providing for any civil penalty money to help in both environmental and economic recovery efforts, the state will benefit from increase funds to focus on long-term recovery efforts.

VI. Technical Deficiencies:

None.

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.

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:	SM 220
INTRODUCER:	Senator Gaetz
SUBJECT:	Unemployment Assistance/Oil Spill
DATE:	January 5, 2011 REVISED:

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

I. Summary:

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. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010.

Because Disaster Unemployment Assistance, a federal unemployment program, is only available for natural disasters, some Floridians who became unemployed as a result of the oil spill, such as self-employed individuals, were not eligible for unemployment benefits. The Agency for Workforce Innovation received 440 claims for benefits from individuals who had lost their jobs due to the oil spill; of that amount 385 claimants received at least one benefit payment.

This memorial urges Congress to enact legislation providing unemployment assistance to individuals who are unemployed due to the oil spill. This would provide benefits to those who would not otherwise be eligible for regular state unemployment benefits.

II. Present Situation:

Initial Deepwater Horizon Explosion

At approximately 10:00 p.m. 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

[1] The Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html (last visited 01/07 2011).

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 110 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] Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating much different rates from the official government estimates. The actual daily rate of leakage was somewhere between 35,000 and 60,000 barrels per day. "The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico."[4] As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline.[5]

Florida Response

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.[6] 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.[7] Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.[8]

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[2] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at http://www.oilspillcommission.gov/sites/default/files/documents/Containment%20Working%20Paper%2011%2022%2010.pdf%20 (last visited 12/22/2010).

[3] The Wall Street Journal, *supra* note 1.

[4] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at http://www.oilspillcommission.gov/sites/default/files/documents/Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper%2010%206%2010.pdf%20 (last visited 12/22/2010). "By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem."

[5] Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 12/23/2010).

[6] Fla. Exec. Order No. 10-99 (April 30, 2010).

[7] Fla. Exec. Order No. 10-100 (May 3, 2010).

[8] Fla. Exec. Order No. 10-106 (May 20, 2010).

Florida's emergency response system began immediate operations, which continued through the capping of the well.[9] The 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.

As reported by the Governor's Gulf Oil Spill Economic Recovery Task Force at their last monthly meeting in October, state and local government institutions in Florida had been granted a total of $7 million for employment and training activities. For example, BP, p.l.c. ("BP"), granted Workforce Escarosa $2.5 million to help with reemployment in the area.[10] In a presentation to the Governor's Gulf Oil Spill Economic Recovery Task Force, the Agency for Workforce Innovation reported that industries likely to be impacted were:

- Fishing, seafood preparation and packaging, fish and seafood wholesalers;
- Accommodation and food services, amusement parks, sightseeing tours, gift shops;
- Retail and general merchandise stores;
- Travel agencies, car rental, air transportation, water transportation;
- Gasoline stations, construction, building materials stores;
- Banking, real estate, temporary help services, building services, waste and remediation services;
- Physicians' offices, emergency medical services, hospitals, emergency services, pharmacies, drug stores; and
- Government.[11]

On December 29, 2010, BP reported that it had invested over $1 billion in Florida:[12]

BP Payments and Investments – Florida
December 29, 2010

Florida Government Payments	$66,600,000
Payments to Individuals and Businesses	$1,102,800,000
BP Claims Process -- $81,600,000 [1]	
Gulf Coast Claims Facility -- $1,021,200,000 [2]	
Vessels of Opportunity Payments [3]	$73,200,000
Tourism Grants	$32,000,000
NRDA Grants	$8,000,000
Research Grant	$10,000,000
Behavioral Health	$3,000,000
Community Contributions	$300,000
TOTAL	**$1,295,900,000**

[1] Through 8-22-2010. [2] Through 12-28-2010. [3] Through 12-25-2010.

[9] The operations transitioned to a monitoring status on August 27, 2010.
[10] Free Services Available to Help Jobless, BP Florida News, available at http://www.floridagulfresponse.com/go/doc/3059/901695/ (last visited 12/23/2010).
[11] Gulf Oil Spill Economic Recovery Task Force, BP Claims Process Workgroup, Presentation by Cynthia Lorenzo, Director of Agency for Workforce Innovation, June 23, 2010, available at http://emergency.awiadministration.com/AlertDetail.aspx?ID=100 (last visited 12/23/2010).
[12] BP Investments and Payments - Florida, Dec. 29, 2010, available at http://www.floridagulfresponse.com/go/doc/3059/979815/ (last visited 1/5/2011).

Ongoing Response Efforts

While oil leaked from the Deepwater Horizon rig site, efforts were focused both on stopping the leaking well and on recovering and cleaning up the oil that had leaked out.

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. "At its peak, efforts to stem the spill and combat its effects included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and the participation of scores of federal, state, and local agencies."[13] BP hired local boats and crews for the Vessels of Opportunity program. Boats and crews participating in the program were paid for their services, which included a variety of activities, including oil recovery, transportation of supplies, wildlife rescue, and boom deployment and recovery. BP reports that about 3,500 vessels were put into service during the life of the program, with thousands of boats deployed on a daily basis, and that over $500 million was paid across all the Gulf States.[14] The program concluded in Florida in September 2010. Additionally BP hired locals as part of its cleanup crews on the beaches and shores in Florida; almost 15,000 oil spill related jobs were advertised and 46,486 referrals were made through the Agency for Workforce Innovation and regional workforce boards as of the last situation report by the Department of Environmental Protection on August 26, 2010.[15] As of December 23, 2010, about 730 cleanup workers were still working.[16]

From April until July, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Allen announced that the well was "effectively dead," as the "static kill" was completed (drilling intersected the original well site nearly 18,000 feet below the surface and filled the well with mud and cement).[17] On August 26, 2010, Governor Crist signed an executive order that continued the state of emergency for Escambia, Franklin, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties through October 27, 2010.[18]

Claims for Lost Income

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

The Oil Pollution Act of 1990 requires "responsible parties," including lessees of offshore facilities, to pay for removal costs and certain damages resulting from a spill. The act allows individuals to submit claims for damages for lost income.

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[13] RestoretheGulf.gov, America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill 3, September 2010, http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf (last visited 01/07/2011).

[14] BP, Florida News, Vessels of Opportunity Program to Close in Florida, http://www.floridagulfresponse.com/go/doc/3059/899263/ (last visited 12/23/2010).

[15] Situation Report #114 (Final).

[16] Data from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.

[17] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

[18] Fla. Exec. Order No. 10-191 (August 26, 2010).

BP provided interim advance payments to claimants who were not receiving their ordinary income or profit while cleanup was underway (upon demonstration of financial hardship).

Agreeing to a request by the President of the United States, BP committed $20 billion to a trust fund designed to provide compensation for damages incurred by individuals and businesses, as well as for certain government claims. Responsibility for adjudicating individual and business claims against BP to be paid out of this fund was turned over to an independent claims facility run by Kenneth Feinberg, who on August 23, 2010, opened the Gulf Coast Claims Facility to manage the process.[19] From August 23, 2010, through November 23, 2010, claimants could submit claims to the Gulf Coast Claims Facility for "emergency advance payments" to receive emergency relief for damages caused by the oil spill.[20]

Of particular importance to individuals out of work, claims covered by the Gulf Coast Claims Facility include:[21]

- Lost Earnings: a loss of or reduction in one's ability to earn wages or income because of the oil spill – for example, if a person was not able to engage in his or her normal job because of the oil spill or made less money than usual because of the oil spill; and
- Lost Profits: loss of income or profits by a business – for example, if a business experienced a temporary or permanent loss or reduction in profits due to the oil spill, or if it was forced to operate under different conditions than those that existed prior to the oil spill.

Currently, the Gulf Coast Claims Facility is offering claimants a "quick payment final claim" of $5,000 for individuals and $25,000 for businesses without having to submit any more documentation or undergo further claim review; however the quick payment also requires the claimant to sign a release and covenant not to sue. This payment option requires a claimant to release and waive any claims against BP and all other potentially responsible parties with regard to the oil spill or to submit any claim for payment to the National Pollution Funds Center, the Coast Guard office responsible for evaluating and approving Oil Pollution Act claims.[22]

Claimants can also seek a "full review final payment." This option pays for all past and future losses caused by the oil spill. Again, with the full review final payment the claimant must sign a release that releases all of the claimant's past and future damages in exchange for a liquidated amount. Additionally, certain types of payments that claimants may have received will be deducted from the final payment amount, including:

- Any prior payments by BP, the Coast Guard, or the Gulf Coast Claims Facility;
- For payments for lost earnings or profits, any amounts received from unemployment compensation, severance pay, or other employment benefit since the oil spill;
- Amounts received from insurance or other programs as replacement income;

[19] RestoretheGulf.gov, *supra* note 13.
[20] Gulf Coast Claims Facility, Frequently Asked Questions, available at http://gulfcoastclaimsfacility.com/faq (last visited 12/22/2010).
[21] Id.
[22] Id.

- Amounts needed to pay any liens, garnishments, or other attachments received by the Gulf Coast Claims Facility on the claimant.

However, amounts a claimant has received from charities will not be deducted from the full review final payment.[23]

Claimants can also see interim payment claims, which are paid one a quarter for documented past losses caused by the oil spill. These types of payments are available under the Gulf Coast Claims Facility program that concludes on August 22, 2013. Also, claimants receiving these payments do not have to sign releases.[24]

To date, the Gulf Coast Claims Facility has processed claims from over 580,000 claimants and paid out about $2.89 billion. In Florida:[25]

Gulf Coast Claims Facility – Florida Statistics	
Total Claimants (who may have more than one claim type):	156,677
Total Paid:	$1,124,431,476
Individual Claimants (who may have more than one claim category):	122,426
Individual Claimants Paid: Total Individual Claims Paid:	58,683 $437,618,200
Claims for Lost Earnings or Profits: Paid for Lost Earning or Profits:	81,224 $1,095,094,633

Disaster Unemployment Assistance
The Disaster Unemployment Assistance (DUA) program is administered by the Agency for Workforce Innovation (AWI) and funded by the U.S. Department of Homeland Security Federal Emergency Management Agency (FEMA) through the U.S. Department of Labor.

- 26 weeks of benefits from the date of the disaster declaration;
- Federally funded program;
- Helps people who become unemployed as a direct result of a declared natural disaster; and
- Unlike unemployment compensation, DUA benefits individuals, including the self-employed, who are not eligible for regular state and federal unemployment compensation.

[23] Id.
[24] Id.
[25] Gulf Coast Claims Facility, Program Statistics, http://gulfcoastclaimsfacility.com/reports (last visited January 5, 2011).

Unfortunately, because DUA is only available for natural disasters, this program was not available for the Floridians who became unemployed as a result of the oil spill, a man-made disaster.

III. Effect of Proposed Changes:

SM 220 urges Congress to pass legislation that creates an Oil Spill Unemployment Assistance Program to provide income assistance to individuals who are unemployed as a result of a spill of national significance and who have no entitlement to any other unemployment compensation, the cost of which shall be borne by responsible parties under the Oil Pollution Act.

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If Congress passes legislation that permits individuals to receive unemployment assistance as a result of a spill of national significance, like the Deepwater Horizon oil spill, then out-of-work individuals will benefit by receiving income replacement for a period of time while they seek new employment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.

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]

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[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, 1011).

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 <u>not</u> 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 (QTI) 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 Program[22] 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 Fund[30] 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 bur 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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (11) is added to section 14.2015, Florida Statutes, to read:

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.—

(11)(a) For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

(b) For a project submitted by a business seeking to relocate from another state to a Disproportionally Affected County between July 1, 2011, and June 30, 2014, the Office of Tourism, Trade, and Economic Development may, up to the cumulative amount of $5 million, waive any or all requirements of any program or programs specifically assigned to the Office of Tourism, Trade, and Economic Development by law, the appropriations process, or by the Governor if the Office of Tourism, Trade, and Economic Development determines such waiver is in the best interest of the public. Prior to granting such waiver, the Director of the Office of Tourism, Trade, and Economic Development shall file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver.

(c) For a project submitted by a business seeking to relocate from another state to a Disproportionally Affected County between July 1, 2011, and June 30, 2014, the Office of Tourism, Trade, and Economic Development may, for cumulative amounts in excess of $5 million but less than $10 million, waive any or all requirements of any program or programs specifically assigned to the Office of Tourism, Trade, and Economic Development by law, the appropriations process, or by the Governor if the Office of Tourism, Trade, and Economic Development determines such waiver is in the best interest of the public. Prior to granting such waiver, the Office of Tourism, Trade, and Economic Development Shall file with the Governor, President of the Senate, and Speaker of the House of Representatives a written statement of the conditions and circumstances consituting the reason for the waiver, and

requesting written concurrence within 5 business days to the Governor from the President of the Senate and the Speaker of the House of Representatives. Without such concurrence, the waiver shall not occur.

(d) A project submitted by a business seeking to relocate from another state to a Disproportionally Affected County between July 1, 2011, and June 30, 2014, that receives a total of $10 million or more from any program or programs assigned to the Office of Tourism, Trade, and Economic Development office by law, the appropriations process, or by the Governor shall not be eligible for a waiver under this section.

Section 2.Section 252.363, Florida Statutes, is created to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency by the Governor tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. The buildout date of a development of regional impact,

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including any extension of a buildout date that was previously granted pursuant to s. 380.06(19)(c).

(b) Within 90 days after the termination of the emergency declaration, the holder of the permit or other authorization shall notify the issuing authority of the intent to exercise the tolling and extension granted under paragraph (a). The notice must be in writing and identify the specific permit or other authorization qualifying for extension.

(c) If the permit or other authorization for a phased construction project is extended, the commencement and completion dates for any required mitigation are extended such that the mitigation activities occur in the same timeframe relative to the phase as originally permitted.

(d) This subsection does not apply to:

1. A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies.

2. A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

3. The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action.

4. A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would be in conflict with the extensions granted in this

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section.

(2) A permit or other authorization that is extended shall be governed by the laws, administrative rules, and ordinances in effect when the permit was issued, unless any party or the issuing authority demonstrates that operating under those laws, administrative rules, or ordinances will create an immediate threat to the public health or safety.

(3) This section does not restrict a county or municipality from requiring property to be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances.

Section 3.Subsection (6) is added to section 253.02, Florida Statutes, to read:

253.02 Board of trustees; powers and duties.—

(6) The board of trustees shall report to the Legislature its recommendations as to whether any existing multistate compact for mutual aid should be modified or whether the state should enter into a new multistate compact to address the impacts of the Deepwater Horizon event or potentially similar future incidents. The report shall be submitted to the Legislature by February 1, 2012, and updated annually thereafter for 5 years.

Section 4.Commission on Oil Spill Response Coordination.—

(1) The Board of Trustees of the Internal Improvement Trust Fund shall appoint a commission consisting of a representative of the office of each board member, a representative of each state agency that directly and materially responded to the Deepwater Horizon disaster, and the chair of each of the following counties: Bay County, Escambia County, Franklin

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County, Gulf County, Okaloosa County, Santa Rosa County, and Walton County. The Governor shall select the chair of the panel from among the appointees.

(2) The commission shall prepare a report for review and approval by the board of trustees which:

(a) Identifies potential changes to state and federal law and regulations which will improve the oversight and monitoring of offshore drilling activities and increase response capabilities to offshore oil spills.

(b) Identifies potential changes to state and federal law and regulations which will improve protections for public health and safety, occupational health and safety, and the environment and natural resources.

(c) Evaluates the merits of the establishment of a federal Gulf-wide disaster relief fund.

(d) Evaluates the need for a unified and uniform advocacy process for damage claims.

(e) Evaluates the need for changes to interstate coordination agreements in order to reduce the potential for damage claims and lawsuits.

(f) Addresses any other related issues as determined by the commission.

(3) The board of trustees shall deliver the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Environmental Protection, and the director of the Office of Tourism, Trade, and Economic Development by September 1, 2012.

(4) This section expires September 30, 2012.

Section 5.(1) The tax levied under chapter 212, Florida

Statutes, may not be collected on the sale of a recreational vessel, commercial vessel, or marine equipment from a registered dealer in Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County from 12:01 a.m., July 1, 2011, through midnight, September 30, 2011.

(2) As used in this section, the term:

(a) "Commercial vessel" has the same meaning as defined in s. 327.02, Florida Statutes.

(b) "Recreational vessel" has the same meaning as defined in s. 327.02, Florida Statutes.

(c) "Marine equipment" means the following items designed to be used on boats: radios, global positioning systems, radar and sonar devices, antennae, personal flotation devices, bilge pumps, marine safety equipment, and anchors and anchoring accessories. The term "marine equipment" also includes boat engines and machine parts designed for boat engines and commercial fishing nets.

(3) The Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 6. (1) For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

(2) There is appropriated for the 2011-2012 fiscal year the sum of $10 million in recurring funds from the General Revenue Fund to the Office of Tourism, Trade, and Economic Development. The Office of Tourism, Trade, and Economic Development shall use

these funds to execute a $10 million contract with Florida's Great Northwest, Inc., for the purpose of developing and implementing an innovative economic development program for promoting research and development, commercialization of research, economic diversification, and job creation in any Disproportionally Affected County.

(3) The contract between the Office of Tourism, Trade, and Economic Development and Florida's Great Northwest, Inc., shall at a minimum, require Florida's Great Northwest Inc., to report quarterly to the Office of Tourism, Trade, and Economic Development and to collaborate with educational entities, economic development organizations, local governments, and relevant state agencies to create a program framework and strategy, including specific criteria governing the expenditure of funds. The criteria for the expenditure of funds shall, at a minimum, require a funding preference for any Disproportionally Affected County and any municipality within a Disproportionally Affected County which provides for expedited permitting in order to promote research and development, commercialization of research, economic diversification, and job creation within their respective jurisdictions. The criteria for the expenditure of funds shall, at a minimum, also require a funding preference for any Disproportionally Affected County and any municipality within a Disproportionally Affected County which combines their permitting processes for expedited permitting in order to promote research and development, commercialization of research, economic diversification, and job creation within their respective jurisdictions.

(4) None of the funds appropriated in this section may be

used for administrative costs of Florida's Great Northwest, Inc.

(5) The funds appropriated in this section 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.

Section 7. (1) For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

(2) Any funds received by the state from any governmental or private entity for damages caused by the Deepwater Horizon oil spill shall be deposited into the applicable state trust funds and expended pursuant to state law or as approved by the Legislative Budget Commission.

(3) Seventy-five percent of such moneys may be used for:

(a) Scientific research into the impact of the oil spill fisheries and coastal wildlife and vegetation along any Disproportionally Affected County's shoreline and the development of strategies to implement restoration measures suggested by such research;

(b) Environmental restoration of coastal areas damaged by the oil spill in any Disproportionally Affected County;

(c) Economic incentives directed to any Disproportionally Affected County of the state; and

(d) Initiatives to expand and diversify the economies of any Disproportionally Affected County.

(4) The remaining 25 percent of such moneys may be used for:

(a) Scientific research into the impact of the oil spill

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fisheries and coastal wildlife and vegetation along any the state's shoreline which is not a Disproportionally Affected County's shoreline and the development of strategies to implement restoration measures suggested by such research;

(b) Environmental restoration of coastal areas damaged by the oil spill in any county other than a Disproportionally Affected County;

(c) Economic incentives directed to any county other than a Disproportionally Affected County of the state; and

(d) Initiatives to expand and diversify the economies of any county other than a Disproportionally Affected County.

(5)(a) The Department of Environmental Protection is the lead agency for expending the funds designated for environmental restoration efforts.

(b) The Office of Tourism, Trade, and Economic Development is the lead agency for expending the funds designated for economic incentives and diversification efforts.

Section 8. (1) The holder of a lease of sovereignty submerged lands may apply to the Department of Environmental Protection for reimbursement of lease fees paid for the lease of sovereignty submerged lands or for the payment of those lease fees by the responsible party or any other independently administered claims process if the leaseholder:

(a) Is in substantial compliance with the lease conditions, excluding lease payments due during the state of emergency declared by the Governor related to the Deepwater Horizon oil spill;

(b) Has received payment for an economic loss due to the Deepwater Horizon oil spill from the responsible party or other

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independently administered claims process which did not include reimbursement for lease fees paid or funds to pay the lease fees.

(2) An application for reimbursement to the Department of Environmental Protection must include documentation of:

(a) An economic loss due to the Deepwater Horizon oil spill which has impaired the leaseholder's ability to pay lease fees. Such documentation may include a copy of a claim filed with the responsible party or any other independently administered claims process;

(b) The filing of a claim for loss or injury with the responsible party, as defined in s. 376.031, Florida Statutes, or any other independently administered claims process;

(c) The receipt of compensation, if any, from the responsible party or any other independently administered claims process which did not reimburse the leaseholder for lease fees paid to the credit of the Internal Improvement Trust Fund or include funds to pay the lease fees; and

(d) The amount of the claim. The amount of the claim is limited to the pro rata amount of lease fees for the period a state of emergency declared by the Governor related to the Deepwater Horizon oil spill for the county in which the lease was located.

(3) Applications shall be submitted to the Department of Environmental Protection on forms provided by the department. Payments received from the responsible party or any other independently administered claims process shall be applied to the approved applications received by the Department of Environmental Protection during the corresponding fiscal year.

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Applications shall be processed by the Department of Environmental Protection until such time as all claims have been processed by the responsible party or any other independently administered claims process.

(4) The Department of Environmental Protection shall post on its website a copy of the application and instructions for completing the application.

(5) The Department of Environmental Protection shall submit the approved amount of claims for each fiscal year to the Chief Financial Officer to request payment of the approved amount from the responsible party or any other independently administered claims process. The Chief Financial Officer shall use the full extent of the law to recover payments sufficient to cover the amount needed to credit or reimburse lease fees for applications approved each fiscal year.

(6) Upon receipt of payment from the responsible party or any other independently administered claims process, the Chief Financial Officer shall deposit the payment into the Internal Improvement Trust Fund. Upon the deposit of the funds, the Department of Environmental Protection shall:

(a) Reimburse the applicant for any lease fees paid for the applicable time period in an amount not to exceed the payment from the responsible party or any other independently administered claims process for that applicant; or

(b) Credit to the applicant’s lease fees due for the applicable time period an amount not to exceed the payment from the responsible party or any other independently administered claims process for that applicant.

(7) If the amount deposited into the Internal Improvement

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Trust Fund in any fiscal year is insufficient to fully reimburse or credit all approved applications, the department shall issue reimbursements or credits on a pro rata basis.

(8) For purposes of this section, the term "lease fees" includes any associated sales or use tax under ch. 212.

(9) The Department of Environmental Protection shall report to the Legislature on the implementation of this section by February 15 each year until 2014.

Section 9. Sections 1, 5, 6, and 7 of this act may be cited as the "Oil Spill Recovery Act."

Section 12. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to economic recovery from the Deepwater Horizon disaster; amending s. 14.2015, F.S.; defining Disproportionally Affected County; creating a process for the Office of Tourism, Trade, and Economic Development to waive any or all program requirements under certain circumstances when in the best interest of the state; creating s. 252.363, F.S.; tolling and extending the expiration dates of certain building permits or other authorizations following the declaration of a state of emergency by the Governor; providing exceptions; providing for the laws,

administrative rules, and ordinances in effect when the permit was issued to apply to activities described in a permit or other authorization; providing an exception; amending s. 253.02, F.S.; requiring the Board of Trustees of the Internal Improvement Trust Fund to recommend to the Legislature whether existing multistate compacts for mutual aid should be modified or if a new multistate compact is necessary to address the Deepwater Horizon event or similar future incidents; requiring that the Board of Trustees of the Internal Improvement Trust Fund appoint members to the Commission on Oil Spill Response Coordination; providing for the designation of the chair of the commission by the Governor; requiring the commission to prepare a report for review and approval by the board of trustees; specifying the subject matter of the report; temporarily exempting the sale of commercial vessels, recreational vessels, and marine equipment sold by registered dealers in certain counties from the sales tax; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation to the Department of Revenue to administer the sales tax exemptions; defining Disproportionally Affected County; providing an appropriation to the Office of Tourism, Trade, and Economic Development to contract with Florida’s Great Northwest, Inc., in order to develop and implement an economic development program for a Disproportionally Affected County; specifying a preference for a

Disproportionally Affected County or municipalities within a Disproportionally Affected County which provide expedited or combined permitting for certain purposes; providing for the appropriation to be placed in reserve by the Executive Office of the Governor for release as authorized by law or the Legislative Budget Commission; defining Disproportionally Affected County; providing for the deposit of federal funds or entities involved in the Deepwater Horizon oil spill into applicable state trust funds; specifying permissible uses of such funds; designating the Department of Environmental Protection as the lead agency for expending funds for environmental restoration; designating the Office of Tourism, Trade, and Economic Development as the lead agency for funds designated for economic incentives and diversification efforts; authorizing the holder of a lease of sovereignty submerged lands to apply to the Department of Environmental Protection for the payment or the reimbursement of lease fees for the period of the state of emergency for the Deepwater Horizon oil spill; specifying conditions for eligibility; requiring an application to the Department of Environmental Protection; requiring the Chief Financial Officer to use the full extent of the law to recover payments from the responsible party or other independently administered claims process; providing a short title for certain sections of the act; providing an effective date.

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 106
INTRODUCER:	Senator Ring
SUBJECT:	Public Records
DATE:	January 3, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			CM	
3.			GO	
4.				
5.				
6.				

I. Summary:

This bill creates an exemption from public-records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center or for the benefit of the Legislative Research Center and Museum at the Historic Capitol should the donor wish to remain anonymous. The bill also defines the term "publicly owned performing arts center" and contains a statement of public necessity. Both exemptions are subject to legislative review and repeal under the Open Government Sunset Review Act.

Since this bill creates a new public-records exemption, it requires a two-thirds vote of the membership of each house of the Legislature for passage.

This bill substantially amends section 272.136, of the Florida Statutes, and creates two undesignated sections of law.

II. Present Situation:

Public Access

The State of Florida has a long history of providing public access to governmental records, with the first public records law being enacted by the Florida Legislature in 1892.[1] In 1992, Florida voters adopted an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.[2]

[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] FLA. CONST. art. I, s. 24.

Section 24, Art. I, of the State Constitution, states that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Act

The Public Records Act, located in ch. 119, F.S., specifies conditions under which the public must be provided access to agency records.[3] Section 119.07(1)(a), F.S., requires every person who has custody of a public record to allow the record to be inspected and examined by any person, "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records".[4] Unless specifically exempted, all agency records are available for public inspection.

The term "public record", is broadly defined in s. 119.011(12), F.S., to include:

> . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass any materials prepared by an agency in connection with official business which are used to "perpetuate, communicate or formalize knowledge of some type".[6]

The Legislature is the only entity that is authorized to create exemptions from open government requirements.[7] The Legislature may provide an exemption by a general law that is approved by a two-thirds vote of each house of the Legislature.[8] The exemption must specifically state the public necessity justifying the exemption and must be no broader than necessary to accomplish

[3] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[4] Section 119.07(1)(a), F.S.

[5] Section 119.011(12), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] FLA. CONST. art. I, s. 24(c).

[8] *Id.*

the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions; although it may contain multiple exemptions that relate to one subject.[11]

There is a difference between records that the Legislature exempts from public inspection and those that that the Legislature makes *confidential* and exempt for public inspection. If the Legislature makes a record confidential and exempt, then such information may not be released by an agency to anyone other than the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act), in s. 119.15, F.S., provides a process for the review and repeal, or reenactment of public records exemptions.[14] Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2nd of the 5th year after enactment, unless the Legislature acts to reenact the exemption.[15] By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.[16]

As part of the legislative review process for exemptions from public meeting and public records requirements, the Legislature is required to consider the following criteria:

- Specific records or meetings that are affected by the exemption;
- Whom the exemption uniquely affects, as opposed to the general public;
- The identifiable public purpose or goal of the exemption;
- Whether the information contained in the records or discussed in the meeting can be readily obtained by alternative means, and if so, how;
- Whether the record or meeting is protected by another exemption; and
- If there are multiple exemptions for the same type of record or meeting that would be appropriate to merge.[17]

The Act states that an exemption may only be created, revised, or expanded if it serves an identifiable public purpose and the exemption is no broader than necessary to meet the public purpose it serves.[18] An identifiable public purpose is considered to be served if the exemption meets one of three specified criteria, and the Legislature finds that the purpose is "sufficiently

[9] *Id. See also Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be treated as a new exemption if it is "substantially amended", so that the exemption is expanded to cover additional records or information, or to include meetings as well as records. *See* s. 119.15(4)(b), F.S.
[11] FLA. CONST. art. I, s. 24(c).
[12] Op. Att'y Gen. Fla. 85-62 (1985).
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] This Act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.
[15] Section 119.15(3), F.S.
[16] Section 119.15(5)(a), F.S.
[17] Section 119.15(6)(a)1. - 6., F.S.
[18] Section 119.15(6)(b), F.S.

compelling to override the strong public policy of open government and cannot be accomplished without the exemption".[19] The prescribed statutory criteria include whether the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[20]

Examples of current exemptions for donors or prospective donors

Entity	***Exemption***	***Florida Statute***	***Status***
Enterprise Florida, Inc. (OTTED)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc. (OTTED)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Dept. of State)	Information which, if released, would identify donors and amounts contributed. Information which, if released, would identify prospective donors.	265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
Direct Support Organization (Univ. of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (FWC)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Museum (DACS)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information.	570.903(6)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.

[19] *Id.*
[20] *See* s. 119.15(6)(b)1. - 3., F.S.

John and Mable Ringling Museum of Art Direct Support Organization (FSU)	Information that would, if released, identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.
Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, personal information regarding contract beneficiaries, including identity.	1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.

Direct-Support Organization

A.) In General

Florida law provides for the establishment of direct-support organizations as a means to assist state agencies in accomplishing their missions. Direct-support organizations are established as Florida corporations not for profit which are incorporated under ch. 617, F.S., and approved by the Department of State. Section 617.01401(5), F.S., defines the term "corporation not for profit" as "a corporation no part of the income or profit of which is distributable to its members, directors, or officers."

Direct-support organizations perform a variety of services for state agencies, including:

- Raising money;
- Submitting requests for, and receiving grants from, the federal government, the state, or its political subdivisions;
- Receiving, holding, investing, and administering property;
- Assisting an agency in performing its mission; and
- Making expenditures for the benefit of the supported agency.[21]

Direct-support organizations have been established in Florida to support a wide array of services and agencies, including: child abuse prevention and adoption; tourism; public guardianship; victims of crime; universities, community colleges, and school districts; the Florida National Guard; the Departments of Corrections, Juvenile Justice, Agriculture and Consumer Services, and Veterans' Affairs; and the Florida Prepaid College Board.[22]

Florida Statutes generally require direct-support organizations to:

- Operate under written contract with the supported agency;
- Be governed by a board of directors; and
- Operate for the benefit of, and in a manner consistent with, the goals of the agency and in the best interest of the state.

[21] Sections 39.0011, 250.115, 267.1732, 267.1736, 288.1226, 292.055, 570.903, 744.7082, 944.802, 960.002, 985.672, 1001.453, 1004.28, 1004.70, and 1009.983, F.S.
[22] *Id.*

B.) Direct-Support Organization for the Florida Historic Capitol and the Legislative Research Center and Museum

In 2009, the Legislature enacted s. 272.136, F.S., authorizing the Legislative Research Center and Museum at the Historic Capitol and the Capitol Curator[23] to establish a direct-support organization in order to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum, including but not limited to, their education programs and initiatives.[24] The direct-support organization established under s. 272.136, F.S., must be:

- A Florida corporation;
- Not for profit;
- Incorporated under ch. 617, F.S.; and
- Approved by the Department of State.[25]

The direct-support organization is governed by a board of directors with a demonstrated capacity for supporting the mission of the Historic Capitol, of which the initial appointments shall be made by the President of the Senate and the Speaker of the House of Representatives, and thereafter by the board.[26]

If the direct-support organization is no longer authorized or fails to comply with the requirements of s. 272.136, F.S., fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the direct-support organization account revert to the state and are deposited into an account designated by the Legislature.[27]

III. Effect of Proposed Changes:

Section 1 of the bill creates an undesignated section of law stating that if donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center wishes to remain anonymous, then that donor or prospective donor's name, address, and telephone number are confidential and exempt from s. 119.07(1), F.S., and section 24(a), Art. I, of the State Constitution.

The bill defines "publicly owned performing arts center" as:

> a facility consisting of at least 200 seats, owned and operated by a county or municipality, which is used and occupied to promote development of any or all of the performing, visual or fine arts or any or all matters

[23] The Florida Historic Capitol Curator (Curator) is appointed by and serves at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The Curator is responsible for: (a) promoting and encouraging state knowledge and appreciation of the Florida Historic Capitol; (b) collecting, researching, exhibiting, interpreting, preserving and protecting the history, artifacts, objects, furnishings and other materials related to the Florida Historic Capitol, other than archaeological materials; and (c) developing, directing, supervising, and maintaining the interior design and furnishings within the Florida Historic Capitol. In conjunction with the Legislative Research Center and Museum at the Historic Capitol, the Curator may also assist the Florida Historic Capitol in the performance of certain monetary duties outlined in subsection (3) of s. 272.135, F.S. *See* s. 272.135, F.S.

[24] Chapter 2009-179, s.3, Laws of Fla.

[25] Subsection (2), of s. 272.136, F.S.

[26] Subsection (1), of s. 272.136, F.S.

[27] Subsection (6), of s. 272.136, F.S.

relating thereto, and to encourage and cultivate public and professional knowledge and appreciation of the arts.

This exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act in s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill creates subsection (7) of s. 272.136, F.S., stating that the identity and all information identifying a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous is confidential and exempt from s. 119.07(1), F.S., and section 24(a), Art. I, of the State Constitution. The section also provides that such anonymity shall be maintained in any auditor's report created pursuant to the annual financial audits required under subsection (5) of this section in accordance with s. 215.981, F.S.

This exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act in s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 of the bill states that these exemptions are a public necessity, in order to:

- Encourage private support for publicly owned performing arts centers and the direct-support organization;
- Promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of publicly owned performing arts centers; and
- Promote the programming and preservation of the Florida Historic Capitol and the Legislative Research Center and Museum.

Section 4 of the bill states that this act shall take effect on October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement
Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public-records or public-meetings exemption. Since this bill creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity
Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section three

of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Donors or prospective donors to a publicly owned performing arts center and the direct-support organization for the Florida Historic Capitol and The Legislative Research Center and Museum, would have the option of requesting anonymity, which may encourage private entities to donate.

C. Government Sector Impact:

This exemption may encourage donations, and therefore result in a financial gain to counties and municipalities that own and operate publicly owned performing arts centers.

Similarly, this exemption may also encourage donations that result in financial gain to the State's direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum.

VI. Technical Deficiencies:

None.

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.

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 172
INTRODUCER:	Senator Bennett
SUBJECT:	Security Cameras
DATE:	January 5, 2011
REVISED:	

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

I. Summary:

In response to ongoing litigation, this bill reenacts a section of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) to eliminate any possible question that it could be subjected to a single subject[1] challenge or struck down as an unconstitutional unfunded mandate.[2] The bill does not change the law, but reaffirms the change to the law made in 2009 by SB 360 that prevents local governments from requiring that a business spend funds for security cameras. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras.

This bill reenacts s. 163.31802 of the Florida Statutes.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act" (SB 360).[3] This bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.[4] The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB

[1] Art. III, § 6, Fla. Const.
[2] Article VII, § 18(a), Fla. Const.
[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

360 as an unconstitutional mandate.[5] The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

Single Subject Rule

Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The subject shall be briefly expressed in the title.[6] The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[7] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.[8] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[9] A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[10] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,[11] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[12]

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[13] The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.[14] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[15]

(A) Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or

[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[6] *Franklin v. St/ate*, 887 So.2d 1063, 1072 (Fla.2002).
[7] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).
[8] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[9] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[10] *Ex parte Knight*, 41 So. 786 (Fla. 1906).
[11] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[12] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[13] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[14] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[15] *Id*.

- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[16] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[17]

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

Preemption
Under its broad home rule powers, a municipality and charter counties may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[18] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.[19] A local government cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.[20] Legislature can preempt counties' broad authority to enact ordinances and may do so either expressly or by implication.[21]

Local Ordinances Requiring Security Cameras
The Convenience Business Security Act[22] creates security standards for late-night convenience businesses, including the requirement that every convenience business[23] shall be equipped with a "security camera system capable of recording and retrieving an image to assist in offender identification and apprehension."[24] A political subdivision of this state may not adopt, for

[16] Although the constitution says "no county or municipality shall be bound by any general law" that is an (a) mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.
[17] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.
[18] *See, e.g., City of Hollywood v. Mulligan*, 934 So.2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011 (Fla. 2d DCA 2005).
[19] *Id.*
[20] *Rinzler v. Carson*, 262 So.2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011 (Fla. 2d DCA 2005).
[21] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011 (Fla. 2d DCA 2005).
[22] Sections 812.1701-812.175, F.S.
[23] Defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term "convenience business" does not include: (1) A business that is solely or primarily a restaurant. (2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m. (3) A business that has at least 10,000 square feet of retail floor space. The term "convenience business" does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.
[24] Section 812.173, F.S.

convenience businesses, security standards which differ from the statutory requirement in the provisions of the Act. All differing standards are preempted and superseded by general law.

Section 163.31802, F.S., created by SB 360 preempts local governments from having in place ordinances or rules requiring that a business expend funds for security cameras unless specifically required by general law. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras. The preemption is broader than the Convenience Business Security Act in that it targets all businesses, but narrower in that it only stops local governments from requiring businesses to expend funds on security cameras (whereas the Act applies to a wider array of security requirements). Therefore, under the law as amended by SB 360, convenience businesses have a statutory requirement that they have security cameras, but local governments could not require other businesses to pay for security cameras. Some local governments did have ordinances in place at the time that may be interpreted as requiring security cameras for more than just convenience businesses.[25]

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 (the creation of s. 163.31802, F.S.) related to security cameras. SB 174 and 176 reenact the other parts of SB 360. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is not a mandate as it reenacts current law. The original provision in SB 360 did not require local governments to spend funds and, therefore, was not a mandate.

B. Public Records/Open Meetings Issues:

None.

[25] Note that there are several local governments that have ordinances that are not explicitly limited to convenience stores: Boca Raton Ordinances Part II, § 4-6 (requiring security cameras for nightclubs); DeBary Ordinances Art. II, § 18-34 (requiring security cameras for late-night businesses); Deltona Ordinances Art. II, § 22-33 (requiring security cameras for late-night businesses); Fort Pierce Regulations Art. XIII, § 9-367 (requiring security cameras in all late night stores); Homestead Ordinances Art. I, § 16-5 (requiring security cameras for small late-night restaurants); Jacksonville Ordinances Title V, § 177-301 (requiring security cameras for grocery stores and restaurants); Jacksonville Ordinances Title VI, § 111-310 (enabling Sheriff to purchase cameras for small businesses to meet requirements of Chapter 177); Oakland Park Ordinances Art. III, § 24-39 (requiring security cameras for new and existing hotels); Orange County Ordinances Art. IV, § 38-79 (requiring security cameras for freestanding carwashes); Sunrise Ordinances Art. II, § 3-11 (requiring security cameras to obtain an extended hours license for food service establishments); Volusia County Ordinances Art. II, § 26-36 (requiring security cameras for all late-night businesses, stores, or operations); West Melbourne Ordinances Art. III, § 98-362 (requiring security cameras for nightclubs); West Melbourne Ordinances Art. IV, § 98-963 (requiring interior and exterior security cameras for nightclubs).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.

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 174
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	January 3, 2011 REVISED:

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

I. Summary:

In response to ongoing litigation, this bill reenacts sections of law amended by the parts of ch. 2009-96, Laws of Florida, (SB 360 from 2009) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject[1] challenge. Additionally, if the bill passes by a 2/3 majority of each house, it could remove the argument that these provisions violate the mandates provision of the Florida Constitution.[2] The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360:

- The compliance deadline for local governments to submit financially feasible capital improvement elements was extended, and one of the penalties for failing to adopt a public schools facility element was eliminated.
- Transportation Concurrency Exception Areas (TCEAs) were created in any: municipality that qualifies as a dense urban land area; urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and any county, including the cities within the county, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated within the local comprehensive plan.
- Other local governments have the option of creating TCEAs in certain designated areas.
- TCEAs were not created in Broward or Miami-Dade County.
- The bill explicitly stated that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees.

[1] Art. III, § 6, Fla. Const.
[2] Article VII, § 18(a), Fla. Const.

- A waiver from transportation concurrency requirements on the state's strategic intermodal system was created for certain Office of Tourism, Trade, and Economic Development job creation projects.
- Certain developments became exempt from the development-of-regional-impact (DRI) process in the following areas:
  - municipalities that qualify as dense urban land areas;
  - an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
  - a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.
- Other local governments have the option of designating certain areas as exempt from DRI review.
- The bill required municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
- Parties that fail to resolve their disputes through voluntary meetings must now use mandatory, rather than voluntary, mediation or a similar process.
- Urban service areas may be designated in the comprehensive plan using an expedited process.
- Chapter 2009-96, Laws of Florida, also authorized permit extensions and commissioned a mobility fee study.
- Includes the statement that the Legislature finds that this act fulfills an important state interest from the original bill and includes a statement that this bill, SB 174, fulfills an important state interest.

This bill substantially reenacts parts of sections 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.32465, 171.091, 186.509, and 380.06 of the Florida Statutes.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act" (SB 360).[3] This bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.[4] The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.[5] The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted. Local governments, developers, and other private interests are facing uncertainty as a result of this lawsuit.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

This discussion explains the issues involved in SB 360. It gives background on the issues and specifies the changes made by SB 360. Discussions of the changes to law effected by SB 360 are flagged by underlining marking the beginning of the discussion.

Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[6] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[7] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

A local government may choose to amend its comprehensive plan for a host of reasons. It may wish to: expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. To adopt a comprehensive plan amendment, local governments must hold two public hearings and undergo review by state and regional entities. For most types of comprehensive plan amendments, local governments may only amend their comprehensive plan twice a year.

SB 360 created a provision that requires local governments to make concurrent zoning and comprehensive plan changes upon the request of an applicant with an approved application. The bill also exempted urban service areas from the twice a year restriction on plan amendments and gave them expedited review.

Proportionate Fair-Share Mitigation

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or

[6] *See* Chapter 163, Part II, F.S.
[7] Section 163.3177(5), F.S.

- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation
Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[8] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be "pipelined" or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Urban Service Areas
SB 360 amended s. 163.3164, F.S., to change "existing urban service area" to "urban service area" and to redefine the term to include built-up areas where public facilities and services, including central water and sewer and roads are already in place or are committed within the next three years. The definition also grandfathers-in existing urban service areas or their functional equivalent within counties that qualify as dense urban land areas. This definition is important because for counties that are dense urban land areas, the area within the urban service area automatically became exempt from transportation concurrency and development-of-regional-impact review.

Dense Urban Land Areas
SB 360 created the definition of a "dense urban land area." The definition includes:

- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research determines which local governments qualify as dense urban land areas. The designation becomes effective upon publication on the state land planning agency's website. To support the Office of Economic and Demographic Research, municipalities that change their boundaries send their boundary changes and information on the population effect to the Office of Economic and Demographic Research. In 2009, when the lawsuit was instituted, 246 local governments qualified as dense urban land areas. However, because of statutory exemptions, not all of these would be transportation concurrency exception areas (see below).

Capital Improvements Element

[8] Section 380.06(1), F.S.

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008.) The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008, deadline to submit their financial feasibility reports for their capital improvements element.

SB 360 changed the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008, to December 1, 2011. This means that local governments have not been required to fund the complete costs of their capital improvements listed in their comprehensive plan during this time. These requirements could be costly in and of themselves. At the very least, local governments would have been required to amend their comprehensive plans to remove any capital improvements they could not fund. Failure to comply with the financial feasibility requirement could lead to local governments being ineligible for land use map amendments and subject to financial sanctions. Under challenging economic conditions, it is likely that a court overturning this provision could be very costly for local governments.

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008, deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008, deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

SB 360 changed the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency. The local government may be subjected to the penalties set forth in s. 163.3184(11)(a) and (b), F.S., and the school board may be subjected to penalties set forth in s. 1008.32(4), F.S. The bill gave a waiver from school concurrency for jurisdictions where student enrollment is less than 2,000 even if the growth rate is more than 10%. The bill specified that school districts must include certain relocatables as student capacity for purposes of school concurrency and that the construction of charter schools counts as mitigation for school concurrency.

Transportation Concurrency

The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.[9]

SB 360 modified numerous provisions related to transportation concurrency. These revisions were made in response to concerns that transportation concurrency stifles economic development in urban centers where development should be encouraged to avoid sprawl. This is because developers in congested areas must pay sometimes exorbitant proportionate fair-share costs to pay for road improvements to try to offset the traffic their planned development would create. In some areas, building new roads is functionally impossible. Developers that built their developments prior to congestion or in areas where roads are not yet congested would not have had to pay proportionate fair-share costs for their impacts. Therefore, SB 360 targeted areas based on population density to relieve some of the unintended consequences of transportation concurrency.

SB 360 designated the following areas as transportation concurrency exception areas (TCEAs):

- a municipality that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that did not meet the population threshold of a "dense urban land area" could designate in their comprehensive plans areas such as urban infill and urban service areas as transportation concurrency exception areas.

After SB 360 became law, the Department of Community Affairs interpreted the change as removing state-mandated transportation concurrency within the specified jurisdictions while preserving transportation concurrency ordinances and the transportation concurrency provisions the local governments had already adopted into their comprehensive plans. Therefore, the department indicated that for transportation concurrency exception areas to become effective in practice local governments would need to amend their ordinance and comprehensive plans to implement the transportation concurrency exception area. Some local governments have begun

[9] *See* Professional staff analysis, Committee on Ways and Means, *CS/CS/SB 360* (Mar. 19, 2009), *available at* http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s0360.wpsc.pdf (last visited Mar. 30, 2010).

to amend their comprehensive plans or land use regulations to implement transportation concurrency exception areas. SB 1752, which became law in 2010,[10] attempted to preserve any amendment to a local comprehensive plan adopted pursuant to SB 360 designed to implement a transportation concurrency exception area.

SB 360 did not create TCEAs for designated transportation concurrency districts within a county, such as Broward County, that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees. TCEAs are also not created for a county such as Miami-Dade that has exempted more than 40% of its urban service area from transportation concurrency for purposes of urban infill.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S. This language does not set specific requirements for local governments to include in their mobility plan. It could be as simple as including bike paths or as ambitious as buses or trains. It could mesh with the existing transportation requirements in the comprehensive plan as long as those requirements address alternative modes of transportation. Although adopting a comprehensive plan amendment will involve a cost, the cost of adopting a comprehensive plan amendment varies significantly from jurisdiction and is less significant when local governments are already adopting other amendments in the same cycle. Additionally, not requiring local governments to adhere to the state requirements of transportation concurrency should give local governments the flexibility to manage growth without always going through the costly process of building new roads.

If a local government uses 163.3180(5)(b)6., F.S., the method of creating TCEAs that existed prior to SB 360, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

Subsection (10) of s. 163.3180, F.S., was amended to provide an exemption from transportation concurrency on the SIS for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED)[11] agree are job creation programs as described in s. 288.0656 (for REDI projects) or s. 403.973 (expedited permitting), F.S.

The bill added a specific declaration that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation

[10] Chapter 2010-147, L.O.F.

[11] The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any Rural Areas of Critical Economic Concern (RACEC) project expected to provide more than 1,000 jobs over a 5-year period. OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."

concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The Office of Program Policy Analysis and Government Accountability must study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

SB 360 also added language that within TCEAs the local government will be deemed to achieve and maintain level-of-service standards. It includes a statement that transportation level-of-service standards for development of regional impact purposes must be the same as for transportation concurrency.

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.[12] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

SB 360 exempted developments from the development-of-regional-impact process in the following areas:

- municipalities that qualify as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that do not meet the density requirements to be dense urban land areas can designate in their comprehensive plan certain designated areas (urban infill and urban service areas, e.g.) within their jurisdiction to be exempt from DRI review. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

[12] Section 380.06(1), F.S.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The section explicitly does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Additionally, certain projects that are part of the Innovation Incentive Program, when part of a DRI, do not need to be analyzed under DRI review.

SB 1752, which became law in 2010, included a provision to reauthorize exemptions for developments of regional impact that are underway. Any exemption granted for any project for which an application for development approval has been approved or filed pursuant to s. 380.06, Florida Statutes, or for which a complete development application or rescission request has been approved or is pending, and the application or rescission process is continuing in good faith, should be protected if the development order was filed or application for rescission was pending before a possible final ruling on invalidation of SB 360 could take effect.[13]

Intergovernmental Coordination
The intergovernmental element of a local government's comprehensive plan contains a dispute resolution process. SB 360 changed intergovernmental mediation from optional to mandatory.

Impact Fees
Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes. Section 163.31801 governs impact fees. Prior to SB 360, local governments were required to provide 90 days of notice to create a new impact fee or to change an impact fee. SB 360 modified s. 163.31801(3)(d), F.S., to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

The Definition of "In Compliance"
SB 360 amended the definition of "in compliance" to change a technical error.

Mobility Fee Study
SB 360 required the Department of Transportation and the Department of Community Affairs to continue their mobility fee studies with the goal of developing a mobility fee that can replace the existing transportation concurrency system. The mobility fee study was completed and presented

[13] Chapter 2010-147, L.O.F.

to the Legislature. It is available on the DCA's website and provides some concepts for local governments to use when determining alternatives to transportation concurrency. The Legislature did not adopt a mobility fee nor did the Legislature require local governments to adopt a mobility fee.

Extension of Permits

SB 360 created an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for:

- any permit issued by the Department of Environmental Permitting or a Water Management District under part IV of ch. 373, F.S.,
- any development order issued by the DCA pursuant to s. 380.06, F.S., and
- any development order, building permit, or other land use approval issued by a local government which expired or will expire between September 1, 2008 and January 1, 2012. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreement, the extension applies to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is specifically provided for. The completion date for any mitigation associated with a phased construction project is extended and renewed so the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must have notified the authorizing agency in writing by December 31, 2009, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal. SB 1752, which became law in 2010, contained a provision reauthorizing these permit provisions; therefore, these extensions should remain valid even if SB 360 is struck down by the appellate court.[14]

Single Subject Rule

Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The subject shall be briefly expressed in the title.[15] The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[16] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a

[14] Chapter 2010-147, L.O.F.
[15] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2002).
[16] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

natural or logical connection.[17] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[18] A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[19] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,[20] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[21]

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[22] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[23]

(A) Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[24] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[25]

[17] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[18] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[19] *Ex parte* Knight, 41 So. 786 (Fla. 1906).
[20] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[21] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[22] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[23] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[24] Although the constitution says "no county or municipality shall be bound by any general law" that is an (a) mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.
[25] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments that have designated TCEAS would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or $1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.

The court decided that:

- The cost of amending the comprehensive plan would be at least $15,000 per jurisdiction required to amend its comprehensive plan.
- All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
- Therefore, local governments throughout Florida will be required to spend $3,690,000 to comply with the SB 360 requirement that local governments that have Transportation Concurrency Exception Areas adopt into their comprehensive plan, plans to support and fund mobility within two years.

Because the court deemed $3,690,000 to be greater than an "insignificant fiscal impact," it decided that SB 360 was an unconstitutional mandate. The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts those provisions of SB 360 most closely related to growth management. SB 172 and 176 reenact the parts of SB 360 claimed by the litigants to be outside the purview of growth management. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 1 of ch. 2009-96, the title of SB 360: "Community Renewal Act."

Section 2 reenacts s. 163.3164 (29) and (34), F.S., which define the terms "urban service area" and "dense urban land area." The section also tasks the Office of Economic and Demographic Research within the Legislature with determining which jurisdictions qualify as dense urban land areas under that definition by using specific methods and with annually publishing the list and submitting it to the state land planning agency.

Section 3 reenacts s. 163.3177 (3)(b), (3)(f), (6)(h), (12)(a), and (12)(j), F.S. Paragraph (3)(b) contains the deadline for local governments to comply with the financial feasibility requirement of the CIE. Paragraph (3)(f) states that areas within TCEAs shall be deemed to have achieved

and maintained their level-of-service standard requirements. Paragraph (6)(h) details the requirements for an intergovernmental coordination element. Paragraph (12)(a) & (j) relate to the public schools facility element.

Section 4 reenacts s. 163.3180 (5), (10), (13)(b), and (13)(e), F.S. Subsection (5) & (10) relate to TCEAs. Paragraph (13)(b) & (e) relate to school concurrency.

Section 5 reenacts s. 163.31801(3)(d), F.S., which relates to notice requirements on impact fees.

Section 6 reenacts s. 163.3184(1)(b) and(3)(e), F.S. Paragraph (1)(b) gives the definition of "in compliance". Paragraph (3)(e) requires local governments to consider an application for zoning changes concurrently with comprehensive plan amendment changes.

Section 7 reenacts s. 163.3187(1)(b), (f), and (q) creating exemptions to the twice a year restriction on comprehensive plan amendments.

Section 8 reenacts s. 163.32465(2), F.S., allowing local governments to use the alternative state review pilot program to designate their urban service areas.

Section 9 reenacts s. 171.091, F.S., requiring local governments to file boundary changes with the Office of Economic and Demographic Research.

Section 10 reenacts s. 186.509, F.S., requiring mandatory mediation in certain circumstances.

Section 11 reenacts s. 380.06 (7)(a), (24), (28), and (29) relating to DRIs.

Section 12 reenacts ss. 13, 14, and 34 of ch. 2009-96. Section 13 requires DOT & DCA to work on a mobility fee study and report their findings to the Legislature. Section 14 extends and renews certain permits. Section 34 states that the Legislature finds that this act fulfills an important state interest.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 provides for the act to take effect upon becoming a law and for the portions amended or created by chapter 2009-96 to operate retroactively to June 1, 2009. In the case that a court of last resort finds such retroactive application unconstitutional, the section provides for the act to apply prospectively from the date that it becomes a law.

Other Potential Implications:
SB 360 is on appeal. If the trial court opinion is upheld and the bill in its entirety is struck down, local governments, developments, school districts, and any other people or entities that have relied on the bill may be in uncertain legal waters. Most local governments would not have a financially feasible capital improvements elements, meaning that they would either need to: amend their comprehensive plan to remove unfunded infrastructure projects, fund the often costly projects in their CIE, or possibly be subjected to financial sanctions and a prohibition on comprehensive plan amendments. Similarly, local governments that have failed to adopt school concurrency would be prohibited from adopting comprehensive plan amendments. Local

governments that may want to suspend, reduce, or eliminate impact fees to encourage new business would have to wait 90 days to do so. Any existing ordinances that did not wait 90 days may have questionable validity. In addition, local governments that have not yet adopted transportation concurrency exception area amendments into their comprehensive plan could be prohibited from doing so. Similarly, new developments in dense urban land areas would still have to go through the DRI process.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill reenacts current law. A discussion of mandates issues for SB 360 can be found in the present situation section.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increased certainty of the growth management laws could have a positive financial impact on the development community.

C. Government Sector Impact:

The bill reenacts current law.

VI. Technical Deficiencies:

None.

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.

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 176
INTRODUCER:	Senator Bennett
SUBJECT:	Affordable Housing
DATE:	January 6, 2011
REVISED:	

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

I. Summary:

In response to ongoing litigation, this bill reenacts certain sections of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) that are most related to the subject of affordable housing in order to eliminate any possible question that it could be subjected to a single subject[1] challenge or struck down as an unconstitutional unfunded mandate.[2] The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360 relating to affordable housing:

- Limiting the Florida Housing and Finance Corporation's (FHFC) access to the state allocation pool.
- Providing additional requirements for property receiving the low-income housing tax credit and property owned by a community land trust that is used to provide affordable housing.
- Providing that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.
- Providing additional authorized uses of the local infrastructure surtax for residential housing projects with at least 30 percent of units set aside for affordable housing.
- Revising definitions relating to the state's affordable housing programs.
- Directing the FHFC to establish preference criteria for developers and contractors based in Florida or who have substantial experience developing or building affordable housing.

[1] Art. III, § 6, Fla. Const.
[2] Art. VII, § 18(a), Fla. Const.

- Including certain projects with green building principles, storm-resistant construction, or other elements reducing the long-term maintenance costs as projects eligible for funding under the state's State Apartment Incentive Loans (SAIL) affordable housing program.
- Directing the FHFC and certain state and local agencies to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving foster care.
- Modifying the distribution of funds from the Local Government Housing Trust fund by authorizing set-asides for specific purposes and repealing another section of law providing for the state administration of remaining local housing distribution funds.
- Revising certain criteria related to local housing assistance plans and affordable housing incentive strategies under the State Housing Initiatives Partnership (SHIP) Program.
- Expands the situations in which a district school board can provide affordable housing to include essential services personnel in areas of critical concern.

This bill substantially reenacts parts of the following sections of the Florida Statutes: 159.807, 193.018, 196.196, 196.1978, 212.055, 163.3202, 420.503, 420.507, 420.5087, 420.622, 420.628, 420.9071, 420.9072, 420.9073, 420.9075, 420.9076, 420.9079, and 1001.43. This bill also reenacts the repeal of s. 420.9078, F.S.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act" (SB 360).[3] This bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.[4] The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.[5] The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)[6] is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.[7] It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[6] Formerly the Florida Housing Finance Agency
[7] Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. *See* Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;[8]
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership (SHIP) Program, which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.[9] Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.[10]

SB 360 (2009) amended the Florida Housing and Finance Corporation Act, under Part V, of ch. 420, F.S., to provide a definition for the term "moderate rehabilitation" and to direct the FHFC to provide criteria by rule, establishing a preference for developers and general contractors based in Florida, and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.[11] The bill provided statutory guidelines for the FHFC to use when evaluating whether the developer or general contractor is domiciled in the state and whether he/she has substantial experience.

SB 360 also amended s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code, to the amount of their initial allocation under s. 159.804, F.S. The amendment also provided that after the initial allocation has been provided, the corporation may not receive more than 80

[8] Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.
[9] Sections 201.15 (9) and (10), F.S.
[10] *See* ss. 420.507 (33), and 159.608, F.S.
[11] Chapter 2009-96, L.O.F.

percent of the amount remaining in the state allocation pool on November 16 of each year. The distribution to the corporation of the unused portion of the state allocation pool was not affected.[12]

State Apartment Incentive Loan (SAIL) Program

The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees to provide affordable housing to very-low-income persons if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size; or
- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue code.[13]

"SAIL funds provide gap financing that leverages federal mortgage revenue bonds and allows developers to obtain the full financing needed to construct affordable multifamily units."[14] Under current law, SAIL funds must be reserved for the following tenet groups: commercial fishers and farm workers, families, the elderly, and the homeless.[15] Projects that maintain at least 80 percent of their units for commercial fishing workers, farm workers, and the homeless, are eligible to receive loans with interest rates from 0 to 3 percent. All other projects are eligible for loans with interest rates from 1 to 9 percent.[16]

Ten percent of funds set aside to house the elderly must be reserved to provide loans for the purpose of making existing building health and preservation improvements, sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs and improvements. Loans from the reserved funds may not exceed $750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.[17]

SB 360 (2009) amended s. 420.5087, F.S., to include the following additional criteria the corporation must consider while evaluating and competitively ranking applications for funding under the SAIL program:

- Projects with green building principles, storm-resistant construction, or other elements to reduce long-term costs relating to maintenance, utilities, or insurance.
- Whether the developer and general contractor have substantial experience.
- Domicile of the developer and general contractor. [18]

[12] *Id.*
[13] Section 420.5087(2)(a) - (c), F.S.
[14] The Florida Housing Finance Corporation, *Overview of the Florida Housing Finance Corporation's Mission and Programs*, Sept. 2009, on file with the Senate Committee on Community Affairs.
[15] Section 420.5087(3)(a)-(d), F.S.
[16] Section 420.5087(6)(a), F.S., *referencing* s. 420.507(22)(a)1. and 3., F.S.
[17] Section 420.5087(3)(d), F.S.
[18] Chapter 2009-96, L.O.F.

The bill also provided that SAIL loan proceeds may be used for moderate rehabilitation or preservation of affordable housing units.

State Housing Initiatives Partnership (SHIP) Program

The SHIP program, created in part VII of ch. 420, F.S., provides funds to counties and eligible cities as an incentive for the creation of local housing partnerships, to:

- Expand the production and preservation of affordable housing,
- Further the housing element in a local government comprehensive plan specific to affordable housing, and
- Increase related employment.[19]

SHIP funds are collected from documentary stamp tax revenues and are deposited into the Local Government Housing Trust Fund, which are then distributed on an entitlement basis to counties and Community Development Block Grant cities throughout the state.[20] "The minimum allocation per county is $350,000, of which at least 65 percent of the funds must be used for homeownership."[21]

To be eligible to receive funding under the SHIP program, a county or an eligible city must complete a three step process: (1) submit a local housing assistance plan to the FHFC, (2) within 12 months of adopting the plan, make amendments to incorporate local housing incentive strategies, and (3) within 24 months after adopting the amended plan, the entity must amend its land development regulations or establish local policies and procedures, as necessary, to implement the adopted strategies.[22] A local government seeking approval to receive funding is also required to adopt an ordinance that:

- Creates a local housing assistance trust fund,
- Implements a local housing assistance plan through a local housing partnership,
- Designates responsibility for the local housing assistance plan, and
- Creates an affordable housing advisory committee.[23]

The ordinance, adopted resolution, local housing assistance plan, and other related information must then be submitted to the FHFC for review and approval.[24]

SB 360 (2009) provided new definitions for the following terms under the State Housing Incentives Partnership Act: "annual gross income"; "assisted housing" and "assisted housing development"; "eligible housing"; "local housing incentive strategies"; "preservation"; and "recaptured funds". [25]

SB 360 also provided that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the

[19] Section 420.9072, F.S.
[20] Information obtained from the Florida Housing Finance Corporation, *See supra* note 12.
[21] *Id.*
[22] Section 420.9072(2)(a)1. -3., F.S.
[23] Section 420.9072(2)(b)1. -4., F.S.
[24] *See* s. 420.9072(3), F.S.
[25] Chapter 2009-96, L.O.F.

property being in foreclosure. The one-time relocation grant, in an amount not to exceed $5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.

A. Local Housing Distributions

SB 360 (2009) amended s. 420.9073, F.S., to provide that local housing distributions under SHIP be disbursed by the FHFC on a quarterly or more frequent basis, subject to the availability of funds.[26] The bill also allowed the FHFC to withhold up to $5 million in funds distributed from the Local Government Housing Trust Fund to:

- Provide additional funding to counties and eligible municipalities in a state of emergency.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated by any mortgagee.

SB 360 further clarified that counties and cities receiving SHIP must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.

SB 360 repealed s. 420.9078, F.S., which prior to its repeal, addressed the state administration of remaining local housing distribution funds. This section provided that the FHFC shall distribute remaining funds as follows:

- Proportionately under the local housing distribution formula established in s. 420.9073, F.S., to counties and cities where a state of emergency or natural disaster has been declared by executive order, and which have an approved local housing assistance plan for repairing and replacing housing damaged as part of the emergency or natural disaster.
- If no emergency or natural disaster funding is required, then proportionately among the counties and cities who have fully expended their local housing distribution for the preceding state fiscal year, and who have an approved local housing assistance plan.

B. Local Housing Assistance Plans

Section 420.9075, F.S., requires each county or eligible municipality that is participating in the SHIP program to develop and implement a local housing assistance plan that seeks to provide affordable residential units for persons of very low income, low income, or moderate income, and to persons who have special housing needs.[27] The purpose of these plans is "to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing".[28]

SB 360 (2009) amended s. 420.9075, F.S., to include persons with disabilities as persons with special needs and to allow counties or eligible municipalities to include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income. SB 360 further provided that:

- Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

[26] Chapter 2009-96, L.O.F.
[27] Section 420.9075, F.S.
[28] *Id.*

- Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing.
- Not more than 20 percent of funds made available in each county and eligible municipality may be used for manufactured housing.
- SHIP funds may be used for preconstruction activities, and if preconstruction due diligence activities prove that preservation is not feasible, then the costs for those activities are program costs and not administrative costs if such program expenses do not exceed 3 percent of the annual local housing distribution.
- Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
- Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.[29]

SB 360 also extended Monroe County's exemption from income restrictions relating to the use of set-aside funds in the local government assistance trust fund from July 1, 2008, to July 1, 2013, so that awards could be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.

C. Local Housing Incentive Strategies

Every county or eligible municipality that is participating in the SHIP program, or any municipality receiving SHIP funds through the county or eligible municipality, is required to amend their local housing assistance plan within 12 months of adoption to include local housing incentive strategies.[30] The governing body of the county or municipality is responsible for appointing members to the affordable housing advisory committee by resolution. The committee shall be responsible for evaluating the plan and recommending "specific actions or incentives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value".[31] The committee must be composed of certain individuals as specified in s. 420.9076(2), F.S.

SB360 (2009) amended s. 420.9076(2), F.S., to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee.[32] SB 360 further instructed that the committee submit its final report, evaluation, and recommendations to the FHFC.

Affordable and Workforce Housing Income Requirements

Income requirements for affordable housing and workforce housing are established in ss. 420.0004[33] and 420.5095, F.S., respectively, as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state.

[29] Chapter 2009-96, L.O.F.
[30] Section 420.9076, F.S.
[31] Section 420.9076(4), F.S.
[32] Chapter 2009-96, L.O.F.
[33] Subsections (8), (10), (11), and (15) of s. 420.0004, F.S.

- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state.
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state.
- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.[34]

Affordable Housing Property Exemptions

SB 360 (2009) extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S.[35] The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. The bill also provided that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Affordable Housing for Children and Young Adults Leaving Foster Care

SB 360 (2009) created s. 420.628, F.S., relating to affordable housing for children and young adults leaving foster care.[36] Section 420.628, F.S., directs the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Such young persons are deemed to have met the definitions for eligible persons for affordable housing purposes. In addition, students deemed to be eligible occupants under certain federal requirements[37] are also considered eligible for purposes of affordable housing projects.

State Office on Homelessness

Section 420.622, F.S., creates the State Office on Homelessness within the Department of Children and Family Services in order to "provide interagency, council, and other related coordination on issues relating to homelessness". SB 360 (2009) amended s.420.622 (5), F.S., to allow money granted by the State Office on Homelessness to also be used to *acquire* transitional or permanent housing for homelessness persons.[38]

[34] Section 420.5095(3)(a), F.S.
[35] Chapter 2009-96, L.O.F. See above for Affordable Housing Income Requirements .
[36] *Id.*
[37] 26 USC 42(i)(3)(d), provides conditions under which low-income housing units may not be disqualified as low-income housing because the property is occupied by certain students.
[38] Chapter 2009-96, L.O.F.

Charitable Organizations
Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Property entitled to charitable, religious or other exemptions
In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.[39] Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. The term "affirmative steps" is defined by statute to mean "environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship".[40]

SB 360 (2009), amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken "affirmative steps" to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.[41] SB 360 also provided penalties for properties granted a charitable exemption under this subsection that are transferred for purposes other than affordable housing, or if the property is not actually used as affordable housing, within 5 years after the exemption is granted.

Community Land Trusts
In an effort to create permanent affordable homeownership opportunities for Florida's workforce, local governments donate land or the money to purchase land to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust (CLT) sells the home, but not the land, to an income-eligible buyer at a purchase price that is affordable to the homebuyer, in large part because the buyer is not paying for the land. In return, the homeowner receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

[39] Section 196.196(1)(a)-(b), F.S.
[40] Section 196.196(3), F.S.
[41] Chapter 2009-96, L.O.F.

SB 360 (2009) created s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land owned by a CLT and that is used to provide affordable housing.[42] The bill defined the term community land trust to mean "a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership."

The bill also codified in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

In addition, the bill provided that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess the property based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Discretionary Sales Surtax

Section 212.055, F.S., authorizes qualifying counties and other special local governmental entities to levy various surtaxes. There are seven different types of authorized local discretionary sales surtaxes (also known as local option taxes). The local discretionary sales surtaxes authorized by this section apply to all transactions subject to the sales and use tax imposed pursuant to Chapter 212, F.S.

Section 212.055, F.S., specifies the rate of each surtax that may be imposed, the manner in which each surtax proposal may be adopted and the use of the funds collected. Local discretionary tax rates vary from county to county. The local surtax applies to the first $5,000 of the sales price for most items. Procedures for administration and collection of the surtax are established in s. 212.054, F.S. Any discretionary sales surtax must take effect only on January 1 and terminate on December 31.[43]

SB 360 (2009) amended s. 212.055(2), F.S, relating to local government infrastructure surtaxes, to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families whose household income does not exceed 120 percent of the area median income adjusted for household size, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local

[42] Chapter 2009-96, L.O.F.
[43] Section 212.054(5), F.S.

government to provide such housing.[44] The bill also provided that the local government or special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

Land Development Regulations
Pursuant to 163.3202, F.S., counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its revised comprehensive plan for review pursuant to s. 163.3167(2), F.S. Section 163.3202(2), F.S., outlines minimum provisions that the counties and municipalities should include in their local governments land development regulations.

SB 360 (2009) amended s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place to support the use, but are not located within a high coastal hazard are under s. 163.3178, F.S.[45]

Supplemental Powers and Duties of District School Board, Affordable Housing
Section 1001.43(12), F.S., allows district school boards to use portions of school sites that were purchased within the guidelines of the State Requirements for Education facilities, in which the land is not deemed usable for education purposes because of the location or other factors, or the land is declared as a surplus by the board, in order to provide affordable housing for teachers and other district personnel.

SB 360 (2009) amended s. 1001.43, F.S., to expand the purposes for which a district school board could provide affordable housing by providing that in an area of critical state concern, the board may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.[46]

Constitutional Provisions
A. Single Subject Rule
Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The subject shall be briefly expressed in the title.[47] The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[48] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.[49] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[50] A violation of the one-subject limitation

[44] Chapter 2009-96, L.O.F.
[45] *Id*.
[46] Chapter 2009-96, L.O.F.
[47] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla.2002).
[48] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).
[49] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[50] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.[51] Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,[52] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[53]

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.[54] The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.[55] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[56]

B. Type A Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[57] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[58]

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local

[51] *Ex parte Knight*, 41 So. 786 (Fla. 1906).
[52] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[53] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[54] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[55] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[56] *Id.*
[57] Although the constitution says "no county or municipality shall be bound by any general law" that is an (a) mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.
[58] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's affordable housing and growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 most closely related to affordable housing. SB 172 and 174 reenact the other parts of SB 360 pertaining to security cameras and growth management. By reenacting these bills separately and clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds.

Section 2 reenacts s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing.

Section 3 reenacts s. 196.196(5), F.S., to provide that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.

Section 4 reenacts s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 159.603(7), F.S.,[59] and s. 420.0004, F.S.[60] The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation.

Section 5 reenacts s. 212.055(2)(d), F.S., to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.

Section 6 reenacts s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of specified properties if they are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place.

[59] Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

[60] Income limits for extremely-low, very-low, low, and moderate-income persons or families are defined in s. 420.0004, F.S.

Section 7 reenacts s. 420.503(25), F.S., to provide a definition for "moderate rehabilitation".
Section 8 reenacts s. 420.507(47), F.S., which directs the FHFC to provide criteria establishing a preference for developers and general contractors based in Florida, or who have substantial experience in developing or building affordable housing through the FHFC.

Section 9 reenacts s. 420.5087, F.S., to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program.

Section 10 reenacts s. 420.622(5), F.S., to allow money granted by the State Office on Homelessness to be used to acquire transitional or permanent housing for homeless persons.

Section 11 reenacts s. 420.628, F.S., to direct the FHFC and other state and local agencies receiving funding under SHIP to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Section 12 reenacts s. 420.9071, F.S., to provide definitions for the following terms under the State Housing Incentives Partnership Act: "annual gross income"; "assisted housing" and "assisted housing development"; "eligible housing"; "local housing incentive strategies"; "preservation"; and "recaptured funds".

Section 13 reenacts s. 420.9072, F.S., to delete a cross-reference to s. 420.9078, F.S., which is being repealed in the bill, and to provide that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure.

Section 14 reenacts s. 420.9073, F.S., relating to Local Housing Distributions, to modify the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specified purposes.

Section 15 reenacts s. 420.9075, F.S., relating to local housing assistance plans.

Section 16 reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

Section 17 repeals s. 420.9078, F.S., which used to provide statutory requirements for the FHFC's distribution of funds remaining in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.

Section 18 reenacts s. 420.9079, F.S., to correct cross-references.

Section 19 reenacts s. 1001.43, F.S., to expand the purposes for which a district school board may providing affordable housing, to include essential services personnel in areas of critical state concern.

Section 20 provides that the act shall take effect upon becoming law, and that those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

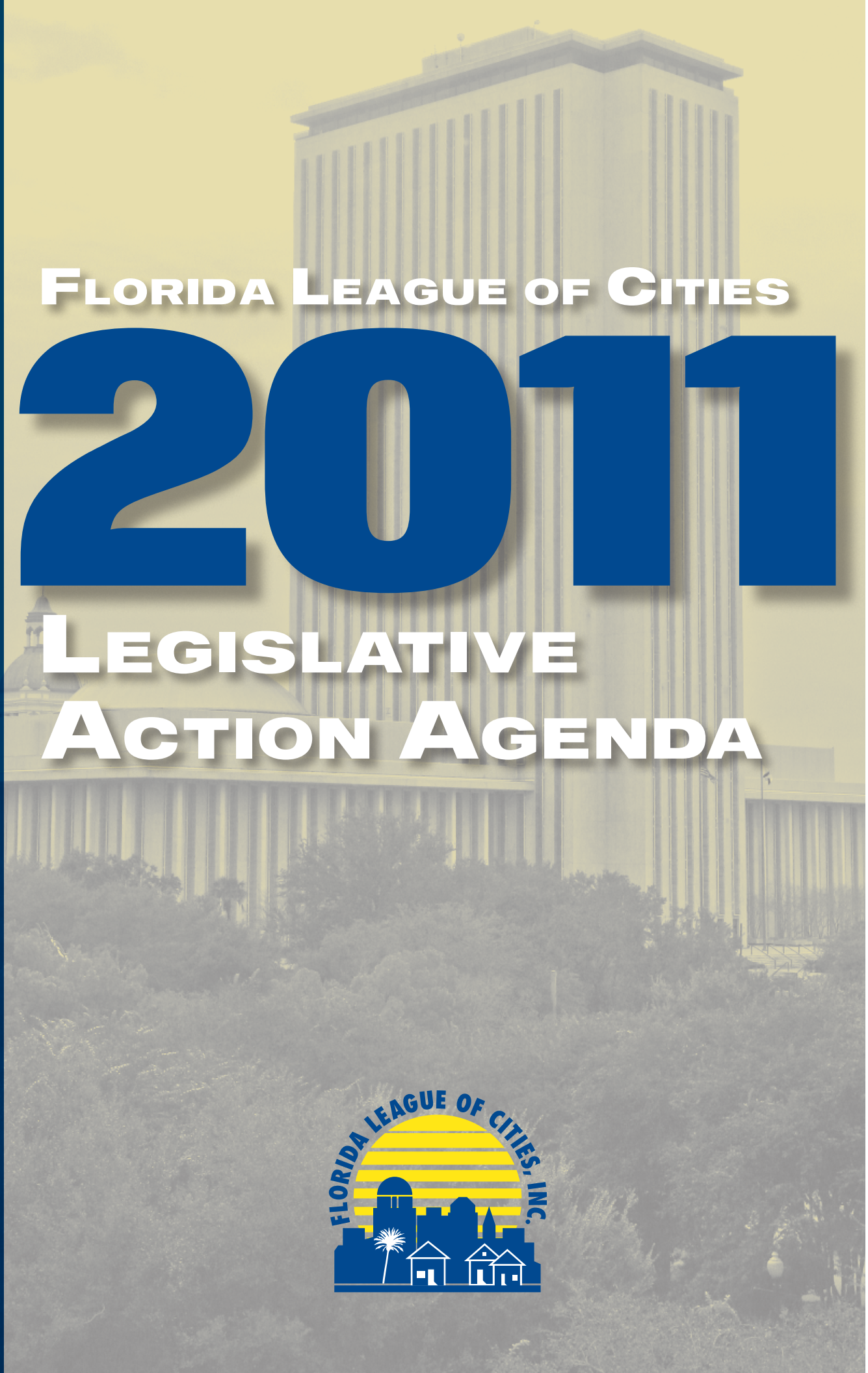
VIII. Additional Information:

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

None.

B. Amendments:

None.



Florida League of Cities

2011

Legislative Action Agenda

FLORIDA LEAGUE OF CITIES, INC.

The Florida League of Cities is the champion of home rule in Florida. Florida's constitution empowers citizens with the right of local self-government, or home rule. Cities are the embodiment of this right. Cities are formed by citizens and are governed by citizens. They administer the local affairs of the community for the special benefit of the city's residents. The form of government and level of services a city provides are fundamental expressions of home rule. Home rule is why no two cities are alike. Florida's city residents take pride in this diversity and responsibility. Strong home rule powers ensure that government stays close to the people it serves. Intrusion on home rule from the state or federal government undermines the constitutional right of local citizens to govern themselves.

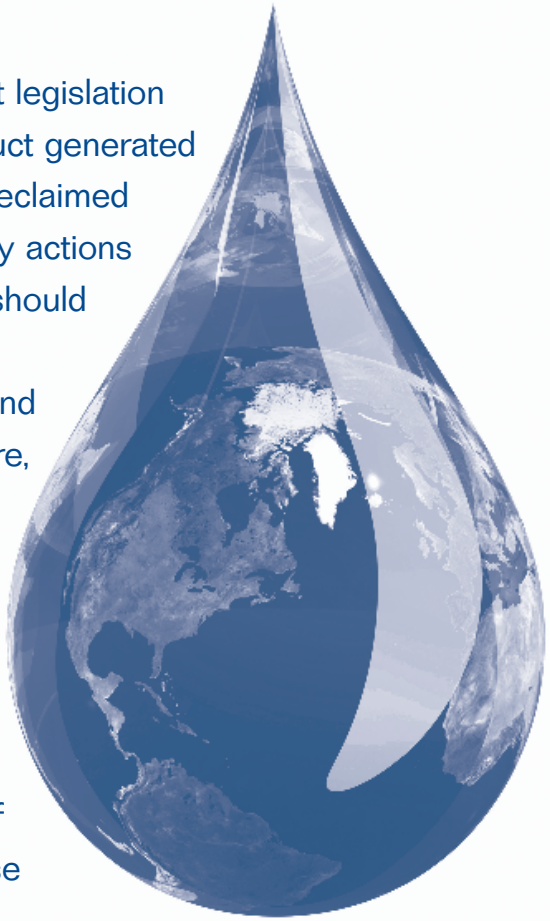
The Florida League of Cities opposes unfunded mandates from any level of government. An unfunded mandate is when one government forces another level of government to take some action that spends or reduces revenue, without providing any resources to offset the impact. Unfunded mandates are the antithesis of government transparency. Mandates conceal the connection between the taxes city residents pay and the services they receive. Unfunded mandates cause local city leaders to be held accountable for decisions made by others who live far away and who are not accountable for the fiscal impact on local taxpayers. The Florida Constitution prohibits unfunded mandates from state government except under certain conditions. This provision was added to the constitution in 1990 after Floridians became fed up with being forced to pay for state programs with local tax dollars. Yet in spite of the clear preference of Florida's residents, unfunded mandates have continued with increasing frequency.

2011 Florida League of Cities Legislative Action Agenda

RECLAIMED WATER

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation clarifying that reclaimed water is a product generated by a utility treatment process. As such, reclaimed water should not be subject to regulatory actions by the water management districts, but should remain available for use as an integral element of a utility's water supply plan and permitted discharge strategy. Furthermore, the Florida League of Cities will support legislation which provides that any quantities of water made available by the use and/or generation of reclaimed water should be allocated to the reclaimed water provider, and which supports the home rule powers of a municipality to create "mandatory reuse zones" within its jurisdiction.



ALTERNATIVE AND RENEWABLE ENERGY

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that incentivizes the development and implementation of a meaningful statewide renewable and alternative energy policy and that encourages the development of new technologies to help create jobs and industries in Florida. Such energy policy shall include a renewable energy minimum standard and should provide tax incentives for the use of renewable energy sources, enhance competitive procurement by public entities of all renewable energy supplies, and ensure the ability of Florida municipalities to obtain

and use renewable energy. The policy should also encourage mass transit, transit-oriented development policies and other transportation-related energy-efficiency practices; and provide technical assistance and funding sources for local governments to assist in the development and implementation of state energy policies including public education programs, sustainable building, contaminant emission reduction strategies, and other policies as part of a comprehensive sustainable statewide energy policy.

REVENUE AND EXPENDITURE CAPS

LEGISLATIVE PRIORITY

The Florida League of Cities opposes state-mandated revenue or expenditure caps. State-mandated caps usurp the home rule powers of municipal residents to self-determine the form of their government and their desired level of service. A cap would be unworkable for any level of government in Florida, unless such proposal, at a minimum:

1. Applies to either revenues or expenditures, but not both;
2. Includes a "time-out" provision in case it becomes necessary to suspend the cap proposal due to unusual economic circumstances; and
3. Reflects the true level of inflation incurred by Florida governments in providing services.

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Further, if the Legislature chooses to reject home rule and instead mandate caps on local governments, any such proposal should, at a minimum:

1. Exclude any resources committed to complying with a mandate imposed by another level of government;
2. Apply equally to the state and all types of local government; and
3. Exempt the following revenue sources:
    - Proprietary, special revenue and fiduciary funds;
    - State and federal funds, such as grants, which are not controllable;
    - Referendum revenues;
    - One-time revenues including but not limited to donations, sales of property, settlement of disputes, insurance proceeds, etc.;
    - Revenues not subject to the control of the receiving government;
    - Revenues committed to the repayment of debt;
    - Franchise fees, rental fees, impact fees, permit fees and other contractual revenues for which a direct service is provided in exchange;
    - Revenues from voluntary recreational fees or similar entertainment-related fees;
    - Revenues received in response to a catastrophic event; and
    - Revenues related to defensive litigation, workers' compensation claims or other risk-management activities, which are not controllable.

MUNICIPAL POLICE OFFICER AND FIREFIGHTER PENSION PLANS

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that provides comprehensive municipal firefighter and police officer pension reform. Pension mandates directly conflict with the Legislature's desire to limit government spending. Any comprehensive pension-reform package should, at a minimum, address the following:

- Require that determinations of average final compensation in defined-benefit pension plans include salary only, and do not include pay for overtime, unused leave time or any other additional payments;
- Allow recipients (cities and special districts) of insurance premium tax revenues under Chapters 175 or 185, Florida Statutes, to use these funds to pay for the costs of current plans and to lower required plan contributions from the plan sponsor;
- Allow cities to convert firefighter and police officer defined-benefit pension plans operating under Chapters 175 or 185, Florida Statutes, to the Florida Retirement System (FRS) or another type of plan without losing insurance premium tax revenues;
- Allow cities desiring to place their public safety officers into the Special Risk Class of the FRS the opportunity to purchase past credit service at an up to 3 percent annual accrual rate rather than the current up to 2 percent;
- Allow deviation from state requirements if agreed to by the employees or their union;
- Restrain the Florida Division of Retirement's non-rule-based administrative activities and restrict the division's broad interpretations of the provisions in Chapters 112, 175 and 185, Florida Statutes, that result in increased costs to pension plan sponsors;
- Change the governance structure of pension boards of trustees to move away from having plan participants serve on the boards; and
- Provide flexibility to local governments in the FRS by allowing them to either retain a standard defined-benefit plan, or at the employer's option move to a different retirement plan, such as a hybrid or modified "defined-benefit/defined-contribution" plan.

GROWTH MANAGEMENT

LEGISLATIVE PRIORITY

The Florida League of Cities supports legislation that:

- Defines a role for the Florida Department of Community Affairs or its equivalent to provide local governments technical assistance while limiting regulatory powers to only those issues requiring interregional coordination;
- Streamlines growth management processes, including reporting requirements, particularly for fiscally constrained or built-out municipalities; and
- Acknowledges municipal home rule powers in the local application of the pending ordinance doctrine as established by the courts.

TRANSPORTATION

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that provides proportionate, dedicated and recurring revenue sources for multi-modal municipal and regional transportation projects to ensure that local conditions and needs are addressed. The League will support legislation that:

- Alters the current taxing authority for the 2nd local option gas tax (ELMS Nickel) to authorize cities to levy – by referendum – up to 2 cents of the existing 5-cent local option gas tax authorized by statute;
- Authorizes the Florida Department of Transportation to increase funding to support local and regional transportation and transit alternatives, including "complete street" programs; and
- Prohibits the transfer of State Transportation Trust Funds for non-transportation purposes.

UNFUNDED MANDATES

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that strengthens the prohibition on existing and new unfunded mandates, requires enhanced staff analyses of quantification of the costs to cities, and ensures full state funding sources be assigned whenever unfunded mandates are identified.

ECONOMIC DEVELOPMENT

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that strengthens Florida's economy through the creation of jobs. Such legislation should:

- Enact an urban economic development policy for the State of Florida;
- Attract businesses for relocation and/or expansion in Florida's urban settings by enacting measures that will promote Florida as a nationally recognized leader in favorable business tax climates;
- Preserve and promote affordable or workforce housing and appropriate all housing trust fund monies to existing housing programs and remove the cap on distributions into the Sadowski Trust Fund;
- Fund urban public infrastructure projects through various means, such as the leveraging of private investments through state tax credits;
- Establish public/private partnerships to promote redevelopment and encourage infill development, preservation and reuse in Florida's cities;
- Create a highly skilled workforce by investing in educational initiatives that reflect the needs of existing and emerging business markets; and
- Solicit additional federal tax credits for environmentally sustainable and affordable housing and local government infrastructure.

EFFECTIVE PUBLIC NOTICE

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation authorizing municipalities to provide effective public notice and advertising for various matters, not to include ad valorem taxation millage setting, by means other than newspapers. Effective public notice may include, but is not limited to, direct mailings, physical posting of property, Internet posting, free publications, government-access television channels and other suitable alternatives.

SUBSIDIZED INSURANCE COVERAGE FOR RETIREES

LEGISLATIVE PRIORITY

The Florida League of Cities will support legislation that removes statutory requirements for cities and other public employers to offer subsidized health, hospitalization and other insurance coverages for retirees.

2011 Key Dates

January

11-13 House/Senate Interim Committee Week
25-27 House/Senate Interim Committee Week

February

7-10 Florida League of Cities Federal Action Strike Team (FAST) Fly-In – Washington, D.C.
8-10 House/Senate Interim Committee Week
15-17 House/Senate Interim Committee Week
22-24 House/Senate Interim Committee Week

March

8 Opening Day of the 2011 Regular Legislative Session
13-17 National League of Cities Congressional City Conference, Washington, D.C.
22 Florida League of Cities Legislative Action Day – Tallahassee-Leon County Civic Center, Tallahassee

May

6 Last Day of 2011 Regular Legislative Session

August

11-13 Florida League of Cities Annual Conference – Orlando World Center Marriott

November

17-18 Florida League of Cities Legislative Conference – Hyatt Regency Orlando International Airport Hotel

December

8-12 National League of Cities Annual Congress of Cities and Exposition, Phoenix, Az.

2011 Florida League of Cities Lobbying Team

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General Legislative Questions

This brochure reflects the priorities of 410 municipalities, as prepared by the five legislative policy committees and adopted by the full membership at the Florida League of Cities 50th Annual Legislative Conference on November 19, 2010, in Orlando.

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First Vice President
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The Florida League of Cities, Inc., formed in 1922, represents the municipalities of Florida. Its mission is to concentrate the influence of all city, town and village officials upon other policymaking bodies for the purpose of shaping legislation and public policy, sharing the advantages of cooperative action, and exchanging ideas and experiences.

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2011 Legislative Priorities

SENATE COMMUNITY AFFAIRS COMMITTEE

JANUARY 11, 2011

FAC Priorities

- Growth Management Reform
- Local Savings Act
  - Florida Retirement System
  - Medicaid Reform
  - Pre-Trial Release Programs
  - Article V Cost Index
  - Juvenile Justice billing and cost share
  - Consultants Competitive Negotiation Act (CCNA)
- Water Quality – Numeric Nutrient Criteria
- TABOR
  - “Smart Caps”

Local Savings Act

- **FISCAL CONSTRAINTS**
  - Cut $2.5 billion property taxes (since 2007)
  - Cut $1.0 billion (FY 2008-09)
- **FLEXIBILITY**
- **COST CONTROLS**
- **POSTPONE OR ELIMINATE OUTDATED REQUIREMENTS**

Growth Management

- Amendment 4 – THANK YOU!
- Roles – State
  - Vision
  - Environmental and Infrastructure Resources
  - Inter-jurisdictional issues
  - Technical Assistance
- Roles – Local
  - One Size - Flexible
  - NO New Planning Requirements
  - More control over local issues

TABOR

- ONE SIZE (State Cap)
  - Different functions
  - Different demographic and economic variables
  - Different starting points
- Amendment 4 Qualities
  - Referendums
  - Infrastructure & Growth
- Already got One
  - State cap
  - Locals controlled by Constitution & Legislature

Thank you

QUESTIONS?