

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 Committee on Appropriations

BILL: CS/CS/SB 364

INTRODUCER: Appropriations Committee; Commerce and Tourism Committee; and Senator Gainer and others

SUBJECT: Recovery Fund for the Deepwater Horizon Incident

DATE: April 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Pitts</u>	<u>Pitts</u>	<u>ATD</u>	<u>Recommend: Favorable</u>
3.	<u>Pitts</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 364 establishes a mechanism for 75 percent of the settlement funds received by the state, pursuant to Florida's claims for economic damages caused by the Deepwater Horizon oil spill, to be appropriated to Triumph Gulf Coast, Inc. (Triumph Gulf Coast).

Triumph Gulf Coast, Inc., is a nonprofit corporation created to administer a program that makes awards to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the eight counties that were disproportionately affected by the Deepwater Horizon oil spill.

The bill amends provisions related to the operation of Triumph Gulf Coast. The bill:

- Requires 75 percent (about \$300 million) of settlement funds currently held in General Revenue to be immediately transferred to Triumph Gulf Coast, and 75 percent (about \$80 million annually beginning in the 2018-19 fiscal year) of future settlement payments to be deposited in the Triumph Gulf Coast Trust Fund, for appropriation by the legislature;
- Requires 40 percent of the funds initially received by Triumph Gulf Coast to be allocated to projects as reviewed and approved by boards of county commissioners, with no county receiving less than 5 percent of the total allocation;
- Requires 32 percent of the funds subsequently received by Triumph Gulf Coast to be allocated to projects as reviewed and approved by boards of county commissioners, with no county receiving less than 4 percent of the total allocation;

- Adds two members to the board of directors of Triumph Gulf Coast, with the Senate President and the Speaker of the House of Representatives each appointing an individual from one of the lesser populated counties within the disproportionately affected counties;
- Allows Triumph Gulf Coast to invest surplus funds in the Local Government Surplus Funds Trust Fund and requires the interest earned and net of fees to be transferred monthly into the Triumph Gulf Coast Trust Fund;
- Provides that administrative fees are limited to 0.75 percent of the funds available for use by Triumph Gulf Coast;
- Limits the annual salary of any employee or contracted staff of Triumph Gulf Coast to \$130,000, and provides that associated benefits may not exceed 35 percent of the salary;
- Extends the length of time Triumph Gulf Coast board members are required to refrain from having any direct interest in awards made by Triumph Gulf Coast after serving on the board of directors from 2 years to 6 years;
- Requires Triumph Gulf Coast to publish on a website its intent to approve an award and a project summary at least 14 calendar days prior to approving an award;
- Clarifies awards may be made for ad valorem tax *rate* reduction and *public* infrastructure projects for construction, expansion, or maintenance;
- Amends the types of projects that are eligible for award funding and the factors for prioritizing the projects; and
- Provides that an award may supplement but not supplant existing funding sources.

The bill transfers approximately \$300 million from the General Revenue Fund to the Triumph Gulf Coast Trust Fund and subsequently appropriates those funds to the Triumph Gulf Coast, Inc. The bill also directs future settlement funds shall be deposited into the Triumph Gulf Coast Trust Fund for appropriation by the legislature.

The bill is effective upon becoming law.

II. Present Situation:

Deepwater Horizon Oil Spill

On April 20, 2010, an offshore drilling rig, known as Deepwater Horizon, exploded in the Gulf of Mexico.¹ The explosion claimed the lives of 11 crewmembers² and caused nearly 5 million barrels of crude oil to spill into the Gulf of Mexico.³ The five states bordering the Gulf of Mexico (Alabama, Florida, Louisiana, Mississippi, and Texas) were quickly determined to have experienced the most devastating economic and environmental effects of the oil spill.⁴

¹ Campbell Robertson, *Gulf Spill Is the Largest of Its Kind, Scientists Say*, The New York Times, Aug. 2, 2010, available at <http://www.nytimes.com/2010/08/03/us/03spill.html> (last visited April 5, 2017).

² Bradley Blackburn, *BP Oil Spill: Families Gather to Honor 11 Who Died, Express Frustration with BP, Transocean*, ABC News, May 25, 2010, available at <http://abcnews.go.com/WN/bp-oil-spill-transocean-holds-memorial-11-lost/story?id=10739080> (last visited April 5, 2017).

³ Robertson, *supra* note 1.

⁴ Exec. Order No. 13554, 75 Fed. Reg. 62313, (October 5, 2010), available at <https://obamawhitehouse.archives.gov/the-press-office/2010/10/05/executive-order-13554-gulf-coast-ecosystem-restoration-task-force> (last visited April 5, 2017).

On July 6, 2012, President Obama signed into law the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) in an effort to provide a mechanism for funding restoration of the Gulf Coast region.⁵ The RESTORE Act required 80 percent of administrative and civil penalties paid by responsible parties⁶ under provisions of the federal Clean Water Act to be deposited into the Gulf Coast Restoration Trust Fund.⁷ The RESTORE Act set forth the following framework for allocation of the Trust Fund:

- 35 percent equally divided among the five states;
- 30 percent to the Gulf Coast Ecosystem Restoration Council;
- 30 percent to the Oil Spill Restoration Impact;
- 2.5 percent to the Gulf Coast Ecosystem Restoration Science Observation Monitoring and Technology Program; and
- 2.5 percent to Centers of Excellence.⁸

In addition to penalties imposed under the Clean Water Act, responsible parties were liable for Natural Resource Damage Assessment Penalties under the Oil Pollution Act of 1990 and criminal penalties asserted by the National Fish and Wildlife Foundation.⁹ The funds awarded to the Gulf States were determined pursuant to a consent decree, approving a \$20.8 billion settlement of a civil lawsuit filed by the United States and the five Gulf States against parties responsible for the oil spill.¹⁰

Economic Loss Claims

In an agreement separate from the civil lawsuit, BP also agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for economic damage claims related to the oil spill.¹¹ Pursuant to the economic damages settlement agreement, Florida will receive a total of \$2 billion over an 18-year period.¹² Attorney General Pam Bondi received BP's initial settlement payment of \$400 million in July of 2016, and the funds were placed into the state General Revenue Fund.¹³ Subsequent settlement payments are scheduled to be paid annually to the state in the amount of \$106,666,666 from 2019 until 2033.¹⁴

⁵ Pub. L. No. 112-141 (113th Congress). Codified at 33 U.S.C. 1321.

⁶ Transocean Ltd., British Petroleum (BP), and The Halliburton Company were among the parties found to be responsible.

⁷ The remaining 20 percent of the administrative and civil penalties are required to be deposited into the federal Oil Spill Liability Trust Fund, which funds removal costs or damages resulting from discharges of oil. *See* 33 U.S.C. 1321.

⁸ A table of Projected BP Annual Deposits into the Gulf Coast Restoration Trust Fund is available at https://www.treasury.gov/services/restore-act/Documents/BP_Estimated_Deposits_Schedule_June302016.pdf (last visited March 10, 2017).

⁹ Consent Decree, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (no. 2179, M.D.L., April 4, 2016), available as document no. 15, at <https://www.justice.gov/enrd/file/838066/download> (last visited April 5, 2017).

¹⁰ A flowchart of the funds awarded in the approved settlement is available at <http://www.oceanconservancy.org/places/gulf-of-mexico/spill-funds-flowchart-spring.pdf> (last visited April 5, 2017)

¹¹ Attorney General Pam Bondi, *Deepwater Horizon Oil Spill Settlement Fact Sheet* [http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/\\$file/BP+Fact+Sheet.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/$file/BP+Fact+Sheet.pdf) (last visited April 5, 2017).

¹² Consent Decree, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (no. 2179, M.D.L., April 4, 2016), available as document no. 15435-2.

¹³ Court settlement funds negotiated by the state are placed in the General Revenue Fund pursuant to s. 216.216, F.S.

¹⁴ Document no. 15435-2, *supra* note 12.

Florida Legislation

Disbursement of Funds

In 2011, the Legislature began to address the negative economic and environmental impacts of the oil spill.¹⁵ Section 377.43, F.S., was created to provide a mechanism for the disbursement of funds received by the state for damages associated with the oil spill.¹⁶ Section 377.43, F.S., ensures that 75 percent of “[a]ny funds received by the state from any governmental or private entity for damages caused by the Deepwater Horizon oil spill...” are utilized for the benefit of the eight counties disproportionately affected by the oil spill.¹⁷ The eight disproportionately affected counties are: Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa Count, Walton County, and Wakulla County.¹⁸ Section 377.43, F.S., designates the Department of Environmental Protection (DEP) as the lead agency for expending funds directed to environmental restoration and the Department of Economic Opportunity (DEO) as the lead agency for expending funds directed to economic incentives and diversification efforts.¹⁹

Gulf Coast Economic Corridor Act

In 2013, the Legislature created the “Gulf Coast Economic Corridor Act” (the Act) to provide a long-term source of funding for economic recovery and enhancement efforts in the Gulf Coast region. The Act was intended to help businesses, individuals, and local governments recover from the Deepwater Horizon oil spill.²⁰ The Act created Triumph Gulf Coast, Inc. (Triumph Gulf Coast), a nonprofit corporation, administratively housed under the DEO.²¹

Triumph Gulf Coast, Inc.

Triumph Gulf Coast must create and administer a “Recovery Fund” to be utilized as a long-term source of revenue for the disproportionately affected counties.²² Triumph Gulf Coast is tasked with investing the principal of the Recovery Fund, which is derived from “75 percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon disaster, after payment of reasonable and necessary attorney fees, costs, and expenses....”²³ The Recovery Fund is required to decline over a 30-year period, in equal amounts each year. Any funds remaining after 30 years will revert to the State Treasury.²⁴

The duties of Triumph Gulf Coast include:

- Responsibly and prudently managing all funds received and ensuring that the use of funds is in accordance with applicable laws, bylaws, and contractual requirements;
- Administering the program set forth by the Act;

¹⁵ Chapter 2011-142, Laws of Fla.

¹⁶ See ss. 377.43(2) and (3), F.S.

¹⁷ Section 377.43(3), F.S.

¹⁸ Section 377.43(1), F.S.

¹⁹ Section 377.43(5), F.S.

²⁰ Section 288.8011, F.S.

²¹ Sections 288.8013(1), F.S.

²² The “Recovery Fund” is defined as, “a trust account established by Triumph Gulf Coast, Inc., for the benefit of the disproportionately affected counties.” Section 288.2012(3), F.S.

²³ Sections 288.8013(2) and (3), F.S.

²⁴ Section 288.8013(3), F.S.

- Monitoring, reviewing, and annually evaluating awardees and their projects or programs to determine whether awards should be continued, terminated, reduced, or increased; and
- Operating in a transient manner, by maintaining a website that provides public access to information, notice of meetings, awards, and the status of projects and programs.²⁵

Triumph Gulf Coast is required to competitively procure one or more money managers to invest the funds.²⁶ While Triumph Gulf Coast is permitted to hire or contract for staff deemed necessary to execute the program, the corporation is required to retain all of the following staff members:

- An independent certified public accountant;
- An independent financial advisor;
- An economic advisor; and
- A legal advisor.²⁷

Board of Directors

Triumph Gulf Coast is comprised of a 5-member board of directors (the board).²⁸ Each of the Trustees of the State Board of Administration,²⁹ the President of the Senate, and the Speaker of the House of Representatives, appoint an individual from the private sector to serve as a board member.³⁰ To achieve staggered terms, the initial board members appointed by the President of the Senate and the Speaker of the House of Representatives will serve for a period of 5 years.³¹ All other initially appointed, and subsequently appointed, board members will serve for a term of 4 years.³² The board annually elects a chairperson, who is responsible for the official seal of Triumph Gulf Coast and ensuring that records are properly recorded and maintained.³³ The board is required to meet at least quarterly, upon the call of the chairperson or at the request of a majority of the membership. A majority of the board members constitutes a quorum, and board members cannot vote by proxy.³⁴

The board is required to formulate an investment policy governing the investment of the principal of the Recovery Fund, under the advice of the financial advisor, and in consultation with the State Board of Administration.³⁵ The board's powers include the ability to:

- Make and enter into contracts;
- Make expenditures;
- Adopt, use, and alter a common corporate seal;
- Adopt, amend, and repeal bylaws; and

²⁵ Section 288.8016, F.S.

²⁶ Section 288.8013(4)(b), F.S.

²⁷ Section 288.8014(9)(a), F.S.

²⁸ Section 288.8014(2), F.S.

²⁹ The State Board of Administration Trustees are the Governor, the Attorney General, and the Chief Financial Officer. *See* FLA. CONST. art. IV, s.4.

³⁰ Section 288.8014(2), F.S.

³¹ In 2014, the Legislature amended the length of the terms and specified the initial terms would begin once the Legislature appropriated funds to the Recovery Fund. *See* ch. 2014-218, Laws of Fla.

³² Section 288.8014(3), F.S.

³³ Section 288.8014(2), F.S.

³⁴ Section 288.8014(7), F.S.

³⁵ Section 288.8013(4)(a), F.S.

- Use the state seal.³⁶

The board may also request the presence of, and consult with, the executive director of the DEO, the secretary of the DEP, the chair of the Committee of 8 Disproportionately Affected Counties, and any retained staff. However, these individuals are not able to vote on any matters before the board.³⁷

Triumph Gulf Coast and board members are subject to public records and meeting requirements.³⁸ Board members and staff must adhere to the same standards of conduct as public officers and employees and are required to file financial disclosure forms.³⁹ Board members are required to serve uncompensated, except for travel and per diem expenses. Additionally, each board member must agree to refrain from having any direct interest in any contract, program, project, or other benefit arising from an award from the Recovery Fund during the term of appointment to the board and for 2 years following the end of the appointment.⁴⁰ It is a misdemeanor of the first degree for a board member to violate these requirements.⁴¹

Awards

Under the Act, Triumph Gulf Coast is permitted to make awards from available earnings and principal, for projects or programs that prioritize economic recovery, diversification, and enhancement of the disproportionately affected counties. Triumph Gulf Coast may award any of the following projects or programs:

- Ad valorem tax reduction;
- Payment of impact fees;
- Administrative funding for economic development organizations;
- Local match requirements for certain economic incentives programs;
- Economic development projects;
- Infrastructure projects that are shown to enhance economic development;
- Grants to local governments to establish and maintain equipment and trained personnel for local action plans of response to disasters;
- Grants to support programs of excellence that prepare students for future occupations and careers at K-20 institutions; or
- Grants to Visit Florida for advertising and promoting tourism, the Fresh From Florida program, or other related content.⁴²

Triumph Gulf Coast must establish an application and scoring process for all awards. The scoring process should lead to the selection of projects or programs that “have the potential to

³⁶ Section 288.8015, F.S.

³⁷ See s. 288.8014(9), F.S.

³⁸ Section 288.8014(1), F.S.

³⁹ These standards of conduct include restrictions on employment of relatives, voting conflicts, and standards of conduct for public officers, which include prohibitions on self-dealing, solicitation of gifts, and postemployment restrictions. See ss. 288.8014(4) and (9), F.S.

⁴⁰ Section 288.8014(5), F.S.

⁴¹ Punishable by a fine of up to \$1,000 and up to one-year imprisonment. See ss. 775.082 and 775.083, F.S.

⁴² See s. 288.8017(1), F.S.

generate increased economic activity in the disproportionately affected counties.”⁴³ Awards may not finance 100 percent of a project or program, and an awardee is prohibited from receiving all of the available funds in any given calendar year. A one-to-one private-sector match may be required if applicable and deemed prudent by the board.⁴⁴ The application and scoring process should give priority to projects or programs that meet the following criteria:

- Generate maximum economic benefits;
- Increase household income above the national average;
- Expand or establish new high growth industries;
- Leverage or enhance key regional assets, including research facilities and military bases;
- Partner with local governments, convention and visitor bureaus, chambers of commerce, school districts, or educational institutions;
- Have investment commitments from private equity or venture capital funds;
- Provide or encourage seed-stage investments;
- Provide advice or technical assistance to companies on restructuring existing management, operations, or production in order to attract business opportunities;
- Benefit the environment in addition to the economy; and
- Provide outcome measures for programs of excellence.⁴⁵

Contracts for awards must include provisions that require the awardee to submit a performance report to Triumph Gulf Coast. Contracts must also include provisions that allow for recovery of an award if the awardee does not meet performance expectations or the awardee is determined to have given fraudulent information to obtain the award.⁴⁶

Administrative Costs

Earnings generated by investments and interest of the Recovery Fund are required to be utilized for awards and administrative costs under the program. Administrative costs include management fees for investments, audit expenses, travel and per diem expenses, staff salaries, and other allowable costs. Administrative costs are limited to 2.25 percent of the earnings each calendar year.⁴⁷ Management fees for investments are limited to 150 basis points.⁴⁸

Auditing and Reporting

Triumph Gulf Coast is required to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on June 30 and December 30 of each year. The report should provide the financial status of the Recovery Fund and its investments, including a detailed list of approved awards, submitted applications, and any reasons for approval or denial. The report must also include information on the program’s established priorities and the application selection process.⁴⁹

⁴³ Section 288.8017(2), F.S.

⁴⁴ Section 288.8017(3), F.S.

⁴⁵ See s. 288.8017(2), F.S.

⁴⁶ Section 288.8014(4), F.S.

⁴⁷ Section 288.8013(3).

⁴⁸ Section 288.2013(4)(c), F.S.

⁴⁹ Section 288.8013(5), F.S.

Triumph Gulf Coast is also required to have two annual audits – one of the investment of the Recovery Fund by an independent certified public accountant,⁵⁰ and one of the Recovery Fund and Triumph Gulf Coast by the Auditor General. The Act requires Triumph Gulf Coast to provide the Auditor General details or supplemental data necessary to perform the audit.⁵¹

The Local Government Surplus Funds Trust Fund (Florida PRIME)

Created by the Legislature in 1977, Florida PRIME is operated by the State Board of Administration as a cash management fund for public entities. For March 2017, the State Board of Administration reported a participant yield of 1.03 percent.⁵²

III. Effect of Proposed Changes:

Definitions

The bill amends s. 288.8012, F.S., to provide the following definitions:

- “Awardee” means a person, organization, or local government granted an award of funds as authorized in s. 288.8017 for a project or program;
- “Department” means the Department of Economic Opportunity;
- “Public infrastructure” means roads, bridges, seaports, rail transport, traffic signalization, underground and above ground utilities, transmission and storage of fossil fuels, and renewable sources; hazardous waste disposal and handling, information storage and distribution, and distribution and maintenance of water supply; and disposal and treatment of wastewater; and
- “Settlement agreement” means the agreement entitled “Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising From the *Deepwater Horizon* Incident,” which was entered into on October 5, 2015, in the case styled: *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL 2179 in the United States District Court for the Eastern District of Louisiana.

Settlement Funds

Transfer of funds

Section 3 amends s. 288.8013, F.S., to require 75 percent of all payments to the state pursuant to the settlement agreement (roughly \$300 million) to be transferred immediately from the General Revenue Fund to the Triumph Gulf Coast Trust Fund⁵³ to be allocated by the board of directors of Triumph Gulf Coast.

Section 2, then requires the 75 percent of the moneys received by the state before June 30, 2017, to be immediately transferred to Triumph Gulf Coast. Of this amount, up to 0.75 percent (roughly \$2.25 million) of such moneys may be used for administrative costs by Triumph Gulf

⁵⁰ Section 288.8013(4), F.S.

⁵¹ Section 288.8013(6), F.S.

⁵² The participant yield is net of fees and expenses. *See* https://www.sbafla.com/prime/Portals/8/Performance/Yields/20170331_PrimeRates.pdf?ver=2017-04-03-152252-487, (last visited April 5, 2017).

⁵³ The Triumph Gulf Coast Trust Fund is created by SB 2518 as a trust within the Department of Opportunity.

Coast. Forty percent (roughly \$119 million) of the remaining moneys must be allocated by the board to projects identified in s. 288.8017, F.S., and as reviewed and approved by the appropriate board of county commissioners, in the eight disproportionately affected counties, with no county receiving less than 5 percent of the total allocation. The bill also provides that any remaining funds must be allocated by the board to projects identified in s. 288.8017, F.S., in any disproportionately affected county to address the impacts of the Deepwater Horizon event.

The bill also requires 75 percent of the moneys received by the state after July 1, 2017, pursuant to the settlement agreement, to be deposited into the Triumph Gulf Coast Trust Fund for appropriation by the Legislature. Up to 0.75 percent of such moneys may be used to pay for administrative costs. Thirty-two percent of the remaining funds appropriated must be allocated by the board to projects identified in s. 288.8017, F.S., and as reviewed and approved by the appropriate board of county commissioners, to the eight disproportionately affected counties, with no county receiving less than 4 percent of each settlement distribution to the state. Any remaining funds must be allocated by the board to projects identified in s. 288.8017, F.S.

The bill provides that notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S., funds transferred under s. 288.8013 to the trust fund for the 2017-2018 fiscal year may be expended at any time before the end of the 2018-2019 fiscal year.

Triumph Gulf Coast Trust Account

The bill requires Triumph Gulf Coast to establish a trust account at a federally insured financial institution to hold funds transferred or appropriated to it from the Triumph Gulf Coast Trust Fund and make deposits and payments. The bill provides that interest earned in the trust account must be deposited monthly into the Triumph Gulf Coast Trust Fund.

The bill also authorizes Triumph Gulf Coast to invest surplus funds in the Local Government Surplus Funds Trust Fund, pursuant to s. 218.407, and interest earned, net of fees, must be transferred monthly into the Triumph Gulf Coast Trust Fund.

Administrative Costs

The bill provides that administrative fees are limited to 0.75 percent of the settlement funds available for use by Triumph Gulf Coast, rather than 2.25 percent of the earnings. "Management fees for investment services" are removed from the list of administrative costs in the bill. The bill also provides that administrative costs may not exceed the amounts specifically appropriated for that purpose and may include payment of travel and per diem expenses of board members, audits, salary or other costs for employed or contracted staff, including required staff under s. 288.8014(9), F.S., and other allowable costs.

Related Changes

The bill removes provisions referring to the Recovery Fund, including those pertaining to the investment of funds, the use of earnings generated by the Recovery Fund, and requiring the board to formulate an investment policy for the Recovery Fund. The bill removes provisions requiring Triumph Gulf Coast to consult with a money manager and a financial advisor.

The bill also removes language in existing law providing for the payment of attorney fees and costs associated with the settlement agreement, as these amounts were negotiated in an agreement separate from the economic damage settlement agreement. To implement the bill, the bill repeals s. 377.43, F.S., relating to the disbursement of funds received by the state for damages associated with the Deepwater Horizon Oil Spill.

Triumph Gulf Coast

Duties

The bill provides that at least 14 calendar days prior to approving an award, Triumph Gulf Coast has a duty to publish a summary of the project or program and its intent to approve an award on the website. As a result, the duties of Triumph Gulf Coast will include responsibly managing the funds, administering the program, monitoring and reviewing awardees, operating in a transient manner by maintaining a website that provides public access to information, including the notice of intent to approve an award.

Board of Directors

As of the effective date of the bill, the number of members on the board increases from five to seven, with the Senate President and the Speaker of the House of Representatives each appointing a new member. The bill requires newly appointed board members to be from the private sector and from one of the four least populous counties within the disproportionately affected counties, as estimated by the March 2017 county population estimates released by the United States Census Bureau,⁵⁴ so that two such counties are represented on the board. The appointment of additional members will provide further representation among the disproportionately affected counties. Based on the April 1, 2016, county population estimates published by the Office of Economic and Demographic Research, the new members would be individuals from the private sector from two of the following counties: Gulf County, Franklin County, Wakulla County, or Walton County.⁵⁵

The bill increases the number of years the board members are required to refrain from having any direct interest in any contract, program, project, or other benefit arising from an award made by Triumph Gulf Coast to 6 years after the termination of board membership. The bill specifies that the 6-year requirement applies to persons who serve on the board on or after July 1, 2017.

Awards

The bill amends the list of eligible awards to include grants for programs that provide participants in the disproportionately affected counties with transferrable, sustainable workforce skills that are not confined to a single employer. The bill also amends the eligibility criteria for grants to K-20 institutions by removing the requirements that such institutions have “programs of excellence” and a “home campus” within the disproportionately affected counties. The bill also

⁵⁴ The United States Census Bureau county population and demographic components of population change were released in March of 2017, however the data is based on population estimates from April of 2016. See <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited April 5, 2017).

⁵⁵ See Office of Economic and Demographic Research, *Florida Population Estimates for Counties and Municipalities*, (April 1, 2016), available at http://edr.state.fl.us/Content/population-demographics/data/2016_Pop_Estimates.pdf (last visited April 5, 2017).

provides that programs that encourage certain students to pursue a postsecondary education at a Florida College System institution are eligible programs for such awards.

The bill removes administrative funding for economic development organizations, economic development projects, grants to Visit Florida, and certain local match requirements from the list of projects and programs eligible to receive awards from Triumph Gulf Coast. As a result, the bill allows awards to be made for the following projects or programs within the disproportionately affected counties:

- Ad valorem tax rate reduction;
- Payment of impact fees;
- Local match requirements under s. 288.0655, F.S.;
- Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic development;
- Grants to local governments to establish and maintain equipment and trained personnel for local action plans of response to disasters;
- Grants to support programs that prepare students for occupations and careers at K-20 institutions; and
- Grants to support programs that provide participants with transferrable sustainable workforce skills.

The bill removes criteria from the list of priorities to be considered by Triumph Gulf Coast in making awards to projects or programs. The criteria removed includes projects or programs that expand or establish new high growth industries, have investment commitments from private equity or private venture capital funds, provide or encourage seed state investments, provide advice or technical assistance to companies, provide outcome measures for programs of excellence support, and partner with convention and visitor bureaus. As a result, the application and scoring process for awards should give priority to projects or programs that meet the following criteria:

- Generate maximum economic benefits;
- Increase household income above the national average;
- Leverage or enhance key regional assets, including research facilities and military bases;
- Partner with local governments, chambers of commerce, school districts, or educational institutions established by January 1, 2017;
- Benefit the environment in addition to the economy; and
- Provide outcome measures.

Staff

Under the bill, Triumph Gulf Coast is only required to retain an independent certified public accountant and a legal advisor. The bill removes the requirement to retain an independent financial advisor and an economic advisor and also removes the provisions requiring retained staff to be available attend the meetings of and consult with the board of directors.

The bill provides that the annual salary of any Triumph Gulf Coast employee or contracted staff may not exceed \$130,000 and associated benefits may not exceed 35 percent of the salary.

Effective Date

The bill takes 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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

CS/CS/SB 364 transfers approximately \$300 million from the General Revenue Fund in the 2017-2018 fiscal year to the Triumph Gulf Coast Trust Fund. The bill also appropriates these same funds from the trust fund to the Triumph Gulf Coast, Inc. For future years, 75 percent of the settlement moneys will be deposited into the Triumph Gulf Coast Trust Fund for appropriation by the legislature.

VI. Technical Deficiencies:

Lines 141 through 144 provides that, notwithstanding s. 216.301, F.S., the funds transferred to the Triumph Gulf Coast Trust Fund for the 2017-2018 fiscal year may be expended at any time through June 30, 2019. Section 216.301, F.S., relates to whether funds have been disbursed from the state treasury. Under the terms of the bill, the initial funds will be disbursed to Triumph Gulf Coast, Inc., "immediately." Lines 141-144 appear to be superfluous language. If such provision is attempting to address the expenditure of the funds by Triumph Gulf Coast, Inc., the legislature may consider clarifying the language.

Lines 234 and 235 of the bill reference population estimates released by the United States Census Bureau in March of 2017. This reference may be misleading, as the released data is based on the county population estimates as of April 1, 2016.

Section 9 (lines 474 through 476) refers to persons who serve on the “board of trustees” rather than the “board of directors” referenced throughout the bill.

VII. Related Issues:

The bill provides that 75 percent of the payments to the state must be transferred immediately from the General Revenue Fund to the Triumph Gulf Coast Trust Fund, and also provides that 75 percent of the moneys received by the state before June 30, 2017, must be immediately transferred to Triumph Gulf Coast. Reading these two provisions together, it may be unclear as to whether the funds are required to be transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund and then to Triumph Gulf Coast, or if the funds received by the state before June 30, 2017, will be directly transferred to Triumph Gulf Coast.

The bill requires certain minimum allocations to be made for projects in the eight disproportionately affected counties. However, the bill may be unclear as to whether the allocation percentages should be based on the funds received by Triumph Gulf Coast before or after the administrative costs have been paid. In addition, line 138 of the bill provides that no county shall receive less than 4 percent of each settlement distribution to the state. The language in the bill may be unclear as to whether the 4 percent is meant to come from the total payments to the state or the total payments received by Triumph Gulf Coast.

The bill provides that board members must refrain from benefiting from awards made by Triumph Gulf Coast for a period of 6 years, rather than 2 years, after the termination of board membership. The bill also specifies the 6-year requirement applies only to persons who serve on the board on or after July 1, 2017. As provided in the bill, the initially appointment members, who serve on the board on or after July 1, 2017, will be subject to the 6-year requirement. If the Legislature intends the 2-year requirement to apply to the initially appointed board members, section 9 of the bill could be amended to apply to only persons *appointed to the board* on or after July 1, 2017.

The bill appears to impose a 4-year term limit for the new members appointed to the board by the Senate President and Speaker of the House of Representatives, while their initially appointed board members serve 5-year terms. Staggering these term limits may require the Senate President and the Speaker of the House to appoint subsequent board members in back-to-back years.

VIII. Statutes Affected:

This bill amends sections 288.80 through 288.8018 of the Florida Statutes.

This bill repeals section 377.43 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations on April 5, 2017:**

The committee substitute:

- Requires 75 percent of settlement funds currently held in General Revenue to be immediately transferred to Triumph Gulf Coast, and 75 percent of future settlement payments to be deposited in the Triumph Gulf Coast Trust Fund, for appropriation by the Legislature;
- Requires 40 percent of the funds initially received by Triumph Gulf Coast to be allocated to projects as reviewed and approved by boards of county commissioners, with no county receiving less than 5 percent of the total allocation;
- Requires 32 percent of the funds subsequently received by Triumph Gulf Coast to be allocated to projects as reviewed and approved by boards of county commissioners, with no county receiving less than 4 percent of the total allocation.
- Provides a minimum allocation formula for Triumph Gulf Coast to make awards in the disproportionately affected counties;
- Provides that administrative fees are limited to 0.75 percent of the settlement funds available for use by Triumph Gulf Coast and that such administrative costs may not exceed the amounts specifically appropriated for that purpose;
- Removes the requirement to invest with the State Board of Administration and allows Triumph Gulf Coast to invest surplus funds in the Local Government Surplus Funds Trust Fund, and the interest earned and net of fees are required to be transferred monthly into the Triumph Gulf Coast Trust Fund;
- Limits the annual salary of any employee or contracted staff of Triumph Gulf Coast to \$130,000 and provides that associated benefits may not exceed 35 percent of the salary;
- Extends the amount of time board members are required to refrain from having any direct interest awards made by Triumph Gulf Coast after serving on the board from 2 years to 6 years;
- Removes the requirement that retained staff must be available to consult and attend meetings of the board;
- Requires Triumph Gulf Coast to indicate an intent to approve an award by publishing a summary of the project or program on the website and indicating the intent to approve at least 14 calendar days prior to approving an award;
- Clarifies awards may be made for ad valorem tax *rate* reduction and *public* infrastructure projects for construction, expansion, or maintenance;
- Amends the list of awards to remove administrative funding for economic development organizations, economic development projects, grants to Visit Florida, certain local match requirements, and to remove the requirement that awards for grants that support programs at K-20 institutions must support programs of excellence; and
- Amends the list of awards to add grants for programs that support workforce training and adds a provision that allows programs that encourage certain students to pursue a

postsecondary education at a Florida College System institution to be included as a eligible programs for such awards;

- Removes criteria from the list of priorities, including projects or programs that expand or establish new high growth industries, have investment commitments from private equity or private venture capital funds, provide or encourage seed state investments, provide advice or technical assistance to companies, provide outcome measures for programs of excellence support, or partner with convention and visitor bureaus;
- Amends s. 288.8012, F.S., to provide definitions; and
- Provides that an award may supplement but not supplant existing funding sources.

CS by Commerce and Tourism on March 13, 2017:

The committee substitute:

- Requires Triumph Gulf Coast to invest with the State Board of Administration;
- Limits administrative costs to 0.75% of the principal in a calendar year and removes provisions relating to management fees for investment services;
- Removes provisions requiring Triumph Gulf Coast to develop an investment policy and provisions requiring Triumph Gulf Coast to hire certain staff members;
- Increases the number of board members to include representation from the lesser populated counties within the disproportionately affected counties;
- Allows additional K-20 institutions to be considered for awards from Triumph Gulf Coast by removing the requirement that the institution must have a “home campus” within the disproportionately affected counties;
- Repeals s. 377.43, F.S., related to the disbursement of funds received for damages caused by the Deepwater Horizon Oil Spill; and
- Changes the effective date to “upon becoming law” and directs the Division of Law Revision and Information to revise the act accordingly.

B. Amendments:

None.