

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 Commerce and Tourism

BILL: CS/SB 364

INTRODUCER: Committee on Commerce and Tourism and Senator Gainer and others

SUBJECT: Recovery Fund for the Deepwater Horizon Incident

DATE: March 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 364 appropriates 75 percent of Florida's economic damage settlement funds to Triumph Gulf Coast, Inc., a nonprofit corporation, which is responsible for creating and administering a program to assist with economic recovery in the eight counties disproportionately affected by the Deepwater Horizon oil spill. The bill requires Triumph Gulf Coast, Inc., to invest the settlement funds with the State Board of Administration.

The bill adds two members to the board of directors of Triumph Gulf Coast, Inc., 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.

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

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 March 10, 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 March 10, 2017).

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

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

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 March 10, 2017).

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 March 10, 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 March 10, 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 March 10, 2017).

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

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

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 8.

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.

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;
- 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, providing 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

²³ Sections 288.8013(2) and (3), F.S.

²⁴ Section 288.8013(3), F.S.

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.

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
- 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;

³⁵ Section 288.8013(4)(a), F.S.

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.

- 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 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;
- Expand 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

⁴² See s. 288.8017(1), F.S.

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.

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

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

III. Effect of Proposed Changes:

The bill defines “settlement agreement” as “the agreement between the gulf states and the BP entities with respect to economic claims arising from the Deepwater Horizon incident.” Adding the definition clarifies that the Act relates to the \$2 billion of economic damage settlement funds negotiated by the Attorney General.⁵²

The bill appropriates economic damage settlement funds to Triumph Gulf Coast. After reasonable and necessary payment of attorney fees, costs, and reasonable expenses, the bill requires settlement funds received by the state prior to June 30, 2017, to be transferred to the Recovery Fund no later than August 1, 2017. The bill also creates a recurring appropriation to Triumph Gulf Coast to ensure that settlement funds received by the state on or after July 1, 2017, are transferred to the Recovery Fund within 30 days of receipt by the state.

The bill removes the requirements that Triumph Gulf Coast retain an independent financial advisor and an economic advisor. The bill also removes provisions requiring Triumph Gulf Coast to consult with a money manager and a financial advisor in order to develop an investment policy. Instead, the bill requires Triumph Gulf Coast to consult with, and invest the settlement funds with, the State Board of Administration. The bill also removes provisions relating to investment fees and revises the limit on administrative fees to 0.75% of the principal in a calendar year, rather than 2.25% of the earnings.

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

⁴⁹ Section 288.8013(5), F.S.

⁵⁰ Section 288.8013(4), F.S.

⁵¹ Section 288.8013(6), F.S.

⁵² See *supra*, note 8.

United States Census Bureau,⁵³ 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.⁵⁴

The bill removes the requirement that K-20 institutions have a “home campus” within the disproportionately affected counties in order receive grant awards for programs of excellence, and allows K-20 institutions to be eligible for such awards so long as the institution has a campus within the disproportionately affected counties. The bill likely increases the number of K-20 institutions that may be eligible for such grant awards.

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.

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.

⁵³ A table of the United States Census Bureau anticipates county population and demographic components of population change may be released in March of 2017. See <https://www.census.gov/programs-surveys/popest/about/schedule.html> (last visited March 14, 2017).

⁵⁴ 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 March 14, 2017).

C. Government Sector Impact:

The bill reduces General Revenue funds by \$300 million in Fiscal Year 2017-2018. Seventy-five percent of future economic damage settlement payments received by the state will be transferred from General Revenue to the Recovery Fund.

VI. Technical Deficiencies:

Line 73 of the bill refers to moneys received *before* June 30, 2017 and line 78 of the bill refers to moneys received *on or after* July 1, 2017. The language inadvertently does not provide guidance for a scenario in which the state receives settlement funds on June 30, 2017.

VII. Related Issues:

Line 68 of the bill relates to 75 percent of the moneys after “reasonable and necessary payment of attorney fees, costs, and related expenses.” The Attorney General negotiated fees, costs, and expenses in an agreement separate from the settlement for economic damages. Without a deduction of these funds, Triumph Gulf Coast will receive 75 percent of the total amount of moneys received before June 30, 2017.

The bill is unclear as to the term limits of the newly appointed board members. Section 288.8014(3), F.S., identifies the term limits for the five initially appointed board members, as ending either 4 or 5 years after the Legislature appropriates funds the Recovery Fund and provides that “[t]hereafter, each member of the board of directors shall serve for a term of 4 years.” Lines 150-158 of the bill increase the number of board members as of the effective date of the act. If the newly appointed board members are meant to serve terms of 4 years, the terms may not end at the same time as the initially appointed board members serving 4-year terms.⁵⁵ In addition, if the newly appointed members serve 4-year terms, the Senate President and the Speaker of the House of Representatives will be required to make subsequent appointments to the board in back-to-back years. For example, the 4-year terms of the newly appointed members would end in 2021, while the serving 5-year terms of the initially appointed members end in 2022.

Line 156 of the bill references population estimates that the United States Census Bureau has not yet published. Until this data is released, the four least populous disproportionately affected counties, from which the two new board members will be appointed, are unidentified in the bill.

VIII. Statutes Affected:

This bill creates section 288.8012(5) of the Florida Statutes. This bill amends section 288.8013 of the Florida Statutes. This bill repeals section 377.43 of the Florida Statutes.

⁵⁵ The bill provides that the board membership increases to seven members upon becoming law, and s. 288.8014(3), F.S., provides that the initially appointed members’ terms end 4 years after the Legislature appropriates funds to the Recovery Fund. The date the Legislature appropriates funds may differ from the date the act becomes law.

IX. Additional Information:

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

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.