

**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 Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations

**BILL:** CS/SB 248

**INTRODUCER:** Senate Committee on Community Affairs and Senator Gaetz

**SUBJECT:** Economic Recovery from the Deepwater Horizon Disaster

**DATE:** January 20, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Martin	Meyer	BTA	Pre-meeting
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**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.

CS/SB 248 seeks to address many of the negative economic impacts resulting from the oil spill. The CS defines the term “disproportionally affected county.” It amends the state economic development incentives assigned to the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) to provide waivers for business requirements in disproportionately affected counties. The CS creates a 3-month-long sales-tax holiday for marine-related purchases in Northwest Florida, and appropriates \$10 million to OTTED to develop a strategy to diversify and expand economic opportunities in Northwest Florida.

This CS 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 CS will reduce overall state revenue collections by approximately \$2.0 million in FY 2010-11 and \$15.4 million in FY 2011-12, and will reduce local revenues by approximately \$227,000 in FY 2010-11 and \$1.9 million in FY 2011-12.

This CS substantially amends the following sections of the Florida Statutes: 14.2015 and 253.02. This CS 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> The estimates were further revised twice more and now stand at between 35,000 and 60,000 barrels per day.<sup>4</sup>

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

<sup>2</sup> 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>.

<sup>3</sup> *E.g. Rig Disaster: Timeline*, *supra* note 1.

<sup>4</sup> 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,

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.<sup>5</sup> 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.<sup>6</sup> Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.<sup>7</sup>

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:<sup>8</sup>

### 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 <sup>1</sup>	
Gulf Coast Claims Facility -- \$1,137,600,000 <sup>2</sup>	
Vessels of Opportunity Payments <sup>3</sup>	\$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
<b>TOTAL</b>	<b>\$1,412,300,000</b>

<sup>1</sup> Through 8-22-2010. <sup>2</sup> Through 1-5-2011. <sup>3</sup> Through 12-25-2010.

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

<http://www.restorethegulf.gov/release/2010/06/15/us-scientific-team-draws-new-data-multiple-scientific-methodologies-reach-updated> (last visited January 9, 2011).

<sup>5</sup> Fla. Exec. Order No. 10-99 (April 30, 2010).

<sup>6</sup> Fla. Exec. Order No. 10-100 (May 3, 2010).

<sup>7</sup> Fla. Exec. Order No. 10-106 (May 20, 2010).

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

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.”<sup>9</sup> However, BP disputes the estimate of the amount of oil spilled into the Gulf, saying that it is overstated by 20 to 50 percent.<sup>10</sup> 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.”<sup>11</sup>

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. Also, the proposals recommend that the money should be used for economic as well as environmental recovery efforts.<sup>12</sup>

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<sup>9</sup> *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](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/](http://www.msnbc.msn.com/id/40684304/ns/us_news-crime_and_courts/) (last visited Jan. 9, 2011).

<sup>10</sup> *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).

<sup>11</sup> 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*).

<sup>12</sup> *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.

**Discussion of this CS's provisions**

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

**III. Effect of Proposed Changes:****Section 1: Waiver of OTTED Incentive Criteria**

Section 1 amends s. 14.2015, F.S., to allow OTTED to waive requirements for businesses seeking the economic incentives in specified counties. At least 17 incentive programs, or categories of incentive programs, managed by OTTED appear to be eligible for the waiver provision in Section 1 of CS/SB 248.

***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),<sup>13</sup> created under the Governor's auspices to perform what had been the defunct department's governance functions. Over the years, 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 local matching funds from the Economic Development Trust Fund for various incentive programs, including QTI and the high-impact business performance grant.

**Rural incentive programs**

Florida has 32 rural counties, defined as either having a population not exceeding 75,000 persons, or having no more than 125,000 persons and be adjacent to a county with a population not exceeding 75,000.

OTTED takes the lead in facilitating technical assistance, planning, and financing rural economic development activities. There are four rural financial incentive programs: the Rural Infrastructure Fund; Rural Strategy Grants; the Rural Community Development Revolving Loan Fund; and the Rural Jobs Tax Credit.

The most popular of these rural incentives may be the Rural Infrastructure Fund, which offers three different grants to rural communities for activities involving: feasibility reviews of sites available for business location; feasibility studies and surveys related to expedited permitting for rural projects; and grants to help pay for infrastructure needed by a new or expanding rural business.

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<sup>13</sup> Section 14.2015, F.S., is the primary statute citing OTTED's responsibilities.

In FY 10-11, the Legislature appropriated \$1.1 million for rural infrastructure programs.

Meanwhile, the Rural Jobs Tax Credit program allows eligible businesses in the 32 rural counties to claim \$1,000 per new employee against their corporate or sales and use tax liabilities. The range of eligible business sectors is broad, ranging from targeted industries to agriculture and amusement parks. This program is capped at \$5 million per year; in calendar 2009, nine businesses claimed \$204,000 in credits.

#### Local Government Distressed Area Matching Grant Program

In 2010, the Legislature created this program in chapter 288.0659, F.S. For eligible projects, OTTED provides a 50-50 matching grant to the local government's contribution or \$50,000, whichever is less, to a business that:

- Will create at least 15 jobs; and
- Is either new to Florida, is expanding its operations in Florida, or is planning to leave Florida if it does not receive government incentives.

OTTED will award grants based on the following criteria:

- Whether the local government agrees to expedite its permitting processes for the business;
- The area must suffer from pervasive poverty, unemployment, and "general distress;"
- How much the local government plans to contribute to the business;
- The number of jobs and the wages; and
- The amount of capital investment by the business.

In FY 10-11, the Legislature appropriated \$3 million for this grant program. According to OTTED staff, no local government as of January 11, 2011, has applied.

#### Economic Development Transportation Fund (commonly referred to as "the Road Fund")

Section 288.063, F.S., provides state grants to improve transportation access and infrastructure for businesses that are planning to relocate or expand. OTTED awards the grants to local governments where the businesses are located, to contract for the transportation improvements. OTTED considers a number of factors in selecting the projects, including:

- Jobs to be created by the business,
- Wages to be paid, and
- Whether the transportation improvement is necessary to induce the business to locate or expand in a particular community. In FY 10-11, the Legislature appropriated \$20 million for economic development transportation projects, of which \$16.3 million was specifically earmarked, leaving \$3.7 for general projects under OTTED's discretion.

#### Qualified Defense Contractor and Space Flight Business (QDSC) tax refund program

Created in s. 288.1045, F.S., the QDSC tax refund program is designed to preserve the presence of military/defense and space-related companies in Florida by offering refunds of six types of state taxes and of ad valorem taxes, in exchange for the creation or retention of jobs. The basic credit is \$3,000 per job, but can be as much as \$8,000, based on whether the business is located in an enterprise zone or rural county and pays at least 200 percent of the area's average private-sector wage. The business enters into an agreement with OTTED that it will comply with the program's criteria and other performance benchmarks in exchange for the tax refunds.

For FY 10-11, the Legislature appropriated \$12.23 million to OTTED for use as tax refunds to QDSC and Qualified Target Industry (QTI) tax refund program recipients.

Section 288.095, F.S., caps at \$35 million the Legislature's annual appropriation for the QDSC and QTI programs combined.

#### Qualified Target Industry (QTI) Incentive Requirements

The QTI Incentive Tax Refund Program<sup>14</sup> 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.<sup>15</sup>

The QTI incentive is a refund against seven state taxes and the local ad valorem tax paid by eligible businesses.<sup>16</sup> 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,<sup>17</sup> but exceptions may be granted under specific criteria.<sup>18</sup> 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,<sup>19</sup> 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,"

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<sup>14</sup> Section 288.106, F.S.

<sup>15</sup> Section 288.106 (3)(a) and (b), F.S.

<sup>16</sup> 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.

<sup>17</sup> Section 288.106(4)(b)1.a., F.S.

<sup>18</sup> Section 288.106(4)(b)1.b., F.S.

<sup>19</sup> ENTERPRISE FLORIDA, INC., *supra* note 13, at 13.

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.<sup>20</sup>

As noted above, for FY 10-11, the Legislature appropriated \$12.23 million to OTTED for use as tax refunds to QDSC and Qualified Target Industry (QTI) tax refund program recipients.

#### Brownfield Redevelopment Bonus Refund

This tax-refund program, in s. 288.107, F.S., provides an additional \$2,500 per job refund for certain businesses located in contaminated and abandoned or underused areas. Eligible businesses are either eligible for the QTI program, or have invested \$500,000 in brownfield areas that don't require cleanup or invested \$2 million in multi-use business activities.

As with most of these incentive programs, an eligible business must enter into an agreement with OTTED and meet specified requirements before receiving annual refunds.

#### High-Impact Industry (HIPI) performance grant

Created in s. 288.108, F.S., the HIPI grant program seeks to attract businesses that create highly-skilled, high-wage jobs in Florida and make a substantial capital investment in their operations here. The law does not define "high-impact industry sectors;" instead, OTTED has defined them as: 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.

The HIPI grant is subject to legislative appropriation.

Typically, 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.<sup>21</sup> 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.

There was no appropriation for HIPI in FY 10-11.

#### Economic Gardening Programs

The Legislature created the Economic Gardening Technical Assistance and Business Loan programs in 2009 and funded them with an initial \$10 million appropriation. Of that initial

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<sup>20</sup> 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).

<sup>21</sup> Section 288.108(3), F.S.

appropriation, \$8.5 million was made available for loans and \$1.5 million for technical assistance.

The Economic Gardening Business Loan Pilot Program, in s. 288.1081, F.S., provides low-interest, short-term loans to eligible businesses for working-capital expenses, employee training, and salaries of new employees. It is administered by the Black Business Investment Fund (BBIF) in Orlando. From Oct. 1, 2009, to Sept. 30, 2010, the first year of implementation, the BBIF awarded 29 loans, totaling \$5.74 million, to 27 businesses statewide.<sup>22</sup> About \$2.76 million remains available for loaning by BBIF.

Created in s. 288.1082, F.S., the Economic Gardening Technical Assistance Pilot Program, called GrowFL, is housed at the University of Central Florida's Office of Research & Commercialization, provides eligible companies with training and outreach for their infrastructure, networking, and mentoring needs. In its first year, GrowFL selected 159 businesses that applied for the program for technical assistance.<sup>23</sup> Of those, 57 were manufacturing companies and 55 were in the category of professional, scientific, or technical businesses. The Legislature appropriated an additional \$1 million for FY 10-11 for the technical assistance pilot program.

To participate in GrowFL and in the loan program, a company must be a for-profit, privately held, investment-grade business that:

- employs at least 10 people but not more than 50;
- generates between \$1 million and \$25 million in annual revenue; and
- qualifies for the state tax refund program for qualified target industry businesses under s. 288.106, F.S.

#### The Manufacturing and Spaceport Investment Program

Created in s. 288.1083, F.S., this program allows eligible businesses to apply for a "tax credit" (actually a refund) of the sales and use taxes paid on eligible machinery and manufacturing equipment purchased in FY 10-11 and in FY 11-12. The "credit" is based on the difference in the costs of equipment purchases made in the base year of 2008, and in the two outer years. The total "credit" is \$50,000 per business.

\$19 million is available for refunds in FY 10-11 and \$24 million is available for "credits" in FY 11-12, awarded on a first-come, first-served basis. If more applications for refunds are submitted in FY 10-11 than funds allocated, the excess applicants are first in line for the refunds in FY 11-12.

At least 16 of the 19 applications received by OTTED in 2010 have been approved, totaling about \$800,000.

This program is repealed on July 1, 2013.

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<sup>22</sup> FY 2009-2010 report on file with the Senate Community Affairs Committee.

<sup>23</sup> FY 2009-2010 report on file with the Senate Community Affairs Committee.

### Quick Action Closing (QAC) Fund

QAC was conceived as a discretionary pool of money for the Governor to rapidly respond, after legislative oversight, to business projects interested in relocating to, or expanding within, Florida. QAC funds are often used to “close the deal” with recruited or retained companies.

QAC projects must represent a targeted industry sector; have a positive payback ratio of \$5 in to \$1; pay an average of at least 125 percent of the area or state average private-sector wage; and be supported by the local community in which they plan to locate or expand. Also, the QAC incentive payment must be seen as an inducement to the project’s relocation or expansion in Florida.

Per the statute, Enterprise Florida, Inc., reviews and evaluates applications for QAC funding, and forwards its recommendations to OTTED. Next, OTTED’s executive director has 22 calendar days to recommend to the Governor approval or disapproval of a project, and to include performance standards for the projects. Section 288.1088(3)(c), F.S., requires the Governor to provide the evaluation of projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives and consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for a project. Subsequently, at least 14 days before releasing funds for a project, the Executive Office of the Governor must recommend approval of the project and the release of funds by delivering notice of such action pursuant to the legislative consultation and review requirements set forth in s. [216.177](#), F.S.

If the chair or vice chair of the Legislative Budget Commission or the President of the Senate or the Speaker of the House of Representatives, within the 14 day consultation period, advise the Governor, in writing, that releasing funds for the project exceeds the Governor’s authority or is contrary to legislative policy, then the Governor must void the release of funds and wait until the LBC or the full Legislature addresses the project. Notwithstanding this process, any QAC project in excess of \$2 million must be approved by the LBC before funds are released.

In FY 10-11, the Legislature appropriated \$16 million for the QAC program.

### Innovation Incentive Program (IIP)

Created in s. 288.1089, F.S., the IIP grant is designed to attract biomedical, innovative technology, alternative energy, and research and development entities to Florida, to diversify the state’s economic base with highly skilled, high-wage jobs that energize their communities.

Since 2006, the state has awarded \$449 million, of the \$525 million appropriated, to seven R&D institutes, laboratories, or non-profit corporations.<sup>24</sup> The last legislative appropriation was for \$75 million in FY 10-11, and the funds have not been released to any new projects.

The review process begins with EFI evaluating an applicant’s eligibility. EFI recommends applicants to OTTED, which does a further review and makes a recommendation to the Governor. The Governor consults with the Senate President and the Speaker of the House of Representatives on the project, and can release the funds following approval by the LBC.

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<sup>24</sup> 2010 report on the IIP program, prepared by OTTED, is on file with the Senate Community Affairs Committee.

There are three types of IIP projects:

- R&D projects;
- Innovation Businesses; and
- Alternative and Renewable Energy Projects.

Each has specialized requirements, but all three must:

- pay wages at least 130 percent of the area or statewide average private-sector wage;
- enter into agreements with OTTED specifying performance standards and benchmarks that must be attained before funds are released; and
- reinvest with the state 15 percent of royalties and naming rights, to be deposited in either the Biomedical Research Trust Fund or the Economic Development Trust Fund, whichever is appropriate.

#### The Spring Training Baseball Incentive Program

Section 288.11621, F.S., specifies that up to 10 communities could be certified by OTTED as eligible to receive a long-term, bondable revenue stream of refunded state sales and use tax revenues, to pay for spring training facilities.<sup>25</sup> Local governments must comply with several criteria to be eligible, including a commitment to provide at least 50 percent of the spring training facility's construction or acquisition costs; the local government is in a county that levies a local tourist development tax; and the community has a 20-year agreement with a professional baseball team to use the facility.

As of Dec. 31, 2010, the state has returned \$30.4 million to communities for their spring-training facilities. All 10 slots for certified communities are filled, although two do not have teams.<sup>26</sup> State law establishes a procedure for OTTED to decertify communities, but that has not been invoked. Meanwhile, at least one team that plays spring training in Arizona has expressed interest in moving to Florida.

It is possible that if one of the certification slots became available, OTTED could fill it with a new MPB franchise.

#### The Black Business Loan Program

Currently established within OTTED, the Black Business Loan Program provides state funding for loans, loan guarantees, and investments to black business enterprises that cannot otherwise obtain capital through conventional lending institutions. These state funds flow first through nine entities known as "black business investment corporations," which actually make the loans and facilitate other financing for the eligible businesses. Additionally, a Florida Black Business Investment Board (FBBIB) assists OTTED in development of a long-range plan for the loan program and acts in an advisory role, and otherwise assists black-owned businesses in gaining access to financing.

In FY 10-11, the Legislature appropriated \$2.25 million for loans through the Black Business Loan Program.

<sup>25</sup> Florida currently has 15 spring-training teams total.

<sup>26</sup> Indian River County/Vero Beach lost the Los Angeles Dodgers after the 2008 season, but had previously bonded the state funding for facility improvements. Fort Lauderdale lost the Baltimore Orioles after the 2010 season, but has not bonded the state revenue.

### Military Base Retention Grant Program and other military-related grants

Part XI of chapter 288, F.S., includes several defense-related grants which OTTED awards to communities in their efforts to improve infrastructure near or adjacent to military installations; assist defense-related businesses that could be adversely impacted by base closure or reduction in federal defense spending; and to help communities faced with base closures or reduction to diversify their economies.

In FY 10-11, the Legislature appropriated \$3 million for the Defense Infrastructure Grant Program; \$850,000 for base reinvestment grants; and \$150,000 in military base protection grants.

### New Markets Development Program (New Markets)

Part XIII of chapter 288, F.S., relates to the New Markets tax credit program, which is designed to direct private investment into eligible businesses located within poverty-stricken, underserved communities, in exchange for corporate or premium insurance tax credits. Investors can claim as much as 39 percent of their qualified investments, over a 7-year period, against their corporate or premium tax liabilities.

Modeled after the federal program, Florida's New Markets program is managed by OTTED on the front end, as it reviews and either approves or rejects the qualified investments collected by the community development entities (CDEs) that act as conduits for those investments into the eligible communities. Section 288.9914, F.S., lists the criteria OTTED must use in its evaluation. OTTED also forwards to the state Department of Revenue information pertaining to the amount of qualified investments that may be claimed against tax liabilities and the identities of the investor taxpayers who may claim them.

The CDEs must report to OTTED each April 30 on the status of the investments, how many and the types of businesses that have received investments, how many jobs have been created, and other information. April 30, 2011, will be the first report for many of Florida's CDEs.

Six applications from four CDEs have been approved by OTTED; about \$76 million of the statutory total of \$97.5 million of total tax credits available under the program have been allocated to these CDEs. None of the credits can actually be claimed by the investor taxpayers until the third anniversary date of their investments, which could be in 2012 for the earliest investors.

### Capital Investment Tax Credit (CITC)

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,<sup>27</sup> 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:
  - 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.<sup>28</sup>

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.

The incentive is an annual credit, provided for up to 20 years, against a company’s corporate income tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project.

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<sup>27</sup> 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](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.

<sup>28</sup> 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.

According to DOR, in tax year 2008, \$4.055 million in CITC were claimed on tax returns and \$11.75 million in 2009.<sup>29</sup>

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.<sup>30</sup>

#### The Jobs for the Unemployed Tax Credit

Created in s. 220.1896, F.S., this is a corporate income tax credit for businesses that are in targeted industry sectors and which hire unemployed Floridians who meet certain requirements. New or existing businesses that meet the definition of a “qualified target industry” pursuant to s. 288.106, F.S., and which are subject to the state’s corporate or franchise income tax, will be eligible for the new “Jobs for the Unemployed Tax Credit.”

Eligible employees must be new hires for the eligible business; been unemployed at least 30 days prior to being hired on or after July 1, 2010; work on a regular, full-time basis for at least 36 hours a week and 12 months before the eligible business claims the tax credit.

An eligible business will receive a \$1,000 tax credit per year, for a maximum of two tax years, for each qualified employee. The tax-credit cap for all eligible businesses in each of the two fiscal years this credit is available is \$5 million, to be distributed by OTTED on a first-come, first-served basis. The tax credits can be taken in 2011 and 2012.

It is the responsibility of the business to affirmatively demonstrate to OTTED and to the Department of Revenue (DOR) that it is eligible to receive and use the tax credits. An eligible business may apply the tax credits up to the amount of its corporate tax liability in a tax year, and may carry forward any unused credits to the next tax year.

#### Urban High-Crime Job Tax Credit

This incentive allows eligible businesses in urban, high-crime areas, as designated by OTTED, to claim \$1,000, \$1,500, or \$2,000 per new employee against their corporate or sales and use tax liabilities, depending on the number of new hires and other criteria. An additional credit is available for eligible companies in subsequent years, for each new employee is hired. The range of eligible business sectors is broad, ranging from manufacturing to amusement parks. This program is capped at \$5 million per year; in calendar 2009, some 19 businesses claimed \$855,000 in credits.

#### *Effect of Proposed Changes*

**Section 1** amends s. 14.2015, F.S., to define “disproportionally affected county” as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

The CS gives OTTED the ability to waive any or all requirements of any of its programs for a business seeking to relocate from another state to a disproportionally affected county between

<sup>29</sup> Email from DOR staff to Senate Commerce and Tourism Committee (Dec. 30, 2010) (on file with Senate Commerce and Tourism Committee).

<sup>30</sup> ENTERPRISE FLORIDA, INC., *supra* note 13, at 28.

July 1, 2011 and June 30, 2014 if OTTED determines the waiver is in the best interest of the public.

If the cumulative amount of the state incentives is:

- up to \$5 million then OTTED must file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver;
- between \$5 and \$10 million then OTTED must file with the Governor, the President of the Senate, and the Speaker of the House a written statement of the conditions and circumstances constituting the reason for the waiver and requesting concurrence within 5 business days (no waiver can be given without concurrence); and
- greater than \$10 million, no waiver is available.

### ***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.

#### ***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.<sup>31</sup> Local governments regularly issue a wide variety of development permits and building permits that have varying durations.

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<sup>31</sup> Section 163.3229, F.S.

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

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

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

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

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 CS 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 CS 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 CS 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.<sup>32</sup>

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.<sup>33</sup> The compact requires each state to make emergency plans and develop interstate procedures, where practical, to better coordinate emergency responses for emergencies.

Section 253.03, F.S., tasks the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees or Board), with acquiring, managing, and disposing of state lands (with certain exceptions including transportation, flood control, and military lands).<sup>34</sup>

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<sup>32</sup> Ch. 96-244, L.O.F. (1996).

<sup>33</sup> Section 252.922(2), F.S.

<sup>34</sup> Section 253.03(7)(a), F.S.

***Effect of Proposed Changes***

The CS 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: Creation of a Commission on Oil Spill Coordination**

Section 4 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***

CS/SB 248 creates the Commission on Oil Spill Response Coordination. It would include a 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 5: State sales-tax holiday on marine-related purchases in Northwest Florida**

Section 5 creates a 3-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., July 1, 2011, through midnight, September 30, 2011.

***Present Situation***

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***

CS/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 3-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 the following items designed to be used on boats:
  - Radios;
  - Global positioning systems;
  - Radar and sonar 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 6: Strategic Economic Diversification Plan for Disproportionally Affected Counties**

Section 6 appropriates \$10 million in recurring revenue to OTTED and Florida’s Great Northwest, Inc., and directs it to use the funds to help develop and implement an economic strategic plan with preference given to programs in disproportionately affected counties.

***Present Situation***

Florida’s Great Northwest, Inc. is a Florida non-profit corporation founded in 2000. They are a regional economic development organization representing 16 counties in Northwest Florida. The organization is comprised of county and local economic development groups, workforce development boards, community and junior colleges, universities, and private businesses which compose the majority of its organization’s membership. Through the creation of strategic alliances with its public and private partners, Florida’s Great Northwest’s goal is to enrich economic life in Northwest Florida.

***Effect of Proposed Changes***

CS/SB 248 defines “disproportionally affected county” as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

The CS appropriates \$10 million in recurring state general revenue to OTTED to contract with Florida’s Great Northwest, Inc., to develop and implement an “innovative economic development program” for disproportionately affected counties. The contract between OTTED

and Florida's Great Northwest must require Florida's Great Northwest to report to OTTED quarterly 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 expenditure of funds. Funding preference would be given to disproportionately affected counties and the municipalities therein, if the applicable local government provides for expedited permitting in order to promote:

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

Funding preference is also given when these disproportionately affected local governments combine their permitting processes for the purposes described above.

None of the funds may be used for administrative costs of Florida's Great Northwest. 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 may approve expenditures of the \$10 million without legislative concurrence.

The legislation does not specify a deadline by which OTTED or Florida's Great Northwest must develop and implement the new program, and the funds are appropriated on a recurring basis (\$10 million is available each year until such authorization is modified by the Legislature).

**Section 7: Use of Federal Funds and Other Oil-Spill Related Compensation**

Section 7 provides direction on how funds received by the state based on damages caused by the Deepwater Horizon oil spill are to be directed.

***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***

Section 7 defines "disproportionally affected county" as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County.

The CS states that any funds received for damages caused by the Deepwater Horizon oil spill shall be deposited into the applicable state trust funds (which means for OTTED, the Economic Development Trust Fund) and expended pursuant to state law or as approved by the LBC.

Seventy five percent of the funds may be used by disproportionately affected counties and twenty five percent may be used by other counties for:

- Scientific research into the impact of the oil spill fisheries and coastal wildlife and vegetation along the shoreline and the development of strategies to implement restoration measures suggested by such research;
- Environmental restoration of coastal areas damaged by the oil spill;
- Economic incentives; and
- Initiatives to expand and diversify the economy of the county.

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.

### **Section 8: Submerged-land leases**

Section 8 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 CS 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. Lease fees, under this section, include associated sales or use taxes.

***Title***

Section 9 of the CS states that sections 1, 5, 6, and 7 may be cited as the “Oil Spill Recovery Act.”

***Effective Date***

Section 10 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:****General or Local Laws**

Because this CS 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.<sup>35</sup> If a

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<sup>35</sup> 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).

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.<sup>36</sup>

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’ . . .<sup>37</sup>

“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.”<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> This bill relates to the Deepwater Horizon oil spill. The bill names those counties that have been disproportionately affected by the spill.

### **Separation of Powers - Nondelegation Doctrine**

Section 1 of the CS allows OTTED to waive any or all requirements of any of its programs with certain restrictions. Allowing OTTED to waive its own legislatively created requirements may raise a separation of powers question. The Florida Constitution provides that no person belonging to one branch of the government may exercise any power belonging to the other branches.<sup>42</sup> Because the Legislature has the sole authority and responsibility to make laws, the Legislature may not delegate its power to others. However, an administrative agency has some degree of flexibility in administering a legislatively articulated policy.<sup>43</sup> The nondelegation doctrine states that a law that delegates authority to an agency must contain sufficient standards or guidelines in order to enable the agency, as well as the courts, to determine whether the agency is properly carrying out the Legislature's intent.<sup>44</sup> Here, the Legislature has specified requirements

<sup>36</sup> Art III, § 10, Fla. Const.

<sup>37</sup> *State ex rel. Buford v. Daniel*, 99 So. 804 (Fla. 1924).

<sup>38</sup> Art. III, § 11(b), Fla. Const.

<sup>39</sup> *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).

<sup>40</sup> *State ex rel. Landis v. Harris*, 163 So. 237 (Fla. 1934).

<sup>41</sup> *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).

<sup>42</sup> Art. II, § 3, Fla. Const.

<sup>43</sup> *B.H. v. State*, 645 So. 2d 987, 46 A.L.R.5th 877 (Fla. 1994).

<sup>44</sup> *Department of Ins. v. Southeast Volusia Hosp. Dist.*, 438 So. 2d 815 (Fla. 1983); *Coca-Cola Co., Food Division, Polk County v. State, Dept. of Citrus*, 406 So. 2d 1079 (Fla. 1981).

for OTTED economic development programs. The Legislature is attempting to give OTTED more flexibility to assist businesses in disproportionately affected local governments in response to the DWH oil spill. The Legislature has placed restrictions on the ability of OTTED to use the waiver. The primary restrictions are:

- caps on the amount of funds that can be obtained under the waiver;
- the applicant must be a business moving from another state to a disproportionately affected county;
- the business must relocate between July 1, 1011, and June 30, 2014; and
- OTTED determines that it is in the best interest of the public.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

The three-month sales tax holiday for marine-related purchases in seven Northwest Florida counties would reduce the collections to the State Treasury and to local governments. The Revenue Estimating Impact Conference met on January 24, 2011 to analyze this provision, but as of this writing has not completed its fiscal analysis. However, staff estimates that the holiday will reduce overall state general revenue collections by approximately \$2.0 million in FY 2010-11 and \$15.4 million in FY 2011-12, and will reduce local revenues by approximately \$227,000 in FY 2010-11 and \$1.9 million in FY 2011-12.

To the extent that OTTED waives requirements for the tax credit and refund programs addressed in this CS, if the businesses would not otherwise be qualified for such programs, there will be a corresponding negative impact on tax revenues.

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.

### **B. Private Sector Impact:**

Indeterminate. To the extent that changes to existing economic-development incentives in section 1 of the CS 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 CS/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 CS/SB 248 that will increase their workloads.

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

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

The CS contains \$10 million in recurring general revenue appropriation to OTTED.

To the extent that OTTED waives requirements for the grant and refund programs addressed in this CS, if the businesses would not otherwise be qualified for such programs, there will be a corresponding increase in the funds required for these programs, subject to appropriation.

**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.)

**CS by Community Affairs on January 11, 2011:**

The CS defines “disproportionally affected county” as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, or Walton County. This is a change from the bill because section 1 of the bill only referred to Bay County, Escambia County, Franklin County, and Gulf County.

Rather than amending OTTED’s program requirements (sections 1, 4, & 5 of the original bill), section 1 of the CS gives OTTED the ability to waive all requirement of any of its programs for a business seeking to relocate from another state to a disproportionally affected county between July 1, 2011 and June 30, 2014.

If the cumulative amount of the state incentives is:

- up to \$5 million then OTTED must file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver;
- between \$5 and \$10 million then OTTED must file with the Governor, the President of the Senate, and the Speaker of the House a written statement of the conditions and circumstances constituting the reason for the waiver and requesting concurrence within 5 business days (no waiver can be given without concurrence); and
- greater than \$10 million, no waiver is available.

The CS moves back the dates of the sales tax holiday.

The CS differs from the bill in that it specifically assigns Florida's Great Northwest, Inc., responsibility to develop and implement the \$10 million dollar fund. In the CS the funds are recurring, whereas in the original bill the funds were not recurring.

**B. Amendments:**

None.