





# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The Outer Continental Shelf (OCS) holds a significant quantity of oil and gas for the nation's energy supply. The OCS consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the states' jurisdiction and the seaward extent of federal jurisdiction. Currently, the OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil and gas resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located in the OCS.<sup>1</sup> The OCS consists of four separate regions: the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaskan OCS Region.

The Gulf of Mexico OCS Region is currently divided into three separate offshore drilling areas: the Western Planning Area, the Central Planning Area, and the Eastern Planning Area. The Eastern Planning Area starts on the western coastline of Florida and extends west to a line that is approximately south of Pensacola, Florida into the Gulf.<sup>2</sup> Estimates suggest that 6.95 to 9.22 trillion cubic feet of natural gas and 1.57 to 2.78 billion barrels of oil and condensate are in the Eastern Planning Area.<sup>3</sup>

Because the federal government has retained its authority for the use of these regions, the Supremacy Clause of the United States Constitution prevents Florida from interfering with this prohibition.<sup>4</sup> The Supremacy Clause provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Thus, Florida's authority to regulate offshore drilling in the Gulf of Mexico OCS Region is limited by the authority designated to it by Congress. Under current law, this means that Florida's authority to regulate waters in the Gulf of Mexico extends to approximately nine nautical miles.<sup>5</sup>

The Gulf of Mexico Energy Security Act of 2006 (HR 6111) was passed by the United States Congress and signed into law by President George W. Bush on December 20, 2006. This law temporarily forbids leasing for oil or natural gas drilling in any Gulf of Mexico region east of the Military Mission Line (86 degrees and 41 minutes W. longitude). Further, it also prohibits drilling in any region of the Eastern Planning Area within 125 miles of the Florida coast or any region that is within the Central Planning Area, Lease Area 181, and also within 100 miles of the Florida coastline.<sup>6</sup> The jurisdiction of the United States for the Gulf of Mexico extends from 200 miles up to a possible length of 350 miles offshore.<sup>7</sup> This prohibition is set to expire on June 30, 2022. Lease Area 181 is the closest active leasing region

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<sup>1</sup> <http://www.mms.gov/offshore/>.

<sup>2</sup> See Figure 1.

<sup>3</sup> U.S. Department of the Interior, Minerals Management Service, <http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html>.

<sup>4</sup> United States Constitution, Article VI, Section 2.

<sup>5</sup> See *US v. Louisiana, et al.* 363 U.S. 1, 129 (1960).

<sup>6</sup> U.S. HR 6111. Also See Figure 1.

<sup>7</sup> U.S. Department of the Interior, Minerals Management Service, <http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html>.

to Florida's coastline that is under the jurisdiction of the United States. Leases do currently exist in the Eastern Planning Area, but active drilling may only take place in those areas that are both 125 miles from seaward of Florida's coastline and west of the Military Mission Line.<sup>8</sup>

Currently, the Florida Constitution is silent regarding drilling for oil or natural gas within sovereign submerged lands. However, under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of state-owned submerged lands. These state-owned submerged lands extend waterward from the shoreline for approximately 9 nautical miles into the Gulf of Mexico OCS Region.<sup>9</sup> Section 253.61, F.S., prohibits the Trustees from granting any "oil or natural gas lease" on state-owned submerged lands off the State's west coast. A similar provision in s. 377.24, F.S., prohibits the Department of Environmental Protection from issuing a permit to drill a well in search of oil or gas on the same state-owned submerged lands. If an oil spill were to occur in Lease Area 181, there is less than a 5% chance that the oil would reach the Florida resources within 30 days.<sup>10</sup> These resources include coastal beaches, animal habitats, and state offshore waters. This percentage also assumes that no cleanup efforts are taken during that 30 day period.<sup>11</sup>

### **Proposed Changes**

HJR 631 proposes an amendment to Section 7, Article II of the Florida Constitution to prohibit drilling for oil or natural gas on the sovereign submerged lands within 250 miles of the Florida coastline or "to the maximum extent allowed by laws of the United States."

This legislation proposes an amendment to the Florida Constitution for the next general or special election ballot. Further, because it is a joint resolution, Section 1, Article XI of the Florida Constitution requires that this resolution be "agreed to by three-fifths of the membership of each house of the legislature" before taking effect.

Because the federal government has retained its authority to limit or allow drilling within the Gulf of Mexico OCS Region, this bill is not likely to affect current drilling off of the Florida coastline. However, if the prohibition is changed or allowed to expire in 2022, the federal government may give Florida jurisdiction over a greater area of the state's coastal waters. If the federal government were to give Florida this authority, this amendment would ban drilling within any jurisdiction that Florida is given to a maximum distance of 250 miles. A 250 mile range would likely include all of Lease Area 181 as shown in Figure 1.

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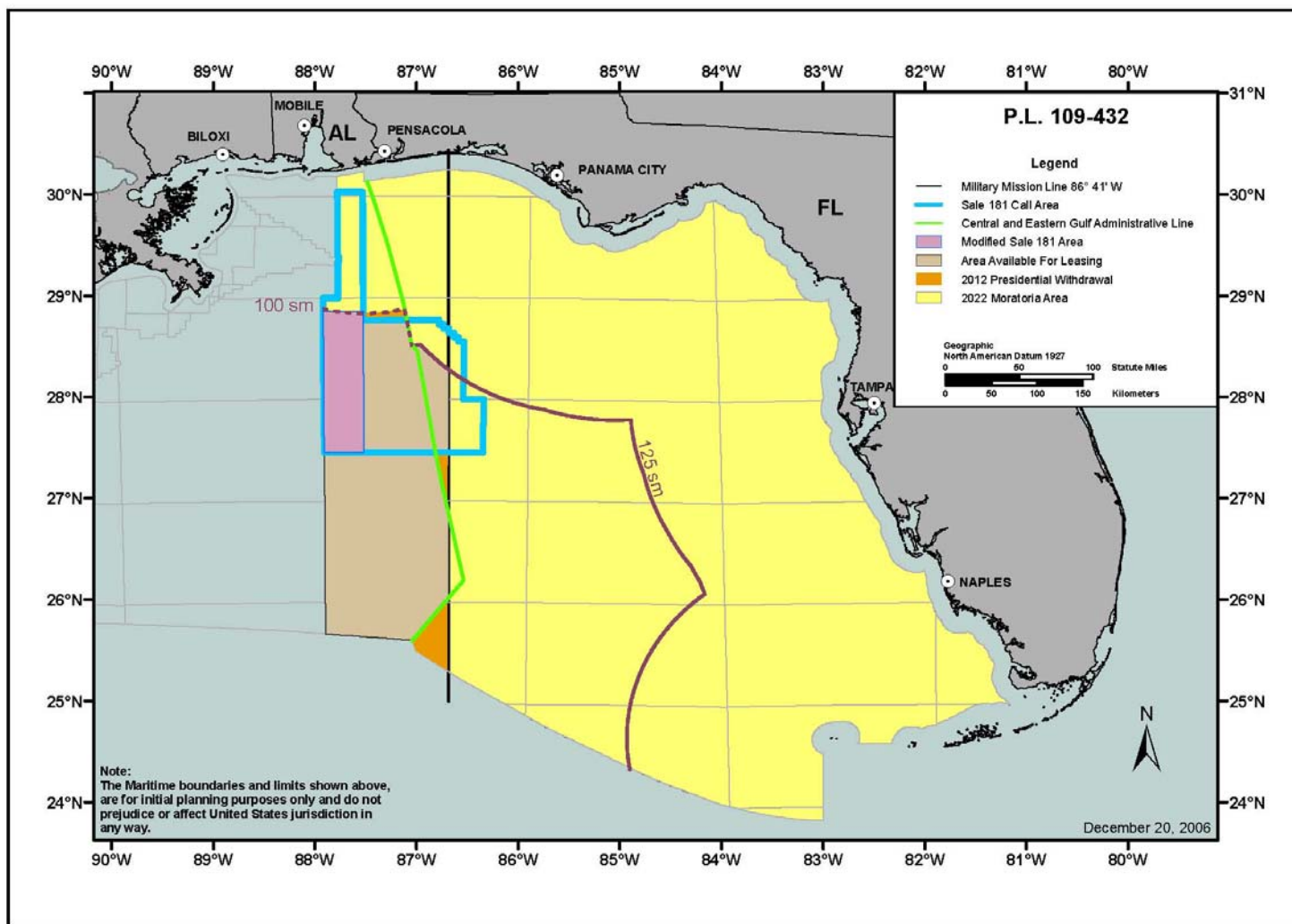
<sup>8</sup> See Figure 1.

<sup>9</sup> Section 1, Article II, Florida Constitution.

<sup>10</sup> Phone conversation with Phil Wieczynski, Emergency Response Chief for DEP Law Enforcement (March 12, 2007). Also see Oil-Spill Risk Analysis: Gulf of Mexico Outer Continental Shelf (OCS) Lease Sales, Eastern Planning Area, 2003-2007 and Gulfwide OCS Program, 2003-2042. U.S. Department of the Interior, Minerals Management Service. September, 2002.

<sup>11</sup> Id.

Figure 1.<sup>12</sup>



C. SECTION DIRECTORY:

HJR 631 proposes an amendment to Section 7, Article II of the Florida Constitution to prohibit drilling for oil or natural gas on the sovereign submerged lands within 250 miles of the Florida coastline or to the maximum extent allowed by the laws of the United States.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

<sup>12</sup> U.S. Department of the Interior, Minerals Management Service, [http://www.mms.gov/ooc/PDFs/PL109d\\_.pdf](http://www.mms.gov/ooc/PDFs/PL109d_.pdf).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact on state or local governments.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

This bill requires an amendment to the Florida Constitution be placed on the next general or special election ballot. If adopted, this amendment would use the fullest extent of Florida's authority to prevent drilling within 250 miles of Florida's coastline. Article VI, Section 2 of the United States Constitution, also known as the Supremacy Clause, states that:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Thus, because current federal laws cover this subject matter, the Supremacy Clause of the United States Constitution will preempt the legal effects of this legislation.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Recently, the Security and Fuel Efficiency Energy Act (SAFE) of 2007 was introduced in the United States Congress.<sup>13</sup> If passed, the SAFE Act will remove the current drilling prohibition and allow drilling as close as 45 miles off of the Florida Gulf coastline.<sup>14</sup>

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<sup>13</sup> Miami Herald, March 14, 2007, <http://www.miamiherald.com/569/story/40913.html>. Also see The St. Petersburg Times, March 14, 2007, [http://www.sptimes.com/2007/03/14/Worldandnation/Bill\\_would\\_bring\\_drill.shtml](http://www.sptimes.com/2007/03/14/Worldandnation/Bill_would_bring_drill.shtml).

<sup>14</sup> Id.

#### D. STATEMENT OF THE SPONSOR

This legislation is simple: it will allow voters to choose whether to ban oil and gas drilling off the coast of Florida. Accidental spills, though unlikely, could have disastrous effects on Florida tourism and fishing. Right now federal laws override this amendment, but its passage would send a powerful message to Congress about how much Floridians value our coast and coastal waters.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES