

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1221 Unemployment Assistance/Oil Spill

**SPONSOR(S):** Drake and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SM 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	10 Y, 0 N	Cyphers	Cyphers
2) Economic Development & Tourism Subcommittee			

### SUMMARY ANALYSIS

This memorial asks Congress to extend the benefits of the Disaster Unemployment Assistance program to include workers who are unemployed as a result of the Deepwater Horizon oil spill if they are not eligible for other unemployment benefits, and even though the disaster was man-caused. It also asks Congress to use funds collected under the Oil Pollution Act to pay for the benefits, rather than the cost be carried by employers and taxpayers.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

On April 20, 2010 in the Gulf of Mexico, the Deepwater Horizon drilling rig experienced an explosion<sup>1</sup> that would take the lives of eleven people and mark the beginning of the largest environmental disaster in the history of the United States. By the end of April 22<sup>nd</sup>, eleven members of the crew of the Deepwater Horizon were missing and presumed deceased<sup>2</sup>; several other crew members were injured; the \$350 million oil rig owned by Transocean<sup>3</sup> had sunk to the bottom of the Gulf of Mexico; and oil and natural gas were leaking from pipes attached to the failed blowout preventer at the well head.

##### Response and Aftermath

The location of the leaking well site, known as the Macondo well, is approximately 45 miles southeast of Louisiana. As it became clear that the built-in measures to stop the leak had failed and that oil was beginning to spread away from the site of the leak, Governor Charlie Crist declared a state of emergency on April 30<sup>th</sup> for Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties<sup>4</sup>. On May 3<sup>rd</sup>, the governor's executive order was amended to add Franklin, Wakulla, Jefferson, Taylor, Dixie, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties<sup>5</sup>.

After several failed attempts to stop the leak from the well, including a failed "top kill" effort between May 26 through 29, 2010<sup>6</sup>; leaking from the well was finally stopped on July 15, 2010<sup>7</sup>. A new "static kill" was successfully completed on August 4, 2010<sup>8</sup>, and on September 19, 2010, after the relief well was finished and the well was cemented from beneath, Admiral Thad Allen announced that the well was "effectively dead."<sup>9</sup>

The federal government estimates the amount of oil released from the Macondo well to be approximately 4.9 million barrels or 205.8 million gallons of oil<sup>10</sup>. While 17 percent of the oil was captured at the wellhead (833,000 barrels), according to official oil budget reports, the remaining oil (4.2 million barrels) escaped immediate retrieval<sup>11</sup>.

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<sup>1</sup> [http://www.nytimes.com/2010/04/22/us/22rig.html?\\_r=1&scp=1&sq=oil+rig+explosion&st=nyt](http://www.nytimes.com/2010/04/22/us/22rig.html?_r=1&scp=1&sq=oil+rig+explosion&st=nyt)

<sup>2</sup> <http://www.tampabay.com/incoming/as-oil-rig-sinks-hope-fades/1089672>

<sup>3</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>4</sup> Office of the Governor, Executive Order Number 10-99 (Emergency Management – Deepwater Horizon) April 30, 2010

<sup>5</sup> Office of the Governor, Executive Order Number 10-100 (Emergency Management – Deepwater Horizon) May 3, 2010

<sup>6</sup> <http://www.nytimes.com/2010/05/30/us/30spill.html>

<sup>7</sup> <http://abcnews.go.com/WN/gulf-oil-spill-bps-cap-success-oil-stops/story?id=11173330>

<sup>8</sup> <http://www.nytimes.com/2010/08/05/us/05spill.html>

<sup>9</sup> <http://www.cbsnews.com/stories/2010/09/19/national/main6881308.shtml>

<sup>10</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>11</sup> [http://www.noaaneews.noaa.gov/stories2010/20101123\\_oilbudget.html](http://www.noaaneews.noaa.gov/stories2010/20101123_oilbudget.html)

Oil Budget (Released Aug. 4)		Oil Budget Technical Report		
Category	% of Total	Category	% of Total	Change
Direct Recovery	17%	Direct Recovery	17%	None
Burned	5%	Burned	5%	None
Skimmed	3%	Skimmed	3%	None
Chemically Dispersed	8%	Chemically Dispersed	16%	+8%
Naturally Dispersed	16%	Naturally Dispersed	13%	-3%
Evaporated or Dissolved	25%	Evaporated or Dissolved	23%	-2%
Other	26%	Other	23%	-3%

According to a report by Secretary of the Navy Ray Mabus, at its peak, the response to the oil spill included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and many federal, state, and local agencies<sup>12</sup>. The final Situation Report by Florida's response team also noted the use of over 791,061 feet of boom; the removal of over 500,000 gallons of oil from Florida's shoreline; the deployment of 128 National Guardsmen; and the registration of 19,899 volunteers from all 50 states and 10 different countries<sup>13</sup>.

#### Claims Process

Under the provisions of Oil Pollution Act of 1990 (OPA), all "responsible parties" are liable for recovery costs and other damages resulting from an unpermitted release of oil into the navigable waters of the United States. The OPA, however, limits the damages to be paid by responsible parties at \$75 million per incident. However, according to a U.S. Coast Guard document on Oil Spill Liability Trust Fund Funding for Oil Spills, this limitation of liability disappears if the incident is found to have been caused by gross negligence; willful misconduct; or a violation of federal operating, construction, or safety regulations.<sup>14</sup> BP has said that it would not claim protection under the \$75 million limit under OPA<sup>15</sup>.

On June 1, 2010, the United States Attorney General Eric Holder announced the federal government would pursue all legal remedies to the disaster, including civil and criminal penalties in order to ensure accountability on the part any responsible party.<sup>16</sup> Later in June, at the request of President Obama, BP announced that it would create a trust that would total \$20 billion to pay all "legitimate claims"<sup>17</sup>.

All claims under OPA, including recovery and damages related to individuals, governments and natural resources, were to be paid out of this fund, though the \$20 billion amount was not intended to be a cap, according to BP.<sup>18</sup>

Until August 23, 2010, BP administered the payment of claims out of the trust fund, but the process of paying claims to individuals and businesses was subsequently turned over to an independent claims facility managed by Kenneth Feinberg with the opening of the Gulf Coast Claims Facility (GCCF)<sup>19</sup>.

<sup>12</sup> America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010

<sup>13</sup> Deepwater Horizon Response: Situation Report #114 (Final) August 26, 2010

<sup>14</sup> <http://www.epa.gov/regulations/laws/opa.html>

<sup>15</sup> <http://www.bloomberg.com/news/2010-05-21/bp-waiver-of-75-million-spill-damage-cap-may-recognize-liability-reality.html>

<sup>16</sup> [http://www.upi.com/Top\\_News/US/2010/06/01/Obama-pledges-investigation-of-spill/UPI-57771275397263/](http://www.upi.com/Top_News/US/2010/06/01/Obama-pledges-investigation-of-spill/UPI-57771275397263/)

<sup>17</sup> <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7062966>

<sup>18</sup> *Id.*

As of March 2, 2011, the total number of claimants to the GCCF reached 802,411. Of these claimants, 263,054 have been paid a total of \$3.46 billion thus far. Florida makes up 32% of all claims (254,557 claims) and 35.6% of all claims paid to date (97,271 claims paid totaling \$1.23 billion).<sup>20</sup>

## Clean Water Act

The Clean Water Act contains provisions not covered by the OPA or other federal laws which allow for penalties to be levied when pollutants are discharged from a vessel or facility without authorization<sup>21</sup>. The civil penalties awarded as a product of the Clean Water Act can be assessed on two separate scales which can be chosen by federal authorities; per day or volumetrically. Section 311(b)(7) of the Act allows for a penalty of \$37,500 for each day in which a violation occurs or \$1,100 per-barrel of oil discharged without a permit. These penalties can be increased significantly if the unlawful discharge is the result of gross negligence or willful misconduct by the owner, operator, or any person in charge of a vessel, or in the case of the Deepwater Horizon, an offshore facility. In fact, the per-barrel penalty for discharges as a result of gross negligence or willful misconduct can be as much as \$4,300. The provisions, as potentially applied in this case, provide for a civil penalty range between \$5.4 billion and \$21.1 billion<sup>22</sup>.

Currently all funds derived from oil spill related civil penalties under the Clean Water Act must be placed into the Oil Spill Liability Trust Fund (OSLTF).<sup>23</sup> These funds can only be used for the purpose of unmet claims by responsible parties in future spill events. Further, the total of all claims against the trust fund are limited by a cap of \$1 billion per pollution event.<sup>24</sup> In the case of the Deepwater Horizon disaster, no funds collected as a result of CWA penalties (other than the capped \$1 billion from the current balance in the OSLTF) could be used for economic or environmental recovery in the five Gulf states including Florida.

In his September 2010 report to the president regarding the Gulf oil spill, Secretary of the Navy, Ray Mabus recommended that federal law be changed to allow the use of penalties collected under CWA as a result of the Deepwater Horizon oil leak for long-term economic and environmental recovery in the Gulf states. He believed that these funds should be used to mitigate economic and natural resource damage not covered by the OPA. He also called for a portion of penalties to go directly to the states for their individual long-term recovery and economic development efforts. Finally, he recommended that the remaining balance should go to the OSLTF for future spills.<sup>25</sup>

## Disaster Unemployment Assistance

The Robert T. Stafford Disaster Relief and Emergency Assistance Act was signed into law in 1988 as an amendment to the Disaster Relief Act of 1974.<sup>26</sup> This Act provides the statutory authority for most Federal disaster response activities, especially as they pertain to FEMA and FEMA programs. One of the provisions of the Act is the Disaster Unemployment Assistance (DUA) program. The program, funded by the federal government and administered by the states, provides unemployment benefits for individuals who are unemployed as the result of a major disaster. Benefits begin with the date the individual was unemployed due to the disaster incident and can extend up to 26 weeks.<sup>27</sup>

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<sup>19</sup> <http://www.gulfcoastclaimsfacility.com/>

<sup>20</sup> Gulf Coast Claims Facility website; Overall Program Statistics; February 28, 2011

<sup>21</sup> Section 311(j)(1) of the Clean Water Act of 1972

<sup>22</sup> Range for penalty amounts is based on assumed unauthorized oil discharge of 4.9 million barrels

<sup>23</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; Staff Working Paper Number 14

<sup>24</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; Staff Working Paper Number 14

<sup>25</sup> America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010

<sup>26</sup> <http://www.fema.gov/about/stafact.shtm>

<sup>27</sup> Id.

The benefits from DUA are made available to individuals not covered by other unemployment compensation programs, such as the self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other unemployment compensation.<sup>28</sup> Eligibility for the assistance, however, is limited to those individuals in counties which have been declared by the President of the United States to be disaster areas as a result of a natural disaster. Since the Deepwater Horizon Oil Spill was a human-caused disaster, individuals in the affected counties in Florida and the rest of the Gulf states are not eligible.<sup>29</sup>

### **Effects of Proposed Changes**

This memorial asks Congress to extend the benefits of the DUA to include workers who are unemployed as a result of the Deepwater Horizon oil spill if they are not eligible for other unemployment benefits, and even though the disaster was man-caused. It also asks Congress to use funds collected under OPA to pay for the benefits, rather than the cost be carried by employers and taxpayers.

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

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, there was an explosion at the Deepwater Horizon oil rig the night of April 20, 2010, and

WHEREAS, the explosion caused hundreds of millions of gallons of oil to spill into the Gulf of Mexico and wash up on the coastlines of the five Gulf states, and

WHEREAS, this man-made disaster has spoiled Florida's coastline and waterways and devastated its fishing and tourism industries, and

WHEREAS, this man-made disaster has directly resulted in the loss of jobs for Floridians, and

WHEREAS, many of these individuals were self-employed or independent contractors, and as such do not qualify for unemployment compensation benefits, and

WHEREAS, the federal Disaster Unemployment Assistance Program benefits individuals who become unemployed only as a direct result of a disaster declared by the President of the United States pursuant to the Robert T. Stafford Disaster Relief and Emergency Act of 1974, and assistance paid under the act may be invoked only for natural disasters...

#### **B. SECTION DIRECTORY:**

Not Applicable

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

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<sup>28</sup> [http://www.floridajobs.org/unemployment/uc\\_emp\\_claims.html](http://www.floridajobs.org/unemployment/uc_emp_claims.html)

<sup>29</sup> *Id.*

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:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

Not Applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**