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: SM 216

INTRODUCER: Senator Gaetz

SUBJECT: Deepwater Horizon Oil Disaster/Federal Income Tax

DATE: January 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Martin	Meyer	BTA	**Favorable**
3.			BC	
4.				
5.				
6.				

I. Summary:

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. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010. BP, p.l.c. ("BP"), and the Gulf Coast Claims Facility have been making payments to individuals and business negatively impacted by the oil spill.

SM 216 urges Congress to enact legislation that gives tax relief to individuals and businesses affected by the Deepwater Horizon oil spill. Specifically, Congress is requested to:

- Exempt claim payments from BP or the Gulf Coast Claims Facility from federal income taxes; and
- Extend the net operating loss carryback for fishing- and tourism-related businesses for an additional 3 taxable years (from 2 years to 5 years), which would allow businesses with $5 million or less in revenues to amend tax returns from the previous 5 years and receive a refund for taxes paid.

II. Present Situation:

Deepwater Horizon Oil Spill

At approximately 10:00 p.m. 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.[1] With the resulting leakage of crude oil and natural gas from the well site, the

[1] Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html (last visited 12/20/2010).

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 110 million barrels of product.[2]

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.[3] Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating much different rates from the official government estimates. The actual daily rate of leakage was somewhere between 35,000 and 60,000 barrels per day. "The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico."[4] As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline.[5]

From April until July 2010, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Allen announced that the well was "effectively dead," as the "static kill" was completed (drilling intersected the original well site nearly 18,000 feet below the surface and filled the well with mud and cement).[6]

[2] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at http://www.oilspillcommission.gov/sites/default/files/documents/Containment%20Working%20Paper%2011%2022%2010.pdf%20 (last visited 12/22/2010).

[3] WSJ.com Deepwater Horizon Rig Disaster – Timeline.

[4] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at http://www.oilspillcommission.gov/sites/default/files/documents/Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper%2010%206%2010.pdf%20 (last visited 12/22/2010). "By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem."

[5] Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 12/23/2010).

[6] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

Florida Response

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.[7] 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.[8] Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.[9]

Florida's emergency response system began immediate operations, which continued through the capping of the well.[10] The 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 restoration of environmental damage remains to be determined and is expected to rise as cleanup and recovery continues.

On December 29, 2010, BP reported that it had invested over $1 billion in Florida:[11]

BP Payments and Investments – Florida
December 29, 2010

Florida Government Payments	$66,600,000
Payments to Individuals and Businesses	$1,102,800,000
BP Claims Process -- $81,600,000 [1]	
Gulf Coast Claims Facility -- $1,021,200,000 [2]	
Vessels of Opportunity Payments [3]	$73,200,000
Tourism Grants	$32,000,000
NRDA Grants	$8,000,000
Research Grant	$10,000,000
Behavioral Health	$3,000,000
Community Contributions	$300,000
TOTAL	**$1,295,900,000**

[1] Through 8-22-2010. [2] Through 12-28-2010. [3] Through 12-25-2010.

Responsibility and Payment of Claims

BP was the operator of Deepwater Horizon and has recognized its role as the principal responsible party for the disaster. BP pledged to fully cover the cost of response, recovery, and damages.

[7] Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.
[8] Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.
[9] Office of the Governor, Executive Order Number 10-106, dated May 20, 2010. On August 26, 2010, Governor Crist signed an executive order that continued the state of emergency for Escambia, Franklin, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties through October 27, 2010. Office of the Governor, Executive Order Number 10-191, dated August 26, 2010.
[10] The operations transitioned to a monitoring status on August 27, 2010.
[11] BP Investments and Payments - Florida, Dec 29, 2010, available at http://www.floridagulfresponse.com/go/doc/3059/979815/ (last visited on 1/5/11).

Under the Oil Pollution Act of 1990 (OPA) "responsible parties," including lessees of offshore facilities, are strictly liable for removal costs and certain damages resulting from a spill. However, OPA caps liability for damages from a spill from an offshore facility to $75 million per incident, except in limited circumstances. Through August 2010, BP administered the processing and payment of claims. Under OPA, the responsible parties are responsible for all removal costs and applicable damages incurred by individuals, business, and state and local governments as a result of the oil spill. Claims include: property damage, economic loss, rental income, and bodily injury.

BP also provided interim advance payments to claimants who were not receiving their ordinary income or profit while cleanup was underway, and who demonstrated financial hardship). Additionally, no person asserting a claim or receiving payment for interim benefits was asked or required to sign a release or waive any rights to assert additional claims, to file an individual legal action, or to participate in other legal actions associated with the Deepwater Horizon oil spill.

Agreeing to a request by the President of the United States, BP committed $20 billion to a trust fund designed to provide compensation for damages incurred by individuals and businesses, as well as for certain government claims. Responsibility for adjudicating individual and business claims against BP to be paid out of this fund was turned over to an independent claims facility run by Kenneth Feinberg, who on August 23, 2010, opened the Gulf Coast Claims Facility to manage the process.[12] From August 23, 2010, through November 23, 2010, claimants could submit claims to the Gulf Coast Claims Facility for "emergency advance payments" to receive emergency relief for damages caused by the oil spill.[13]

Claims covered by the Gulf Coast Claims Facility include:[14]

- Removal and clean up costs: costs that result from actions taken to prevent, minimize, mitigate, or cleanup damages or anticipated damages from the oil spill;
- Damages to real or personal property: any physical injury or damage to:
  - Land and buildings, houses, or objects affixed or attached to the land, or
  - Equipment, boats, cars, furniture, or objects not affixed or attached to the land, and any property not considered real property;
- Lost earnings or profits:
  - Lost Earnings: a loss of or reduction in one's ability to earn wages or income because of the oil spill – for example, if a person was not able to engage in his or her normal job because of the oil spill or made less money than usual because of the oil spill;
  - Lost Profits: loss of income or profits by a business – for example, if a business experienced a temporary or permanent loss or reduction in profits due to the oil spill, or if it was forced to operate under different conditions than those that existed prior to the oil spill;

[12] America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, U.S. Secretary of the Navy, General Ray Mabus, available at http://www.oilspillcommission.gov/sites/default/files/documents/Mabus_Report.pdf%20 (last visited 12/23/2010).

[13] Gulf Coast Claims Facility, Frequently Asked Questions, Section 2, available at http://gulfcoastclaimsfacility.com/faq (last visited 12/22/2010).

[14] Id. at Section 9.

- Loss of subsistence use of natural resources: when an individual or business can no longer use a natural resource to obtain food, shelter, clothing, medicine, or other minimum necessities of life because the natural resource has been injured, destroyed or lost because of the oil spill – for example, if an individual who uses fish or other wildlife for food but can no longer do so because of the oil spill;
- Physical injury or death: an injury to the body proximately caused by the oil spill or the explosion and fire associated with the Deepwater Horizon incident, or by the cleanup of the oil spill; an injury that relates to emotional or mental health is not a physical injury and is not an eligible claim.

Currently, the Gulf Coast Claims Facility is offering claimants a “quick payment final claim” of $5,000 for individuals and $25,000 for businesses without having to submit any more documentation or undergo further claim review; however the quick payment also requires the claimant to sign a release and covenant not to sue. This payment option requires a claimant to release and waive any claims against BP and all other potentially responsible parties with regard to the oil spill or to submit any claim for payment to the National Pollution Funds Center, the Coast Guard office responsible for evaluating and approving Oil Pollution Act claims.[15]

Claimants can also seek a “full review final payment.” This option pays for all past and future losses caused by the oil spill. Again, with the full review final payment the claimant must sign a release that releases all of the claimant’s past and future damages in exchange for a liquidated amount. Additionally, certain types of payments that claimants may have received will be deducted from the final payment amount, including:

- Any prior payments by BP, the Coast Guard, or the Gulf Coast Claims Facility;
- Payments for lost earnings or profits, any amounts received from unemployment compensation, severance pay, or other employment benefit since the oil spill;
- Amounts received from insurance or other programs as replacement income;
- Amounts received from insurance for losses on injuries (for claims for removal and clean up costs, damage to real or personal property, loss of subsistence use of natural resources, or physical injury or death); and
- Amounts needed to pay any liens, garnishments, or other attachments received by the Gulf Coast Claims Facility on the claimant.

However, amounts a claimant has received from charities will not be deducted from the full review final payment.[16]

Claimants can also seek interim payment claims, which are paid once a quarter for documented past losses caused by the oil spill. These types of payments are available under the Gulf Coast Claims Facility program concludes on August 22, 2013. Also, claimants receiving these payments do not have to sign releases.[17]

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[15] Id. at Section 3.
[16] Id. at Section 4.
[17] Id. at Section 5.

As of January 4, 2011, the Gulf Coast Claims Facility has processed approximately 469,374 claims and paid out an estimated $2.89 billion. In Florida:[18]

Gulf Coast Claims Facility – Florida Statistics		
Total Claims (who may have more than one claim type): • Individual Claims: • Business Claims:		156,667 122,426 34,251
	Amount Paid	**Number of Claims**
Totals:	$1,095,431,476	81,296
Total Individual Claims Paid:	$437,618,200	58,683
Total Business Claims Paid:	$657,813,276	22,613
Removal and Cleanup Costs:	$138,000	23
Real or Personal Property:	$187,100	40
Lost Earning or Profits:	$1,095,093,633.14	81,224
Loss of Subsistence Use of Natural Resources:	$0	0
Physical Injury/Death:	$12,742.86	9

States, parishes, counties, local governments, and other political subdivisions that incurred expenses responding to the oil spill and oil spill cleanup have a separate dedicated claims process.

Taxes on Claims

The Internal Revenue Service (IRS) has determined that claims paid for lost wages, income, and profits, certain property damages claims, and payments for emotional distress are taxable.[19] When BP was processing the claims itself, company representatives stated that BP would report any claims it pays to the IRS. Additionally, the Gulf Coast Claims Facility website states that it "will report payments made annually to federal and state taxing authorities, using a Form 1099 or state form equivalent." A copy of that form is also sent to the claimant.[20]

[18] Gulf Coast Claims Facility, Florida Program Statistics, available at http://www.gulfcoastclaimsfacility.com/GCCF_Florida_Status_Report.pdf (last visited on 1/5/11).

[19] IRS, Gulf Oil Spill Information Center, available at http://www.irs.gov/newsroom/article/0,,id=224887,00.html (last visited 12/23/2010).

[20] Gulf Coast Claims Facility, Frequently Asked Questions, #67.

On June 15, 2010, Attorney General Bill McCollum sent a letter to U.S. Congressional members asking them to consider legislation that would exempt oil spill claim payments made to Floridians by BP from 2010 federal income taxes.[21]

There is precedence for Congress to exempt payments related to a disaster from the federal income tax. For example, the payments from the September 11 Victim Compensation Fund of 2001 were exempted from taxation.

H.R. 5598, from the 111th Congress, would have exempted oil spill claim payments from taxation. This bill was sponsored by Representatives Melancon (LA), Boyd (FL), and Ros-Lehtinen (FL).

Net Operating Loss Carryback Period

Legislation was also introduced in Congress to enact law that would allow fishing- and tourism-related businesses to carry back their losses from the oil spill for an additional 3 taxable years ("Gulf Coast net operating loss carryback").[22] Under current law, the net operating loss carryback period allows businesses to amend tax returns from the previous 2 years to account for losses and receive a refund for past taxes paid.

The Gulf Coast net operating loss carryback would allow Gulf Coast fishing- and tourism-related businesses with $5 million or less in revenue to look back 5 years. Losses otherwise eligible for the carryback period would be reduced by any amounts the business receives from BP for lost profits and earning capacity.

Congress previously enacted a similar rule for businesses following Hurricane Katrina in 2005, and the Midwestern storms, tornadoes, and floods in 2009. Farming losses permanently qualify for a 5-year carryback period.

III. Effect of Proposed Changes:

SM 216 urges Congress to enact legislation that gives tax relief to individuals and businesses affected by the Deepwater Horizon oil spill. Specifically Congress is requested to:

- Exempt from federal income tax, those claim payments from BP or the Gulf Coast Claims Facility made to individuals and businesses as a result of the Deepwater Horizon oil disaster for:
  - Lost wages, income, and profits; and
  - Property damage.
- Extend the net operating loss carryback for fishing- and tourism-related businesses for an additional 3 taxable years (from 2 years to 5 years), which would allow fishing- and tourism-related businesses with $5 million or less in revenues to amend tax returns from the previous 5 years and receive a refund for taxes paid.

[21] Letter available at http://myfloridalegal.com/webfiles.nsf/WF/MRAY-86FKCM/$file/TaxReliefLtr.pdf (last visited 12/23/2010).

[22] Senator Nelson introduced an amendment to H.R. 4213 to achieve this purpose; see also, S. 3934, sponsored by Senators Wicker (MS), Cochran (MS), and Vitter (LA).

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If Congress were to enact legislation supported by this memorial, individuals and businesses in Florida would receive a tax relief.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:

None.