

**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 Community Affairs Committee

BILL: SM 218

INTRODUCER: Senator Gaetz

SUBJECT: Deepwater Horizon Oil Disaster/Penalties

DATE: January 4, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
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. The federal government sued nine 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.

SM 218 urges Congress to enact legislation that permits any civil penalties recovered under the Clean Water Act due to the Deepwater Horizon oil disaster to be distributed in the following manner:

- (1) Deposited into a newly created Gulf Coast Recovery Fund, managed by a Gulf Coast Recovery Council to provide long-term environmental and economic recovery in the Gulf;
- (2) Directed to the five Gulf States to enable each state to pursue their own recovery efforts; and
- (3) Remaining funds deposited into the Oil Spill Liability Trust Fund for future recovery efforts.

**II. Present Situation:**

**Initial Deepwater Horizon Explosion**

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.<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 110 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> 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.”<sup>4</sup> As of August 26, 2010, 2,000 tons (500,000 gallons) of oil had been recovered from Florida’s shoreline.<sup>5</sup>

### **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.<sup>6</sup> The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco,

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

<sup>2</sup> 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).

<sup>3</sup> WSJ.com Deepwater Horizon Rig Disaster – Timeline.

<sup>4</sup> 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.”

<sup>5</sup> Situation Report #114 (Final), Deepwater Horizon Response, available at [http://www.dep.state.fl.us/deepwaterhorizon/files/sit\\_reports/0810/situation\\_report114\\_082610.pdf](http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf) (last visited 12/23/2010).

<sup>6</sup> Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.

Pinellas, Hillsborough, Manatee, and Sarasota counties.<sup>7</sup> Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.<sup>8</sup>

Florida’s emergency response system began immediate operations, which continued through the capping of the well.<sup>9</sup> The cost to Florida in terms of response costs, damage to Florida’s economy and business community, individual workers who have lost jobs, decreases in property values, and restoration of environmental damage remains to be determined and is expected to rise as cleanup and recovery continues.

As reported by the Governor’s Gulf Oil Spill Economic Recovery Task Force at their monthly meeting in October 2010, state and local government institutions in Florida have been granted \$130 million in funding from BP, p.l.c. (“BP”), to support environmental response and economic recovery efforts.<sup>10</sup>

Award	Amount
1. Response and Recovery Costs	
a. Booming/Consultant Cost	\$40,000,000
b. State Response Cost	\$10,000,000
2. Tourism	\$32,000,000
3. Natural Resource Damage Assessment	\$8,000,000
4. Employment and Training Activities	\$7,000,000
5. Research Impact on Gulf of Mexico	\$10,000,000
6. Mental Health Care	\$3,000,000
7. Fish and Shell Fish Testing and Marketing	\$20,000,000

On December 29, 2010, BP reported that it had invested over \$1 billion in Florida:<sup>11</sup>

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 <sup>1</sup>	
Gulf Coast Claims Facility -- \$1,021,200,000 <sup>2</sup>	
Vessels of Opportunity Payments <sup>3</sup>	\$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
<b>TOTAL</b>	<b>\$1,295,900,000</b>



<sup>1</sup> Through 8-22-2010. <sup>2</sup>Through 12-28-2010. <sup>3</sup> Through 12-25-2010.

<sup>7</sup> Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.

<sup>8</sup> Office of the Governor, Executive Order Number 10-106, dated May 20, 2010.

<sup>9</sup> The operations transitioned to a monitoring status on August 27, 2010.

<sup>10</sup> Governor’s Gulf Oil Spill Economic Recovery Task Force, created by Executive Order No. 10-101. See the October 28, 2010, Report for detailed information on funding from BP.

<sup>11</sup> BP Investments and Payments - Florida, Dec 29, 2010, available at <http://www.floridagulfresponse.com/go/doc/3059/979815/> (last visited on 1/5/11).

### Ongoing Response Efforts

While oil leaked from the Deepwater Horizon rig site, efforts were focused both on stopping the leaking well and on recovering and cleaning up the oil that had leaked out.

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. “At its peak, efforts to stem the spill and combat its effects included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and the participation of scores of federal, state, and local agencies.”<sup>12</sup> BP hired local boats and crews for the Vessels of Opportunity program. Boats and crews participating in the program were paid for their services, which included a variety of activities, including oil recovery, transportation of supplies, wildlife rescue, and boom deployment and recovery. BP reports that about 3,500 vessels were put into service during the life of the program, with thousands of boats deployed on a daily basis, and that over \$500 million was paid across all the Gulf States.<sup>13</sup> The program concluded in Florida in September 2010. Additionally BP hired locals as part of its cleanup crews on the beaches and shores in Florida; almost 15,000 oil spill related jobs were advertised and 46,486 referrals were made through the Agency for Workforce Innovation and regional workforce boards as of the last situation report by the Department of Environmental Protection on August 26, 2010.<sup>14</sup>

From April until July, 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).<sup>15</sup> 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.<sup>16</sup>

Once the well was killed, there was further debate on the amount of oil remaining in the Gulf of Mexico. The federal government accounted for 100 percent of the oil through an “Oil Budget” that accounted for oil in 7 categories:<sup>17</sup>

- Direct Recovery from Wellhead (17%)
- Burned (5%)
- Skimmed (3%)
- Chemically Dispersed (8%)
- Naturally Dispersed (16%)

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<sup>12</sup> 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](http://www.oilspillcommission.gov/sites/default/files/documents/Mabus_Report.pdf%20) (last visited 12/23/2010).

<sup>13</sup> BP, Florida News, Vessels of Opportunity Program to Close in Florida, available at <http://www.floridagulfresponse.com/go/doc/3059/899263/> (last visited 12/23/2010).

<sup>14</sup> Situation Report #114 (Final).

<sup>15</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

<sup>16</sup> Office of the Governor, Executive Order Number 10-191, dated August 26, 2010.

<sup>17</sup> As of August 4, 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3.

- Evaporated or Dissolved (25%)
- Residual (or “remaining”) (26%)

Some scientific reports found that there was a large underwater plume of oil unaccounted for by the government Oil Budget; additionally, surrounding the well site, some scientists have found that the plume contains high concentrations of natural gas. Other reports found oil lying on or mixed into the sediments of the ocean floor.<sup>18</sup> As recently as October 2010, underwater deposits of oil and tar were found in Pensacola Pass.<sup>19</sup>

### **Responsibility and Payment of Claims**

BP PLC 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.

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.

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.<sup>20</sup>

As of January 4, 2011, the Gulf Coast Claims Facility has processed approximately 469,374 claims and paid out an estimated \$2.89 billion; Florida represents over 156,000 of those claims, and about \$1 billion of the funds distributed.<sup>21</sup>

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.

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<sup>18</sup> As of September 2010. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

<sup>19</sup> [Oil Spill: BP Targets Submerged Oil](http://www.pnj.com/article/20101115/NEWS01/11150309/Oil-Spill-BP-targets-submerged-oil), Pensacola News Journal, November 15, 2010, available at <http://www.pnj.com/article/20101115/NEWS01/11150309/Oil-Spill-BP-targets-submerged-oil> (last visited 12/23/2010).

<sup>20</sup> America’s Gulf Coast.

<sup>21</sup> Gulf Coast Claims Facility, Program Statistics, available at <http://gulfoastclaimsfacility.com/reports> (last visited 1/5/2011).

### **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>22</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>23</sup>

The federal Justice Department is also holding 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 cleanup, 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” (*emphasis added*).<sup>24</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. The proposals also recommend that the money be used for long-term environmental and economic recovery efforts.<sup>25</sup>

### **III. Effect of Proposed Changes:**

SM 218 urges Congress to enact legislation that permits any civil penalties recovered under the Clean Water Act due to the Deepwater Horizon oil disaster to be distributed in the following manner:

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<sup>22</sup> Government Sues BP for Gulf Oil Spill: U.S. Justice Department Files Lawsuit Against Nine Companies Involved in Disaster, The Associated Press, December 15, 2010, available at [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 12/23/2010). See also BP, 8 Other Firms Sued by Justice Dept. Over Gulf Oil Spill, The Washington Post, December 15, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/15/AR2010121503894.html> (last visited 12/23/2010).

<sup>23</sup> BP Disputes Size of Spill, The Associated Press, December 4, 2010, available at <http://www2.tbo.com/content/2010/dec/04/T2NEWS04-bp-disputes-size-of-spill/news-nationworld/> (last visited 12/23/2010).

<sup>24</sup> America’s Gulf Coast, p. 3. This document also contains a summary of the provisions of the Clean Water Act and the OPA.

<sup>25</sup> See America’s Gulf Coast, p. 5; H.R. 6112 (limits funds to environmental recovery efforts); and S. 3792 (limits funds to environmental recovery efforts). The Congressional bills were filed prior to the release of the Secretary of the Navy’s report.

- (1) Deposited into a newly created Gulf Coast Recovery Fund, managed by a Gulf Coast Recovery Council to provide long-term environmental and economic recovery in the Gulf;
- (2) Directed to the five Gulf States to enable each state to pursue their own recovery efforts; and
- (3) Deposited into the Oil Spill Liability Trust Fund for future recovery efforts.

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 enacts law providing for any civil penalty money to help in both environmental and economic recovery efforts, the state could direct that money towards helping Florida businesses impacted by the oil spill.

C. Government Sector Impact:

If Congress enacts law providing for any civil penalty money to help in both environmental and economic recovery efforts, the state will benefit from increase funds to focus on long-term recovery efforts.

#### **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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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