

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 220

INTRODUCER: Senator Gaetz

SUBJECT: Unemployment Assistance/Oil Spill

DATE: January 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	Pre-meeting
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.

Because Disaster Unemployment Assistance, a federal unemployment program, is only available for natural disasters, some Floridians who became unemployed as a result of the oil spill, such as self-employed individuals, were not eligible for unemployment benefits. The Agency for Workforce Innovation received 440 claims for benefits from individuals who had lost their jobs due to the oil spill; of that amount 385 claimants received at least one benefit payment.

This memorial urges Congress to enact legislation providing unemployment assistance to individuals who are unemployed due to the oil spill. This would provide benefits to those who would not otherwise be eligible for regular state unemployment benefits.

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.¹ With the resulting leakage of crude oil and natural gas from the well site, the

¹ The Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, <http://online.wsj.com/article/SB1000142405274870430230457521388355525958.html> (last visited 01/07 2011).

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

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.⁶ 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.⁷ Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.⁸

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).

³The Wall Street Journal, *supra* note 1.

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 Fla. Exec. Order No. 10-99 (April 30, 2010).

⁷ Fla. Exec. Order No. 10-100 (May 3, 2010).

⁸ Fla. Exec. Order No. 10-106 (May 20, 2010).

Florida’s emergency response system began immediate operations, which continued through the capping of the well.⁹ 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.

As reported by the Governor’s Gulf Oil Spill Economic Recovery Task Force at their last monthly meeting in October, state and local government institutions in Florida had been granted a total of \$7 million for employment and training activities. For example, BP, p.l.c. (“BP”), granted Workforce Escarosa \$2.5 million to help with reemployment in the area.¹⁰ In a presentation to the Governor’s Gulf Oil Spill Economic Recovery Task Force, the Agency for Workforce Innovation reported that industries likely to be impacted were:

- Fishing, seafood preparation and packaging, fish and seafood wholesalers;
- Accommodation and food services, amusement parks, sightseeing tours, gift shops;
- Retail and general merchandise stores;
- Travel agencies, car rental, air transportation, water transportation;
- Gasoline stations, construction, building materials stores;
- Banking, real estate, temporary help services, building services, waste and remediation services;
- Physicians’ offices, emergency medical services, hospitals, emergency services, pharmacies, drug stores; and
- Government.¹¹

On December 29, 2010, BP reported that it had invested over \$1 billion in Florida:¹²

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. ²Through 12-28-2010. ³Through 12-25-2010.

⁹ The operations transitioned to a monitoring status on August 27, 2010.

¹⁰ Free Services Available to Help Jobless, BP Florida News, available at <http://www.floridagulfresponse.com/go/doc/3059/901695/> (last visited 12/23/2010).

¹¹ Gulf Oil Spill Economic Recovery Task Force, BP Claims Process Workgroup, Presentation by Cynthia Lorenzo, Director of Agency for Workforce Innovation, June 23, 2010, available at <http://emergency.awiadministration.com/AlertDetail.aspx?ID=100> (last visited 12/23/2010).

¹² BP Investments and Payments - Florida, Dec. 29, 2010, available at <http://www.floridagulfresponse.com/go/doc/3059/979815/> (last visited 1/5/2011).

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.”¹³ 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.¹⁴ 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, 2010.¹⁵ As of December 23, 2010, about 730 cleanup workers were still working.¹⁶

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).¹⁷ 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, 2010.¹⁸

Claims for Lost Income

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.

The Oil Pollution Act of 1990 requires “responsible parties,” including lessees of offshore facilities, to pay for removal costs and certain damages resulting from a spill. The act allows individuals to submit claims for damages for lost income.

¹³ RestoretheGulf.gov, America’s Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill 3, September 2010, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf> (last visited 01/07/2011).

¹⁴ BP, Florida News, Vessels of Opportunity Program to Close in Florida, <http://www.floridagulfresponse.com/go/doc/3059/899263/> (last visited 12/23/2010).

¹⁵ Situation Report #114 (Final).

¹⁶ Data from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.

¹⁷ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

¹⁸ Fla. Exec. Order No. 10-191 (August 26, 2010).

BP provided interim advance payments to claimants who were not receiving their ordinary income or profit while cleanup was underway (upon demonstration of financial hardship).

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.¹⁹ 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.²⁰

Of particular importance to individuals out of work, claims covered by the Gulf Coast Claims Facility include:²¹

- **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; and
- **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.

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.²²

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;
- For 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;

¹⁹ RestoretheGulf.gov, *supra* note 13.

²⁰ Gulf Coast Claims Facility, Frequently Asked Questions, available at <http://gulfcoastclaimsfacility.com/faq> (last visited 12/22/2010).

²¹ Id.

²² Id.

- 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.²³

Claimants can also see interim payment claims, which are paid one a quarter for documented past losses caused by the oil spill. These types of payments are available under the Gulf Coast Claims Facility program that concludes on August 22, 2013. Also, claimants receiving these payments do not have to sign releases.²⁴

To date, the Gulf Coast Claims Facility has processed claims from over 580,000 claimants and paid out about \$2.89 billion. In Florida:²⁵

Gulf Coast Claims Facility – Florida Statistics	
Total Claimants (who may have more than one claim type):	156,677
Total Paid:	\$1,124,431,476
Individual Claimants (who may have more than one claim category):	122,426
Individual Claimants Paid:	58,683
Total Individual Claims Paid:	\$437,618,200
Claims for Lost Earnings or Profits:	81,224
Paid for Lost Earning or Profits:	\$1,095,094,633

Disaster Unemployment Assistance

The Disaster Unemployment Assistance (DUA) program is administered by the Agency for Workforce Innovation (AWI) and funded by the U.S. Department of Homeland Security Federal Emergency Management Agency (FEMA) through the U.S. Department of Labor.

- 26 weeks of benefits from the date of the disaster declaration;
- Federally funded program;
- Helps people who become unemployed as a direct result of a declared natural disaster; and
- Unlike unemployment compensation, DUA benefits individuals, including the self-employed, who are not eligible for regular state and federal unemployment compensation.

²³ Id.

²⁴ Id.

²⁵ Gulf Coast Claims Facility, Program Statistics, <http://gulfcoastclaimsfacility.com/reports> (last visited January 5, 2011).

Unfortunately, because DUA is only available for natural disasters, this program was not available for the Floridians who became unemployed as a result of the oil spill, a man-made disaster.

III. Effect of Proposed Changes:

SM 220 urges Congress to pass legislation that creates an Oil Spill Unemployment Assistance Program to provide income assistance to individuals who are unemployed as a result of a spill of national significance and who have no entitlement to any other unemployment compensation, the cost of which shall be borne by responsible parties under the Oil Pollution Act.

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 passes legislation that permits individuals to receive unemployment assistance as a result of a spill of national significance, like the Deepwater Horizon oil spill, then out-of-work individuals will benefit by receiving income replacement for a period of time while they seek new employment.

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.

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