

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 Committee on Finance and Tax

BILL: CS/SB 1262

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Simpson

SUBJECT: Emergency Management

DATE: February 14, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1262 provides that out-of-state businesses and employees who enter this state to perform emergency-related work during a disaster-response period are excluded from certain registration and licensing requirements and taxes.

Specifically, the bill provides that an out-of-state business performing emergency-related work or conducting operations pursuant to a mutual aid agreement during a disaster-response period is not considered to have established a level of presence that would require the business to register, file, and remit state or local taxes or fees. Such an out-of-state business would not be subject to any of the following:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate Income Tax; and
- Tangible personal property tax on specified equipment brought into the state by the out-of-state business.

Additionally, an out-of-state employee performing emergency-related work in this state is not required to:

- Register, file, or remit state or local taxes; and
- Comply with state or local occupational licensing requirements, or pay related fees.

An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to the exclusions provided in the bill and will be subject to the state's normal standards for establishing presence or residency or doing business in this state.

The bill also provides that 75-percent of the funds received with respect to economic and other claims pursuant to the September 2015 settlement agreement arising from the Deepwater Horizon oil spill are to fund the principal of the Recovery Fund administered by Triumph Gulf Coast, Inc.

The bill takes effect upon becoming law.

II. Present Situation:

Emergency Management

According to the Florida Division of Emergency Management (FDEM), Florida may be considered the most vulnerable state in the nation to the impacts from hurricanes, tropical storms, and tropical depressions. In addition, the state of Florida is vulnerable to numerous other types of severe weather such as tornadoes, drought, various types of flooding, and extreme temperatures, including freezes. The vulnerable geography and environment of the state combined with the subtropical climate create continuous threats from these severe weather events.¹

Florida Division of Emergency Management

The FDEM administers programs to rapidly apply all available aid to impacted communities stricken by emergency.² The FDEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the FDEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in emergency management.³

Emergency Management Powers of the Governor

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.⁴ In the event of an emergency beyond local control, the Governor, or his or her designee, may assume direct operational control over all or any part of the emergency

¹ Florida Division of Emergency Management, *The State of Florida Tropical and Non-Tropical Severe Weather Annex to the 2014 Florida Comprehensive Emergency Management Plan*, available at <http://www.floridadisaster.org/documents/CEMP/2014/2014%20Hazard%20Annexes/2014%20Tropical%20and%20Non-Tropical%20Severe%20Weather%20Annex%20to%20the%20CEMP.pdf> (last visited, Feb. 3, 2016).

² Section 14.2016, F.S.

³ Section 252.35(1), F.S.

⁴ Section 252.36(1)(a), F.S.

management functions within this state.⁵ As part of the Governor's power, he or she may by executive order or proclamation declare a state of emergency. A state of emergency has the force and effect of law and assists in the management of an emergency by activating the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question.⁶ A state of emergency may be declared if the Governor finds that an emergency has occurred or is imminent.

A state of emergency may continue for no longer than 60 days unless renewed by the Governor.⁷ The Legislature by concurrent resolution may terminate a state of emergency at any time.⁸

Other States' Legislation Regarding Disaster Assistance Providers

The American Legislative Exchange Council (ALEC) and the National Conference of State Legislatures (NCSL) have approved model legislation for states to consider to address states' tax and regulatory policies that have historically slowed efforts to respond to natural disasters. The model legislation proposes that activities for repairing damage to critical communications networks and utility-related infrastructure in a state during and after an officially-declared disaster or emergency should not establish a nexus for state and local business activity tax purposes and business licensing. The NCSL Executive Committee Task Force on State and Local Taxation initially adopted this model legislation in 2011 and the ALEC Board of Directors adopted it in 2012.

A December 2011 NCSL resolution emphasizes the importance of repairing and replacing damaged infrastructure, specifically buildings, roads, communications networks, and utility lines, caused by an emergency or disaster.⁹ According to the NCSL, such damage results in an interruption of crucial civic and business services to a state's citizens and that the demand for resources to repair and replace the damaged property and infrastructure can exceed local capacity.¹⁰ In order to promptly address an interruption of service companies may need to bring in resources on a temporary basis from out-of-state, including materials, equipment, temporary shelters, and personnel to assist in the repair and restoration of the damaged infrastructure and property.¹¹

Twenty-two state legislatures have enacted the model legislation and it is currently effective in 21 states.¹²

⁵ Id.

⁶ Section 252.36, F.S.

⁷ Section 252.36(2), F.S.

⁸ Id.

⁹ National Conference of State Legislatures, *NCSL Resolution on Response to Declared Disaster to Repair and Replace Damaged Infrastructure* (Dec. 2011), available at <http://www.ncsl.org/ncsl-in-dc/standing-committees/communications-financial-services-and-interstate-commerce/resolution-on-response-to-declared-disasters.aspx> (last visited Jan. 28, 2016).

¹⁰ Id.

¹¹ Id.

¹² National Conference of State Legislatures, *NCSL Disaster Legislation Status Update* (Jan. 2016), available at <http://www.ncsl.org/research/telecommunications-and-information-technology/ncsl-disaster-legislation-status.aspx> (last visited Jan. 26, 2016).

State Revenue Sources Referenced in the Bill

Reemployment Assistance Taxes

Florida's Reemployment Assistance Program imposes a tax on wages paid by Florida employers to pay for unemployment benefits received by unemployed individuals. The tax imposed on the first \$7,000 of compensation paid to each employee. The tax rate varies from 0.1 percent to 5.4 percent depending upon the benefit experience of the employer.¹³

Professional and Occupational Licensing Fees

The Department of Business and Professional Regulation (DBPR) is the agency charged with licensing and regulating various businesses and professionals in this state. Many professions and occupations pay annual or biennial examination and license fees designed to cover the cost of regulation.¹⁴ Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR.

There are 22 professions regulated by DBPR. Cumulatively, there are more than 450 fees associated with the regulation of these professions. The fees range from \$5 to \$2,500.¹⁵

Local Business Taxes

The local business tax is the method by which a local government grants the privilege of engaging in or managing any business, profession, and occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government. This tax does not refer to any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.¹⁶

Taxes on the Operation of Commercial Motor Vehicles

Motor vehicles and mobile homes must register annually in Florida. License fees for private autos and light trucks range from \$14.50 to \$32.50 according to vehicle weight. License fees for truck tractors are based on gross vehicle weight and range from \$60.75 to \$1,322. Mobile home license fees range from \$20 to \$80 according to length, and recreational vehicle license fees are \$27 to \$47.25 depending on vehicle type and weight.¹⁷

Corporate Income Tax

Certain corporations doing business in Florida must pay a tax of 5.5 percent of income earned in Florida.

¹³ Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, 150.

¹⁴ *Id.* at 147.

¹⁵ *Id.* at 148.

¹⁶ Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook, Local Business Tax* (Dec. 2014), 147.

¹⁷ *Supra* note 15, at 132.

Tangible Personal Property Tax

Tangible Personal Property (TPP) means all goods, chattels, and other articles of value (excluding some vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.¹⁸

Anyone who owns TPP on January 1 and who has a proprietorship, partnership, or corporation, or is a self-employed agent or contractor, must file a tangible personal property return with the property appraiser by April 1 of each year.¹⁹ Tangible personal property physically present in the state on or after January 1 for temporary purposes only (30 days or less) is not subject to assessment for property tax purposes.²⁰

Deepwater Horizon Oil Spill

On April 20, 2010, the Transocean offshore drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 crewmembers.²¹ At the time of the explosion, the rig was under the operation of BP and anchored in the Macondo prospect approximately 45 miles southeast of the Louisiana coast. Over the next three months, an estimated 4.9 million barrels of crude oil was discharged into the Gulf of Mexico.²² As a result of the spreading oil spill in the Gulf of Mexico, a state of emergency was declared in 26 Florida counties.²³

Triumph Gulf Coast, Inc.

In 2013, the Legislature created Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the Department of Economic Opportunity, to oversee 75 percent of all funds recovered by the Florida Attorney General for economic damages resulting from the Deepwater Horizon oil spill.²⁴ Triumph Gulf Coast must establish, hold, invest and administer a Recovery Fund²⁵ for the economic recovery, diversification, and enhancement of the eight Northwest Florida counties disproportionately affected by the oil spill. Those counties are Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, and Wakulla.

Triumph Gulf Coast must make awards from available earnings and principal in the trust account to projects or programs that meet the priorities of economic recovery, diversification, and enhancement of the disproportionately affected counties.²⁶

¹⁸ Section 192.001(11)(d), F.S.

¹⁹ See s. 193.062, F.S.

²⁰ Section 192.03(2), F.S.

²¹ Wall Street Journal, *Rig Disaster: Timeline*, available at <http://online.wsj.com/article/SB1000142405274870430230457521388355525958.html> (last visited Feb. 2, 2016).

²² National Incident Command and the United States Department of the Interior, *Assessment of Flow Rate Estimates for the Deepwater Horizon / Macondo Well Oil Spill*, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3528583/> (last visited Feb. 2, 2016).

²³ Fla. Exec. Order Nos. 10-99, 10-100, and 10-106.

²⁴ Chapter 2013-39, Laws of Fla.

²⁵ Section 288.8012(4), F.S., defines “Recovery Fund” as a trust account established by Triumph Gulf Coast, Inc., for the benefit of disproportionately affected counties.

²⁶ Section 288.8017, F.S.

Deepwater Horizon Oil Spill Settlement

In April 2013, the Florida Attorney General filed a lawsuit against BP and Halliburton seeking reimbursement for the economic damages suffered by the State of Florida due to the oil spill. The lawsuit was later consolidated with the Multidistrict Litigation case in New Orleans.²⁷

On July 2, 2015, BP entered into an agreement-in-principle to settle governments' civil claims under the Clean Water Act, natural resources damage claims under the Oil Pollution Act, and economic damages claims of five Gulf states²⁸ and local governments. On October 5, 2015, the settlement was finalized and a Proposed Consent Decree was lodged with the U.S. District Court in New Orleans. Under the Proposed Consent Decree, BP must pay:

- \$5.5 billion, plus interest, as a civil penalty under the Clean Water Act;
- \$8.1 billion in natural resource damages, including \$1 billion BP previously committed for early restoration projects;
- \$600 million to further reimburse the governments for assessment and removal costs, lost royalties, and to resolve a False Claims Act investigation; and
- Up to \$700 million to address natural resource conditions that are presently unknown.²⁹

Separate from, but in connection to the Proposed Consent Decree, BP has agreed to pay \$4.9 billion, in total, to the five Gulf states, and up to \$1 billion to local governments to resolve economic damages claims.³⁰ The \$4.9 billion payout is divided up among the Gulf states as follows:

- Florida: \$2 billion
- Louisiana: \$1 billion
- Alabama: \$1 billion
- Mississippi: \$750 million
- Texas: \$150 million³¹

Seventy-five percent of the funds recovered for economic damages to this state are to be overseen and managed by Triumph Gulf Coast, Inc., pursuant to s. 288.8013(2), F.S.

Florida stands to receive at least a total of \$3.252 billion as a result of the BP settlement.³² The final resolution is contingent upon approval of the Proposed Consent Decree by the U.S. District Court.³³ According to the Office of the Florida Attorney General's website, the Court may hold a hearing to consider approval of the Proposed Consent Decree in March 2016.³⁴

²⁷ Florida Office of the Attorney General, *The Office of the Attorney General's Role Regarding the Deepwater Horizon Oil Spill*, available at <http://www.myfloridalegal.com/deepwaterhorizon> (last visited Feb. 3, 2016).

²⁸ The five Gulf states affected by the Deepwater Horizon oil spill are Florida, Alabama, Mississippi, Louisiana, and Texas.

²⁹ U.S. Department of Justice, *Summary of the federal-state Consent Decree with BP Exploration & Production Inc.*, available at <http://www.justice.gov/enrd/file/780461/download> (last visited Feb. 3, 2016).

³⁰ Id.

³¹ Florida Office of the Attorney General, *Deepwater Horizon Oil Spill Settlement Fact Sheet – October 5, 2015*, available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A3HJJD/\\$file/FactSheet.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A3HJJD/$file/FactSheet.pdf) (last visited Feb. 3, 2016).

³² \$2 billion for economic damages; at least \$680 million for natural resource damages; and at least \$572 million from the Clean Water Act penalties.

³³ Supra note 34.

³⁴ Office of the Florida Attorney General, *Deepwater Horizon Response Timeline*, available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A3HJKP/\\$file/DWHRResponseTimeline.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A3HJKP/$file/DWHRResponseTimeline.pdf) (last visited Feb. 3, 2016).

III. Effect of Proposed Changes:

Out-of-State Businesses and Employees Performing Emergency-related Work

Section 1 of the bill amends s. 213.055, F.S., to provide that out-of-state businesses and employees who enter this state to perform emergency-related work during a disaster-response period are excluded from certain registration and licensing requirements and taxes.

The bill defines the following terms:

Disaster-response period means:

- A period that begins 10 calendar days before the first day of a declared state of emergency and ends on the 60th calendar day after the end of the declared state of emergency; or
- A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of a disaster, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or seven calendar days after the out-of-state business enters this state, whichever occurs first.

Emergency-related work means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by an event that has resulted in a declaration of a state of emergency; or rendering such services or performing such activities in anticipation of a disaster, regardless of whether a state of emergency is declared.

Infrastructure means public roads; public bridges; property and equipment owned or used by communication networks, electric generating systems, transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities that serve multiple persons which include, but are not limited to, buildings, offices, power and communication lines and poles, pipes, structures, and equipment.

Mutual aid agreement means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, or joint agency owning, operating, or owning and operating infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business perform work in this state in anticipation of a disaster or an emergency.

Out-of-state business means a business entity that:

- Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and
- Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state during the tax year immediately before the disaster-response period. The term also includes a business entity that is affiliated with a registered business solely through common ownership.

Out-of-state employee means an employee who does not work in this state, except for emergency-related work during a disaster-response period.

Registered business means a business entity that is registered to do business in this state before the disaster-response period begins.

The bill provides that an out-of-state business performing emergency-related work or conducting operations pursuant to a mutual aid agreement during a disaster-response period is not considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or fees. Such an out-of-state business would not be subject to any of the following:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate Income Tax; and
- Tangible personal property tax on specified equipment brought into the state by the out-of-state business.

Additionally, an out-of-state employee whose only employment in this state is for the performance of emergency-related work or pursuant to a mutual aid agreement during a disaster-response period is not required to:

- Register, file, or remit state or local taxes; or
- Comply with state or local occupational licensing requirements or related fees.

An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to the exclusions provided in the bill and will be subject to the state's normal standards for establishing presence or residency or doing business in this state.

Deepwater Horizon Oil Spill Economic Claims Settlement

Section 2 of the bill amends s. 288.8013, F.S., to reference a September 2015 settlement agreement between the Gulf states and BP entities relating to the Deepwater Horizon oil spill. The bill provides that the principal of the Recovery Fund administered by Triumph Gulf Coast, Inc., shall derive from 75-percent of the funds received pursuant to the September 2015 settlement agreement with respect to economic and other claims. Additionally, the bill requires moneys that account for the principal of the Recovery Fund to be transferred to the Recovery Fund no later than 30 days after they are received.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Because this bill revises the law on approved activities of out-of-state businesses and employees conducting emergency-related work in this state and also revises the law governing economic damages recovered by the state resulting from the Deepwater Horizon oil spill, it may be considered to address multiple subjects. Art. III, s. 6, of the Florida Constitution, commonly known as the single-subject requirement, requires that “Every law shall embrace but one subject and matter properly connected therewith.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Out-of-state businesses and employees who enter this state in order to perform emergency-related work may experience tax relief.

C. Government Sector Impact:

According to the Revenue Estimating Conference, CS/SB 1262 has a zero or negative but indeterminate, nonrecurring fiscal impact.

VI. Technical Deficiencies:

Section 213.055, F.S., which is being amended by this bill, begins with the sentence:

The following actions to waive or suspend a revenue law may be implemented only when the Governor has declared a state of emergency pursuant to s. 252.36.

The new subsection (3) of this section created by SB 1262 applies to “a period that begins 10 calendar days before the first day of a declared state of emergency” or “a period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement...” The bill can be amended to cure this inconsistency by making it clear that existing subsections (1) and (2) of s. 213.055, F.S., may be implemented only when the Governor has declared a state of emergency pursuant to s. 252.36, F.S.

VII. Related Issues:

The bill references a 2015 September settlement agreement between the Gulf states and BP. However, the settlement agreement between the Gulf states and BP was finalized in October 2015. This agreement is contingent upon the U.S. District Court's approval of the Proposed Consent Decree lodged on October 5, 2015.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 213.055 and 288.8013.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on February 1, 2016:

As it relates to out-of-state business conducting emergency-related work in this state, the CS does the following:

- Relocates the bill provisions from the State Emergency Management Act (ch. 252) to the tax chapter (ch. 213) of the Florida Statutes.
- Removes the Gross Receipts Tax from the list of taxes that do not apply to an out-of-state business.
- Changes references to “disaster-related work or emergency-related work” to strictly “emergency-related work” and refines the definition of the term.
- Removes the provision allowing the Florida Division of Emergency Management to request notification from out-of-state businesses as they enter the state to perform emergency-related work.

The CS also addresses a settlement agreement between the Gulf states and BP with respect to economic and other claims arising from the Deepwater Horizon oil spill.

- B. **Amendments:**

None.