

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: SB 1162

INTRODUCER: Senator Gainer

SUBJECT: Northwest Florida Rural Inland Affected Counties Recovery Fund

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1162 creates the Northwest Florida Rural Inland Affected Counties Recovery Fund (fund) within the Department of Economic Opportunity (DEO), to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland counties affected by the Deepwater Horizon Oil Spill. The bill designates the following counties as rural inland affected counties: Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, and Washington County.

The bill also:

- Directs future Legislatures to appropriate to the fund 5 percent of future settlement payments received by the state pursuant to the Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising from the Deepwater Horizon Incident;
- Requires the DEO to establish an application procedure and scoring process to grant awards to organizations or local governments within the rural inland affected counties;
- Lists eligible projects and programs that may be provided awards by the DEO;
- Establishes criteria for projects and programs that should be given priority for award by the DEO; and
- Requires the DEO to review and certify applications according to the economic development incentive application process specified in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission.

The bill directs future Legislatures to appropriate funds, but contains no current appropriation.

The bill is effective July 1, 2019.

II. Present Situation:

Deepwater Horizon Oil Spill

On April 20, 2010, an offshore drilling rig, known as Deepwater Horizon, exploded in the Gulf of Mexico.¹ The explosion claimed the lives of 11 crewmembers² and caused nearly five million barrels of crude oil to spill into the Gulf of Mexico.³ The five states bordering the Gulf of Mexico (Alabama, Florida, Louisiana, Mississippi, and Texas) were quickly determined to have experienced the most devastating economic and environmental effects of the oil spill.⁴

On July 6, 2012, President Obama signed into law the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies the Gulf Coast States Act of 2012 (RESTORE Act) in an effort to provide a mechanism for funding restoration of the Gulf Coast region.⁵ The RESTORE Act required 80 percent of administrative and civil penalties paid by responsible parties⁶ under provisions of the federal Clean Water Act to be deposited into the Gulf Coast Restoration Trust Fund.⁷ The RESTORE Act set forth the following framework for allocation of the Trust Fund:

- 35 percent equally divided among the five states;
- 30 percent to the Gulf Coast Ecosystem Restoration Council;
- 30 percent to the Oil Spill Restoration Impact;
- 2.5 percent to the Gulf Coast Ecosystem Restoration Science Observation Monitoring and Technology Program; and
- 2.5 percent to Centers of Excellence.⁸

In addition to penalties imposed under the Clean Water Act, responsible parties were liable for Natural Resource Damage Assessment penalties under the Oil Pollution Act of 1990 and criminal penalties asserted by the National Fish and Wildlife Foundation.⁹ The funds awarded to the Gulf States were determined pursuant to a consent decree, which approved a \$20.8 billion

¹ Campbell Robertson, *Gulf Spill Is the Largest of Its Kind, Scientists Say*, The New York Times, Aug. 2, 2010, available at <http://www.nytimes.com/2010/08/03/us/03spill.html> (last visited March 24, 2019).

² Bradley Blackburn, *BP Oil Spill: Families Gather to Honor 11 Who Died, Express Frustration with BP, Transocean*, ABC News, May 25, 2010, available at <http://abcnews.go.com/WN/bp-oil-spill-transocean-holds-memorial-11-lost/story?id=10739080> (last visited March 24, 2019).

³ Robertson, *supra* note 1.

⁴ Exec. Order No. 13554, 75 Fed. Reg. 62313, October 5, 2010, available at <https://obamawhitehouse.archives.gov/the-press-office/2010/10/05/executive-order-13554-gulf-coast-ecosystem-restoration-task-force> (last visited March 24, 2019).

⁵ Pub. L. No. 112-141 (113th Congress). Codified at 33 U.S.C. 1321.

⁶ Transocean Ltd., British Petroleum (BP), and The Halliburton Company were among the parties found to be responsible.

⁷ The remaining 20 percent of the administrative and civil penalties are required to be deposited into the federal Oil Spill Liability Trust Fund, which funds removal costs or damages resulting from discharges of oil. *See* 33 U.S.C. 1321.

⁸ A table of Projected BP Annual Deposits into the Gulf Coast Restoration Trust Fund created by the U.S. Department of Treasury (September 2, 2016) is available at https://www.treasury.gov/services/restore-act/Documents/BP_Estimated_Deposits_Schedule_June302016.pdf (last visited last visited March 24, 2019).

⁹ Consent Decree, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (no. 2179, M.D.L., April 4, 2016), available at <https://www.justice.gov/enrd/file/838066/download> (last visited March 24, 2019).

settlement of a civil lawsuit filed by the United States and the five Gulf States against the parties responsible for the oil spill.¹⁰

Economic Loss Claims

In an agreement separate from the civil lawsuit, BP also agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for economic damage claims related to the oil spill.¹¹ Pursuant to the agreement, Florida will receive a total of \$2 billion over an 18-year period.¹² Attorney General Pam Bondi received BP's initial settlement payment of \$400 million in July of 2016, and the funds were deposited into the state General Revenue Fund.¹³ Subsequent settlement payments are scheduled to be paid annually to the state in the amount of \$106,666,666 from 2019 until 2033.¹⁴

Florida Legislation

Triumph Gulf Coast, Inc.

In 2013, the Legislature created the Gulf Coast Economic Corridor Act (the act) to provide a long-term source of funding for economic recovery and enhancement efforts in the Gulf Coast region to help businesses, individuals, and local governments recover from the Deepwater Horizon oil spill.¹⁵ The act created Triumph Gulf Coast, Inc. (Triumph Gulf Coast), a nonprofit corporation, administratively housed under the DEO.¹⁶

The duties of Triumph Gulf Coast include:

- Responsibly and prudently managing all funds received and ensuring that the use of funds is in accordance with applicable laws, bylaws, and contractual requirements;
- Administering the program set forth by the act;
- Monitoring, reviewing, and annually evaluating awardees and their projects or programs to determine whether awards should be continued, terminated, reduced, or increased; and
- Operating in a transparent manner, by maintaining a website that provides public access to information, notice of meetings, awards, and the status of projects and programs.¹⁷

¹⁰ A flowchart by the Ocean Conservancy of the funds awarded in the approved settlement is available at <http://www.oceanconservancy.org/places/gulf-of-mexico/spill-funds-flowchart-spring.pdf> ("Spill Funds" then download pdf) (last visited March 24, 2019).

¹¹ Attorney General Pam Bondi, *Deepwater Horizon Oil Spill Settlement Fact Sheet*, available at [http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/\\$file/BP+Fact+Sheet.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/$file/BP+Fact+Sheet.pdf) (last visited March 24, 2019).

¹² Joint Motion for Dismissal, Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising from the *Deepwater Horizon* Incident, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (no. 2179, M.D.L., October 5, 2015), at page 42, available at [http://www.laed.uscourts.gov/sites/default/files/OilSpill/Orders/10052015Motion\(DismissalofStates%2015435\).pdf](http://www.laed.uscourts.gov/sites/default/files/OilSpill/Orders/10052015Motion(DismissalofStates%2015435).pdf) (last visited March 24, 2019).

¹³ Court settlement funds negotiated by the state are deposited in the General Revenue Fund pursuant to s. 216.216, F.S.

¹⁴ Joint Motion for Dismissal, *supra* note 9.

¹⁵ Section 288.8011, F.S.

¹⁶ Sections 288.8013(1), F.S.

¹⁷ Section 288.8016, F.S.

The activities of Triumph Gulf Coast are to benefit the “disproportionately affected counties,” which are Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla counties.¹⁸

In 2017, the Legislature created the Triumph Gulf Coast Trust Fund within the DEO as a depository for a portion of the settlement payments received by the state.¹⁹ During the same legislative session, the Legislature amended the act to update the criteria for awards and priorities granted by Triumph Gulf Coast, to address additional operations and requirements of Triumph Gulf Coast, and to provide an appropriation for the settlement payments.²⁰

Pursuant to s. 288.8013, F.S., 75 percent of the payments received by the state pursuant to the settlement agreement must be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund.²¹ Of the settlement moneys received on or before July 1, 2017, 75 percent (roughly \$300 million), was appropriated to Triumph Gulf Coast for allocation by its board of directors. For settlement payments received by the state after July 1, 2017, 75 percent of the moneys (roughly \$80 million per annual payment) must be deposited into the Triumph Gulf Coast Trust Fund and released to Triumph Gulf Coast no later than 30 days after such funds are transferred to the Triumph Gulf Coast Trust Fund.²²

As of March 15, 2019, the 2019 settlement payment from BP (roughly \$106,666,666) has not yet been received by the state. The payment is anticipated to be made on or around April 4, 2019.

Economic Development Incentive Application Process

Section 288.061, F.S., specifies the process by which the Division of Strategic Business Development of the DEO and designated staff of Enterprise Florida, Inc., must review a submitted economic development incentive application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant’s project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant.

The DEO must recommend to its executive director to approve or disapprove an applicant business. If review of the application demonstrates that the application is incomplete, the executive director must notify the applicant business within the first 5 business days after receiving the application.

The DEO must review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives proposed for the project. The term “economic benefits” means the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment, which includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Within 10 business days after the DEO receives the submitted

¹⁸ Sections 288.8012(3) and 288.8017(1), F.S.

¹⁹ Chapter 2017-64, L.O.F.

²⁰ See ch. 2017-63, L.O.F.

²¹ The remaining 25 percent of all payments to the state pursuant to the settlement agreement were not addressed, and as a result, remain in the state’s General Revenue Fund, available for appropriation by the Legislature.

²² Section 288.8013(2)(a), F.S.

economic development incentive application, the executive director must approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The DEO may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature; the release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

The DEO must validate contractor performance and report such validation in the annual incentives report required of Enterprise Florida, Inc.

After an economic development incentive application is approved, the awardee must provide, in each year that the DEO is required to validate contractor performance, a signed written declaration stating that the awardee has reviewed the performance information and that the information is true, correct, and complete to the best of the awardee's knowledge and belief.

III. Effect of Proposed Changes:

Northwest Florida Rural Inland Affected Counties Recovery Fund

The bill creates s. 288.8055, F.S., to establish the Northwest Florida Rural Inland Affected Counties Recovery Fund (fund) within the DEO. The fund is created to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland affected counties, which will encourage job creation, capital investment, and the strengthening and diversification of the economies of such counties by promoting tourism, trade, and economic development.

The "rural inland affected counties" are Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, and Washington County.

Settlement Funds

After settlement funds are transferred to the Triumph Gulf Coast Trust Fund, the bill requires 5 percent of all payments to the state received pursuant to the settlement agreement²³ after July 1, 2019, to be appropriated annually by the Legislature to the fund. The bill clarifies that the transfer of money to the fund does not diminish the amount of money transferred to the Triumph

²³ The bill defines "settlement agreement" to mean the agreement entitled "Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising From the Deepwater Horizon Incident," which was entered into on October 5, 2015, in the case styled *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 in the United States District Court for the Eastern District of Louisiana.

Gulf Coast Trust Fund. Under the bill, future settlement payments received by the state after July 1, 2019, approximately \$106,666,666 annually, will be appropriated as follows:

- Approximately \$80 million to Triumph Gulf Coast; and
- If a future Legislature appropriates it, approximately \$5.3 million to the Northwest Florida Rural Inland Affected Counties Recovery Fund.²⁴

The bill also provides that, notwithstanding s. 216.301, F.S., moneys appropriated to the fund are not subject to reversion.

Application for Awards

Under the bill, the DEO must grant awards to organizations or local governments within the rural inland affected counties for infrastructure projects and workforce programs that meet the priorities of economic recovery, diversification, and enhancement.

The DEO must establish an application procedure for awards and a scoring process for the selection of infrastructure projects and workforce programs that have the potential to generate increased economic activity in the rural inland affected counties. The DEO is required to review and certify applications according to the economic development incentive application process in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate. The application review must include an evaluation of the economic benefit of the infrastructure project or workforce program and its long-term viability. The bill specifies that the DEO has final approval of any awards provided.

Awards and Priorities

Awards may be provided for:

- Local match requirements for the Rural Infrastructure Fund in s. 288.0655, F.S.
- Infrastructure planning, design, construction, expansion, or maintenance projects that meet the priorities of the fund.
- Infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities necessary to induce the relocation or expansion of specific employment opportunities.
- Grants to support workforce programs that provide participants in the rural inland affected counties with transferable sustainable workforce skills.
- Grants to the Florida Tourism Industry Marketing Corporation (VISIT Florida) for the purpose of advertising and promoting tourism and agricultural or agricultural-based products marketed under the “Fresh From Florida” or “From Florida” logos and for promoting infrastructure projects and workforce programs on behalf of the rural inland affected counties.
- Grants to regionally based economic development organizations representing the rural inland affected counties for the purpose of building the professional capacity of such organizations and providing technical assistance to businesses served by such organizations.

²⁴ The remaining 20 percent of the settlement payments received after July 1, 2019 (approximately \$21.3 million of each annual settlement payment) will remain in the General Revenue Fund, available for appropriation by the Legislature.

The DEO is required to give priority to projects and programs that:

- Generate the maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-investment, or dynamic scoring techniques, to determine how the long-term economic growth potential of the rural inland affected counties may be enhanced by the award;
- Increase household income in the rural inland affected counties above the national average;
- Leverage or further enhance key assets, including K-20 educational institutions, research facilities, and military bases, in the rural inland affected counties;
- Partner with local governments to provide funds, infrastructure, land, or other assistance to the rural inland affected counties;
- Benefit the environment and economy of the rural inland affected counties;
- Provide outcome measures;
- Partner with K-20 educational training institutions or school districts located within the rural inland affected counties;
- Are recommended by the board of county commissioners of the rural inland affected county in which such project or program will be located; and
- Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce located within the rural inland affected counties.

Effective Date

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The DEO may incur costs associated with developing the application procedure and process to evaluate applications and grant awards.

The bill provides that 5 percent of the BP settlement payments received after July 1, 2019 “shall be appropriated annually” to the fund created in the bill. The bill does not appropriate any funds, and without an appropriation in the General Appropriations Act or otherwise, no funds are appropriated to the fund created by the bill.

If a future appropriation is made to the fund of 5 percent of the BP settlement payments, then such appropriation would reduce general revenue by approximately \$5.3 million.

VI. Technical Deficiencies:

Line 83 of the bill seems to direct VISIT Florida to made grants for promoting infrastructure projects and workforce programs on behalf of the rural inland affected counties. Section 288.8017(1)(g), F.S., for Triumph Gulf Coast and the disproportionately affected counties has a similar provision, but provides for Triumph Gulf Coast to make “grants to promote...” such activities. VISIT Florida is not an appropriate entity to make grants for infrastructure or workforce programs. If the bill is mirroring the similar language in the Triumph Gulf Coast awards statute, then likely this is a technical deficiency that could be addressed by adding the words “grants to” on line 83 of the bill.

VII. Related Issues:

Lines 51-52 of the bill create the Northwest Florida Rural Inland Affected Counties Recovery Fund within the DEO. Art. III, s. 19(f), of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of created a trust fund. State trust funds terminate not more than 4 years after their initial creation unless re-created. If the fund created by the bill is a trust fund, it should be created in a separate bill. If it is not a trust fund, but merely a program that will be funded out of an existing DEO trust fund, then the terminology could be changed to clarify this intent.

The bill provides that 5 percent of the BP settlement payments received after July 1, 2019 “shall be appropriated annually” to the fund created in the bill. If the intent is to appropriate the payments without further legislative action in subsequent fiscal years, the language “shall be appropriated annually” should be clarified to read “is appropriated annually.”

The bill provides that “organizations” are eligible to receive grant funds without defining the term, which would appear to make the program open to private entities. The bill appears to allow the DEO to grant awards to organizations without the approval or support of the project by a local government.

The bill is silent as to contract and reporting requirements for grant awardees.

Nothing in the bill prohibits the DEO from awarding all available funds to one project or financing 100 percent of a project.

The bill requires the DEO to establish an application procedure for awards and a scoring process, including how to model economic benefits, but also requires that the DEO certify applications pursuant to s. 288.061, F.S., which specifies that “economic benefits” are defined in 288.005, F.S., as the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment.

All counties receiving any funds related to the Deepwater Horizon oil spill is subject to specific audit requirements, including auditing the use of such funds under s. 219.39, F.S., and audits by the Auditor General every two years.²⁵

VIII. Statutes Affected:

This bill creates section 288.8055 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of 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.

²⁵ Section 288.8018, F.S.