

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SOT 17-01a Gulf Coast Economic Corridor
SPONSOR(S): Select Committee on Triumph Gulf Coast
TIED BILLS: PCB SOT 17-02a **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Select Committee on Triumph Gulf Coast		Smith	Hamby

SUMMARY ANALYSIS

The Gulf Coast Economic Corridor Act (act) was passed by the 2013 Legislature to create Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the Department of Economic Opportunity (department). The act directed the corporation to create and administer a trust or "recovery fund" for the benefit of the disproportionately affected counties. The principal of the fund was to be derived from seventy-five percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon oil spill.

PCB SOT 17-01a (PCB) substantially amends the act to require seventy-five percent of all payments Florida receives pursuant to the settlement agreement between the five gulf states and the BP entities be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund (created in PCB SOT 17-02a) within the department. The PCB repeals existing statutory provisions relating to the recovery fund, the investment of funds, money managers, and investment earnings.

The PCB revises provisions in the act governing the corporation's board of directors and its operations. The current requirement that a member of the board refrain from having any direct interest in any contract, franchise, privilege, project, program, or other benefit arising from an award by the corporation is extended from two years to six years after termination of appointment. The same change is applied to the corporation's staff. Additional changes address administrative expenses and the corporation's staff.

The PCB revises the type of awards the corporation is authorized to make and the criteria used to prioritize projects and programs. The corporation is required to ensure that each of the eight disproportionately affected counties directly benefit from awards and to ensure that at least 4 percent of funds appropriated for awards from the Triumph Gulf Coast Trust Fund are expended in each county over the lifetime of the settlement agreement.

The PCB repeals s. 377.43, F.S., relating to the disbursement of funds received for damages caused by the Deepwater Horizon oil spill, which was passed during the 2011 Legislative Session.

Effective July 1, 2017, the PCB appropriates \$299,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation to fund awards for programs and projects authorized in the act. The PCB also appropriates \$1,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation to pay administrative costs. The PCB authorizes appropriated funds to be expended through the 2018-2019 fiscal year.

The PCB has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Deepwater Horizon Oil Spill

On April 20, 2010, an offshore drilling rig known as the Deepwater Horizon exploded, caught fire, and eventually sank, resulting in a massive release of oil and other substances from BP's Macondo well. Initial efforts to cap the well following the explosion were unsuccessful, and for 87 days the well blasted oil and natural gas continuously and uncontrollably into the northern Gulf of Mexico.¹ According to the U.S. District Court's findings of fact, approximately 3.19 million barrels (134 million gallons) of oil were released into the ocean (U.S. v. BP et al. 2015), resulting in the largest offshore marine oil spill in U.S. history.

Cumulatively, over the course of the spill, oil was detected on over 43,300 square miles of the ocean, an area about the size of Virginia. Currents, winds, and tides carried these surface oil slicks to the Gulf states, fouling more than 1,300 miles of shoreline, including beaches, bays, estuaries, and marshes from eastern Texas to the Florida Panhandle.²

Deepwater Horizon Settlement - Economic Damages

On April 4, 2016, a federal court in New Orleans entered a consent decree resolving civil claims against BP arising from the April 20, 2010 Macondo well blowout and the resulting oil spill in the Gulf of Mexico. The settlement resolves the economic loss claims asserted by Florida, Alabama, Louisiana, Mississippi, and Texas; the natural resources claims of the various state and federal trustees; and the Clean Water Act penalties sought by the federal government. Taken together the resolution of claims is worth more than \$20 billion, with Florida receiving a total of \$2 billion for economic damages alone.

Under the economic damages settlement, BP will pay Florida \$2 billion that resolves the economic damage claims arising from Deepwater Horizon incident. Florida will receive payments over the course of several years per an agreed schedule. An initial payment of \$400 million was received in 2016 and, beginning in 2019, Florida will receive annual payments of approximately \$106,666,666 through 2033.³

Disbursement of funds received for damages caused by the Deepwater Horizon oil spill

In 2011, to address the negative economic impacts of the Deepwater Horizon oil spill, the Legislature established section 377.43, F.S., which broadly addressed the use of any funds that the state may receive from any government or private entity for damages caused by the Deepwater Horizon oil spill. Specifically, the legislation:

- Defined the term "disproportionately affected county" to mean Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County;
- Allowed seventy-five percent of funds received for damages from the oil spill to be used for specified types of expenditures in any disproportionately affected county;

¹ Deepwater Horizon Natural Resource Damage Assessment Trustees. (2016). *Deepwater Horizon oil spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement*. Retrieved from <http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>

² *Id.*

³ *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 2:10-md-02179-CJB-SS, Doc. No. 15435-2, Joint Motion for Dismissal at 42 (E.D. La. Oct., 5, 2015).

- Allowed the remaining twenty-five percent of such funds to be used for the same specified types of expenditures in any non-disproportionately affected county; and
- Designated the Department of Environmental Protection as the lead agency for expending funds designated for environmental restoration efforts and the Department of Economic Opportunity as the lead agency for expending funds designated for economic incentives and diversification efforts.

Gulf Coast Economic Corridor Act

Subsequent to the 2011 legislation, new legislation known as the “Gulf Coast Economic Corridor Act”⁴ was enacted by the 2013 Legislature, and amended in 2014. Unlike the 2011 legislation, this act specifically addresses the use of funds recovered by the Attorney General for economic damages to the state resulting from the Deepwater Horizon oil spill. The intent was to provide a long-term source of funding for efforts of economic recovery and enhancement to the Gulf Coast region.⁵

Creation of Triumph Gulf Coast, Inc.

Created within the act is a nonprofit corporation, to be known as Triumph Gulf Coast, Inc., administratively housed within the Department of Economic Opportunity. The corporation is directed to create and administer a trust or “recovery fund” for the benefit of the disproportionately affected counties. The principal of the fund is derived from seventy-five percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon oil spill.⁶ The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Economic Opportunity in any manner.⁷

Anticipating a lump-sum payment of damages, the Recovery Fund is set in law to be maintained as a long-term and stable source of revenue, which shall decline over a 30-year period in equal amounts each year.⁸ Earnings generated by investments and interest of the fund, plus the principal available each year, shall be used by the corporation to make awards and pay administrative costs. After a 30-year period, any funds remaining within the recovery fund are to revert to the State Treasury.⁹

Triumph Gulf Coast, Inc., is required to report on June 30 and December 30 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the financial status of the recovery fund and its investments, established priorities, project and program selection process, including a list of all submitted projects and reasons for approval or denial, and the status of all approved awards.¹⁰ The duties of the corporation include the monitor, review, and annual evaluation of awardees and their projects or programs to determine whether an award should be continued, terminated, reduced, or increased.¹¹

Organization: Board of Directors

The act provides general authority for Triumph Gulf Coast, Inc., to hire or contract necessary staff, but specifically requires the corporation to retain the following staff persons: a certified public accountant, a financial advisor, an economic advisor, and a legal advisor.¹² The corporation is limited to total administrative costs of 2.25 percent of annual earnings, which includes payment of investment fees,

⁴ ss. 288.80–288.8017, F.S.

⁵ s. 288.8011, F.S.

⁶ After payment of reasonable and necessary attorney fees, costs, and expenses, including such attorney fees, costs, and expenses pursuant to s. 16.0155, F.S., relating to contingency fee agreements.

⁷ s. 288.8013(1), F.S.

⁸ s. 288.8013(3), F.S.

⁹ s. 288.8013(3), F.S.

¹⁰ s. 288.8013(5), F.S.

¹¹ s. 288.8016, F.S.

¹² s. 288.8014(9)(a)1.–4., F.S.

travel and per diem expenses, audits, salary for employed and contracted staff, and other allowable costs.¹³ Employees of the corporation are required to comply with the code of ethics standards for public employees and must refrain from having a direct financial interest in contract, franchise, privilege, project, program, or other benefit arising from an award by Triumph Gulf Coast, Inc., during the term of his or her appointment and for two years after the termination of such appointment.¹⁴

A five-member board of directors is to govern Triumph Gulf Coast, Inc., comprised of individuals from the private sector, with the Trustees of the State Board of Administration¹⁵, the President of the Senate and the Speaker of the House of Representatives each appointing one member to the board.¹⁶ Terms of the initial board of directors appointed by the State Board of Administration shall end 4 years after the Legislature appropriates funds to Triumph Gulf Coast, Inc. Terms of the initial board of directors appointed by the President of the Senate and the Speaker of the House of Representatives shall end 5 years after the Legislature appropriates funds to the Recovery Fund. Thereafter, each member of the board of directors shall serve for a term of 4 ears. A member is not eligible for reappointment to the board, however, any member appointed to fill a vacancy for a term of 2 years or less may be reappointed for an additional term of 4 years. Members of the board serve without compensation.¹⁷

The board is required to meet at least quarterly to review the Recovery Fund, establish and review priorities for economic recovery in disproportionately affected counties, and determine use of the earnings available.¹⁸ The executive director of the Department of Economic Opportunity, the secretary of the Department of Environmental Protection, and the chair of the Committee of 8 Disproportionately Affected Counties¹⁹, or their designee, are required to be available for consult with the board of directors and may be requested to attend meetings. These members do not have the authority to vote on matters before the board.²⁰

In addition to the powers and duties prescribed to non-profit corporations in ch. 617, F.S., and in the articles and by laws of corporation, the board of directors may:

- Enter into certain contracts or instruments;
- Make expenditures from earnings consistent with its powers;
- Adopt, use, and alter a common corporate seal; and
- In certain cases, when appropriate, use the state seal for standard corporate identity applications.²¹

Under no circumstances may the board pledge the credit of the State of Florida on behalf of Triumph Gulf Coast, Inc.²²

Awards Criteria

Triumph Gulf Coast, Inc., is authorized to make awards for projects or programs that provide for economic recovery, diversification, and enhancement of the disproportionately affected counties. Awards may be provided for:

- Ad valorem tax reduction;

¹³ s. 288.8013(3), F.S.

¹⁴ s. 288.8014(9)(b), F.S.

¹⁵ The Governor, the Chief Financial Officer, and the Attorney General are the Trustees of the State Board of Administration.

¹⁶ s. 288.8014(2), F.S.

¹⁷ To achieve staggered terms, the initial appointments to the board of directors made by the President of the Senate and the Speaker of the House of Representatives will be for a term of five years, other appointees will serve four year terms.

¹⁸ s. 288.8014(7), F.S.

¹⁹ The federal RESTORE Act directs Florida's share to "a consortia of local political subdivisions that include at least one representative of each affected county" which is known as the Gulf Consortium. The Committee of 8 Disproportionately Affected Counties is an advisory committee established within the Gulf Consortium.

²⁰ s. 288.8014(8), F.S.

²¹ s. 288.8015, F.S.

²² *Id.*

- Payment of impact fees;
- Administrative funding economic development organizations;
- Local match requirements for projects related to the:
 - Rural Infrastructure Fund (s. 288.0655, F.S.)
 - Local Government Distressed Area Matching Grant Program (s. 288.0659, F.S.)
 - Qualified Defense Contractor and Space Flight Business Tax Refund Program (s. 288.1045, F.S.)
 - Tax Refund Program for Qualified Target Industry Businesses (s. 288.106, F.S.)
- Economic development projects;
- Infrastructure projects shown to enhance economic development; and
- Grants related to:
 - Local government emergency preparedness and disaster response
 - Programs of excellence at K-20 institutions
 - Advertising and tourism promotion by Visit Florida (s. 288.1226, F.S.).²³

The corporation must establish an application procedure for awards and a scoring process for the selection of projects and programs with priority given to projects and programs that:

- Generate maximum estimated economic benefit, based on certain tools and models;
- Increase household income above the national average household income;
- Expand high growth industries or establish new high growth industries;
- Leverage key regional assets, including educational institutions, research facilities, and military bases;
- Partner with local governments to provide funds, infrastructure, land, or other assistance;
- Receive investment commitments from private equity or venture capital funds;
- Provide seed stage investments in start-up companies;
- Provide advice and technical assistance to companies related to management or production;
- Benefit the environment and the economy;
- Provide outcome measures and metrics for programs of excellence support;
- Partner with K-20 educational institutions or school districts; and
- Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce.²⁴

The corporation may distribute awards as applications are received or after established application periods. Triumph Gulf Coast, Inc., has the flexibility to require a private-sector match as an application condition. An award may not finance 100 percent of any project or program nor shall an awardee receive all of the earnings or available principle in any given year.²⁵ Awarded contracts must include a required performance report on contracted activities, an accounting of the proper use of funds, and a provision for the recovery of the award if warranted. The status of the project or program must be regularly reported to Triumph Gulf Coast, Inc. by an awardee based on a determined schedule.²⁶

Audit and Reporting Requirements

The Auditor General must conduct an operational audit of the Recovery Fund and Triumph Gulf Coast, Inc., annually.²⁷ Additionally, the independent certified public accountant, required to be retained by Triumph Gulf Coast, Inc., must annually conduct an audit of the investment of the Recovery Fund and the expenditure of earnings and available principle disbursed by the corporation.²⁸

²³ s. 288.8017(1), F.S.

²⁴ s. 288.8017(2), F.S.

²⁵ s. 288.8017(3), F.S.

²⁶ s. 288.8017(4), F.S.

²⁷ s. 288.8013(6), F.S.

²⁸ s. 288.8013(4)(d), F.S. and s. 288.8014(9)(a)1., F.S.

Any local government entity which receives or expends funds related to the Deepwater Horizon oil spill, including funds provided through the RESTORE Act and by Triumph Gulf Coast, Inc., must include an accounting of such funds when conducting their annual financial audit pursuant to s. 218.39, F.S.. The Auditor General must biennially conduct an operational audit of any oil spill funds received or expended by a local government entity and is authorized to report findings to the Secretary of the Treasury of the United States in addition to reporting requirements mandated by state law.²⁹

Effect of Proposed Changes

Triumph Gulf Coast, Inc.

Funding

PCB SOT 17-01a (PCB) requires seventy-five percent of all payments to the State of Florida pursuant to the settlement agreement 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, be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund (created in PCB SOT 17-02a) within the Department of Economic Opportunity (department).

Triumph Gulf Coast, Inc. (corporation), is required to establish a trust account at a federally insured financial institution to hold funds released to it from the Triumph Gulf Coast Trust Fund and make deposits and payments. The PCB requires interest earned in the corporation's trust account be deposited monthly into the Triumph Gulf Coast Trust Fund.

The PCB repeals provisions in the Gulf Coast Economic Corridor Act (act) relating to the recovery fund, the investment of funds, money managers, and investment earnings that were enacted by the 2013 Legislature under the assumption the corporation would receive a single payment from any settlement agreement to manage and spend over a thirty year period. Since, as explained in the Present Situation, the settlement payments are spread over 18 years, this approach is no longer applicable.

Board of Directors

The PCB makes several changes to provisions in the act relating to the corporation's board of directors and their responsibilities. These changes include:

- Extending from two years to six years after termination of appointment, the current requirement that a member of the board of directors refrain from having any direct interest in any contract, franchise, privilege, project, program, or other benefit arising from an award by the corporation. This revision applies only to members serving on the corporation's board of directors on or after July 1, 2017.
- Revising the list of staff the corporation is required to retain to delete the requirement to retain a financial advisor and an economic advisor, but leaving in place the requirement to retain an independent certified public accountant and a legal advisor.
- Limiting the annual salary for any single employee or contracted staff to no more than \$130,000, and limits associated benefits to not more than thirty-five percent of salary.
- Explicitly requiring, rather than directing the corporation to require, all employees of the corporation to comply with the code of ethics for public employees under part III of ch. 112, F.S.
- Extending from two years to six years after termination of appointment, the current requirement that retained staff refrain from having any direct interest in any contract, franchise, privilege, project, program, or other benefit arising from an award by the corporation.
- Limiting the corporation's allowed administrative costs to amounts appropriated for this purpose.

²⁹ s. 288.8018, F.S.

Awards

The PCB substantially revises provisions in the act governing awards the corporation is authorized to make. As revised, the following types of awards are allowed:

- Ad valorem tax rate reduction within disproportionately affected counties.
- Local match requirements of s. 288.0655, F.S., (Rural Infrastructure Fund) for projects in the disproportionately affected counties.
- Public infrastructure projects that are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties.
- Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program.
- Early childhood development and educational programs and services for children from birth to 5 years of age in the disproportionately affected counties.
- Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties.
- Grants to support programs that provide participants in the disproportionately affected counties with transferrable, sustainable workforce skills that are not confined to a single employer.
- Grants to the tourism entity created under s. 288.1226, F.S., for the purpose of advertising and promoting tourism, Fresh From Florida, or related content on behalf of one or all of the disproportionately affected counties.

The following currently authorized types of programs and projects are deleted:

- Payment of impact fees imposed within disproportionately affected counties.
- Administrative funding for economic development organizations located within the disproportionately affected counties.
- Local match requirements of ss. 288.0659, F.S., (Local Government Distressed Area Matching Grant Program), 288.1045, F.S., (Qualified Defense Contractor and Space Flight Business Tax Refund Program), and 288.106 F.S., (Tax Refund Program for Qualified Target Industry Businesses).
- Economic development projects in the disproportionately affected counties.

The PCB also revises provisions directing priority to be given to projects and programs meeting certain criteria to reflect the deletion of some types of projects and programs from the list of eligible programs and projects. Current provisions governing contracts with awardees are revised to require awardees to regularly report to the corporation the expenditure of funds on a schedule determined by the corporation.

The PCB requires the corporation to publish on its website, no less than 14 calendar days prior to making an award, its intent to make the award and a summary of the proposed project or program to be funded.

The PCB requires the corporation to ensure that each of the eight disproportionately affected counties directly benefit from awards and to ensure that at least 4 percent of funds appropriated for awards from the Triumph Gulf Coast Trust Fund are expended in each county over the lifetime of the settlement agreement.

Repeal of 2011 Statute

The PCB repeals s. 377.43, F.S., which was passed during the 2011 Legislative Session and, for purposes of the eight disproportionately affected counties, was supplanted by the passage of the act in 2013. The net effect is to repeal language that addresses the uses of the remaining 25 percent of funds received by the state from any governmental or private entity for damages caused by the Deepwater Horizon oil spill.

Appropriations

Effective July 1, 2017, the PCB appropriates \$299,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation for deposit into the trust account to fund awards for programs and projects authorized in s. 288.8017, F.S. In addition, the PCB appropriates \$1,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation for deposit in the trust account to pay administrative costs. The PCB authorizes funds appropriated in the proposed bill to be expended through the 2018-2019 fiscal year.

B. SECTION DIRECTORY:

Section 1 amends s. 288.80, F.S., to conform provisions related to the short title.

Section 2 amends s. 288.8012, F.S., relating to definitions.

Section 3 amends s. 288.8013, F.S., relating to the creation of Triumph Gulf Coast, Inc., the Recovery Fund, investment, and funding.

Section 4 amends s. 288.8014, F.S., relating to the organization and board of directors of Triumph Gulf Coast, Inc.

Section 5 amends s. 288.8015, F.S., relating to the powers of the board of directors of Triumph Gulf Coast, Inc., conforming provisions.

Section 6 amends 288.8016, F.S., relating to the duties of Triumph Gulf Coast, Inc.

Section 7 amends s. 288.8017, F.S., relating to awards Triumph Gulf is authorized to make.

Section 8 repeals s. 377.43, F.S., relating to the disbursement of funds received for damages caused by the Deepwater Horizon oil spill.

Section 9 appropriates \$299,000,000, effective July 1, 2017, to Triumph Gulf Coast, Inc., to fund awards.

Section 10 appropriates \$1,000,000 to Triumph Gulf Coast, Inc., to pay administrative costs.

Section 11 authorizes funds appropriated in the PCB to be expended through the 2018 – 2019 fiscal year, notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S.

Section 12 provides that the amendments to s. 288.8014(4), F.S., relating to the extension of the post service prohibitions, do not apply to any person unless the person is a member of the board of directors of Triumph Gulf Coast, Inc., on or after July 1, 2017.

Section 13 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Effective July 1, 2017, the PCB appropriates \$299,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation for deposit into the trust account established by the corporation to fund awards for programs and projects authorized in s. 288.8017, F.S. In addition, the PCB appropriates \$1,000,000 in nonrecurring funds from the Triumph Gulf Coast Trust Fund to the corporation for deposit into the trust account to pay administrative costs. The PCB authorizes funds appropriated in the proposed bill to be expended through the 2018-2019 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

PCB SOT 17-01a (PCB) requires seventy-five percent of all payments to the State of Florida pursuant to the settlement agreement 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, be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund (created in PCB SOT 17-02a) within the Department of Economic Opportunity (department).

An initial payment of \$400 million was received in 2016 and, beginning in 2019, Florida will receive annual payments of approximately \$106,666,666 through 2033. Pursuant to the provisions in section 2 of the bill, upon taking effect the bill will require the transfer of \$300,000,000 from the General Revenue Fund to the Triumph Gulf Coast Trust Fund. Beginning in 2019 through 2033, it is anticipated the bill will require the transfer of approximately \$80 million each year from the General Revenue Fund to the Triumph Gulf Coast Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES