

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7077	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Gulf Coast Economic Corridor	119	Y's 0	N's
SPONSOR(S):	Select Committee on Triumph Gulf Coast; Trumbull	GOVERNOR'S ACTION:	Pending	
COMPANION BILLS:	HB 7079, CS/CS/SB 364			

SUMMARY ANALYSIS

HB 7077 passed the House on March 23, 2017. The bill was amended in the Senate on May 1, 2017, and was returned to the House. The House concurred with the Senate amendment and passed the bill as amended on May 2, 2017.

The bill substantially amends the Gulf Coast Economic Corridor Act (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 Triumph Gulf Coast Trust Fund (trust fund), which is created by HB 7079 within the Department of Economic Opportunity. The bill provides for the automatic appropriation of funds transferred to the trust fund to the Triumph Gulf Coast, Inc. (corporation). Seventy-five percent of the BP settlement payment already received by the state is immediately released to the corporation, and funds appropriated after July 1, 2017, will be released to the corporation 30 days after such funds are received by the state and deposited into the trust fund. From this year's appropriation, a minimum allocation of at least 5 percent per county must be used for projects in each of the eight counties. A minimum allocation of at least 4 percent per county of future appropriations to the corporation must be used for projects in each of the eight counties. The Board of County Commissioners of each of the eight counties is required to submit to the corporation a list of projects it or other elected local governing boards recommend for funding.

The corporation is required to establish a trust account at a federally insured financial institution, and is authorized to invest funds in the Local Government Surplus Funds Trust Fund. The corporation is required to deposit interest and earnings into the trust fund on a monthly basis.

The bill revises provisions in the act governing the corporation's board of directors and its operations. The bill provides for the Speaker of the House of Representatives and the President of the Senate to each appoint one additional private sector member from one of the four least populous disproportionately affected counties so that two such counties are represented on the board. 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 bill revises the type of awards the corporation is authorized to make and the criteria used to prioritize projects and programs. The bill provides that an award from the corporation may supplement, but may not supplant existing funding sources.

The bill 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.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7077z.SOT

DATE: May 9, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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;

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 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;
- 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. (corporation), 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

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.

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, 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

¹² s. 288.8014(9)(a)1.-4., F.S.

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.

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;
- 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

²² *Id.*

²³ s. 288.8017(1), F.S.

²⁴ s. 288.8017(2), F.S.

²⁵ s. 288.8017(3), F.S.

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

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

The bill requires seventy-five percent of all payments to the State of Florida 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," 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, be immediately transferred by the Chief Financial Officer from the General Revenue Fund to the Triumph Gulf Coast Trust Fund (created in HB 7079) within the Department of Economic Opportunity (department).

The bill appropriates such funds to Triumph Gulf Coast, Inc. (corporation), and provides for the appropriated funds to be released by the department for deposit into the trust account established by the corporation as follows:

- Seventy-five percent of the moneys received by the state pursuant to the settlement agreement on or before July 1, 2017, shall be immediately released to Triumph Gulf Coast, Inc.
- Seventy-five percent of the moneys received by the state pursuant to the settlement agreement after July 1, 2017, shall be released to Triumph Gulf Coast, Inc., no later than 30 days after such funds are transferred to the Triumph Gulf Coast Trust Fund.

Triumph Gulf Coast, Inc., is required to make awards for projects or programs within the geographic boundaries of each disproportionately affected county based on the following minimum allocations:

- At least 40 percent of the moneys transferred to Triumph Gulf Coast, Inc., before July, 2017, must be allocated equally among the eight disproportionately affected counties based on a minimum allocation of at least 5 percent per county.

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.

²⁹ s. 288.8018, F.S.

- For each subsequent transfer of funds to Triumph Gulf Coast, Inc., at least 32 percent of the moneys must be allocated equally among the eight disproportionately affected counties based on a minimum allocation of at least 4 percent per county.

Each board of county commissioners is required to solicit proposed projects and programs from other elected local governing boards within the county and must provide Triumph Gulf Coast, Inc., with a list of proposed projects and programs located within its county. The submitted list of proposed projects and programs must include projects and programs submitted by other elected local governing boards and projects and programs recommended by the board of county commissioners.

Any remaining funds must be allocated by Triumph Gulf Coast, Inc., for administrative costs and to make awards pursuant to s. 288.8017. Administrative costs may not exceed 0.75 percent of the funds released to Triumph Gulf Coast, Inc.

Triumph Gulf Coast, Inc., 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 bill requires interest earned in the corporation's trust account be deposited monthly into the Triumph Gulf Coast Trust Fund. The bill authorizes the corporation to invest funds in the Local Government Surplus Funds Trust Fund, and requires the corporation to deposit earnings from such investments into the Triumph Gulf Coast Trust Fund on a monthly basis.

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

- As of the effective date of this act, increasing the number of board members to seven, with the President of the Senate and the Speaker of the House of Representatives each appointing an additional private sector member from one of the four least populous disproportionately affected counties as identified by the United States Census Bureau in its April 2016 estimates of county population, so that two such counties are represented on the board.
- 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 limiting 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.

Awards

The bill 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 for construction, expansion, or maintenance which 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.
- 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 and Fresh From Florida, and grants to promote workforce and infrastructure on behalf of 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 bill also revises provisions requiring the scoring process for the selection of projects and programs to give priority to projects and programs meeting specified criteria. The criteria is revised to reflect the deletion of some types of projects and programs from the list of eligible programs and projects and to add an additional criterion to the list to include projects and programs recommended by the board of county commissioners of the county in which the project or program will be located. The existing priority criterion related to partnering with a K-20 educational institution or school district is limited to those partnering with such institutions or districts located within a disproportionately affected county as of January 1, 2017. 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 bill 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 bill also provides that an award from the corporation may supplement, but may not supplant existing funding sources.

Repeal of 2011 Statute

The bill 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Pursuant to the provisions in section 3 of the bill, upon taking effect the bill requires the transfer of \$300,000,000 from the General Revenue Fund to the Triumph Gulf Coast Trust Fund, appropriates these funds to Triumph Gulf Coast, Inc., and immediately releases the funds to the corporation. Administrative costs may not exceed 0.75 percent of the funds released to Triumph Gulf Coast, Inc.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill 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 HB 7079) 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 3 of the bill, upon taking effect the bill requires the transfer of \$300,000,000 from the General Revenue Fund to the Triumph Gulf Coast Trust Fund, appropriates these funds to Triumph Gulf Coast, Inc., and immediately releases the funds to the corporation. Beginning in 2019 through 2033, the bill provides for the immediate transfer of approximately \$80 million each year from the General Revenue Fund to the Triumph Gulf Coast Trust Fund, appropriates the funds to Triumph Gulf Coast, Inc., and releases the funds to the corporation 30 days after they are transferred to the Triumph Gulf Coast Trust Fund.