



Committee:

**SELECT COMMITTEE ON  
FLORIDA'S ECONOMY**

Senator Gaetz, Chair

Senator Ring, Vice Chair

**Workshop Packet**

Tuesday, July 20, 2010

1:00 – 5:00 p.m.

Pat Thomas Committee Room, 412 Knott Building

# **January in July: The Economic Impact of the BP Oil Spill**

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July 20<sup>th</sup>, 2010

Westward and Eastward views from  
Pensacola Beach Fishing Pier

10:00 a.m., 4<sup>th</sup> of July, 2010



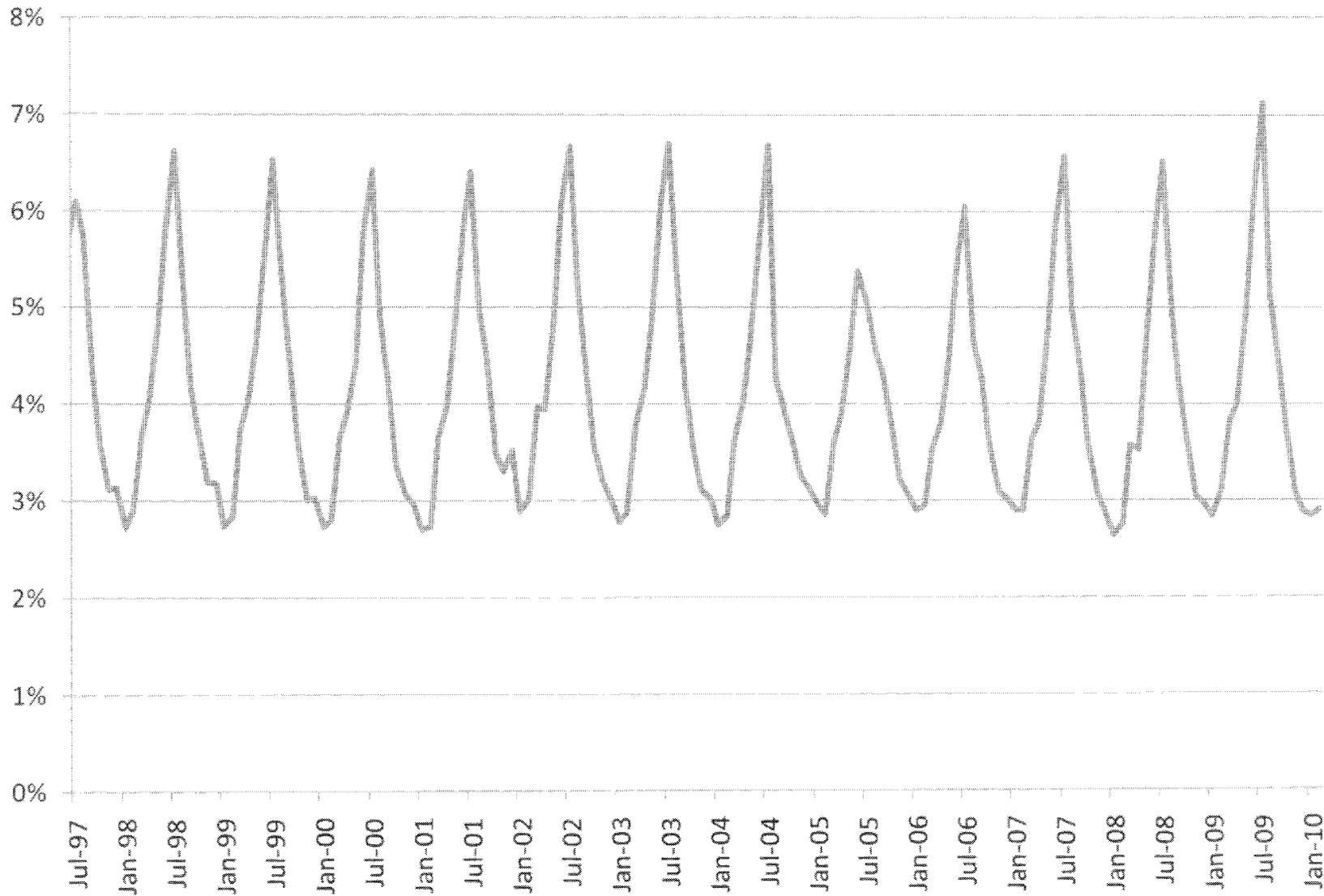
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View to the West

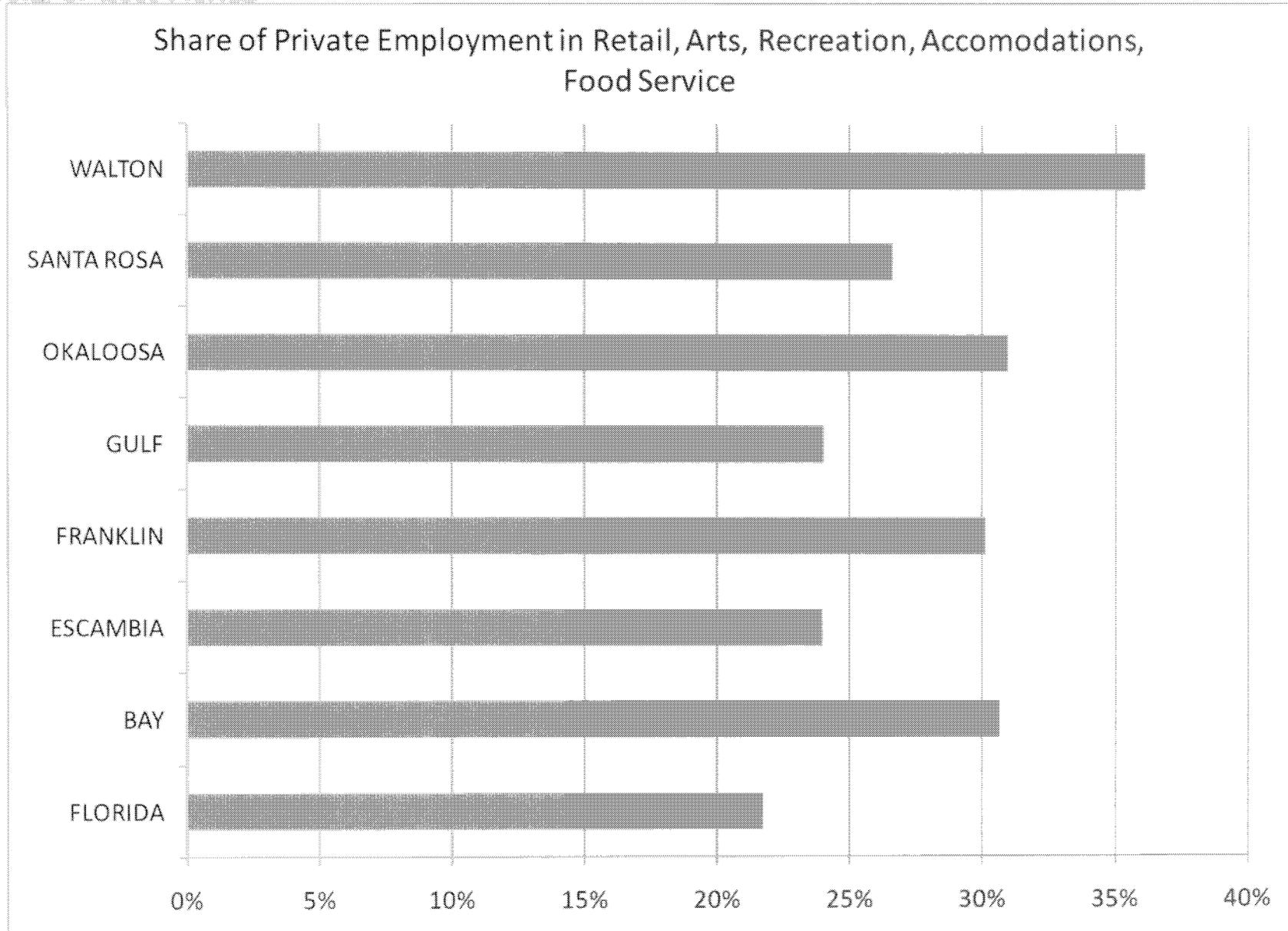


View to the East



NW FL Coastal MSA Tourism Revenue as Share of FL Total Tourism

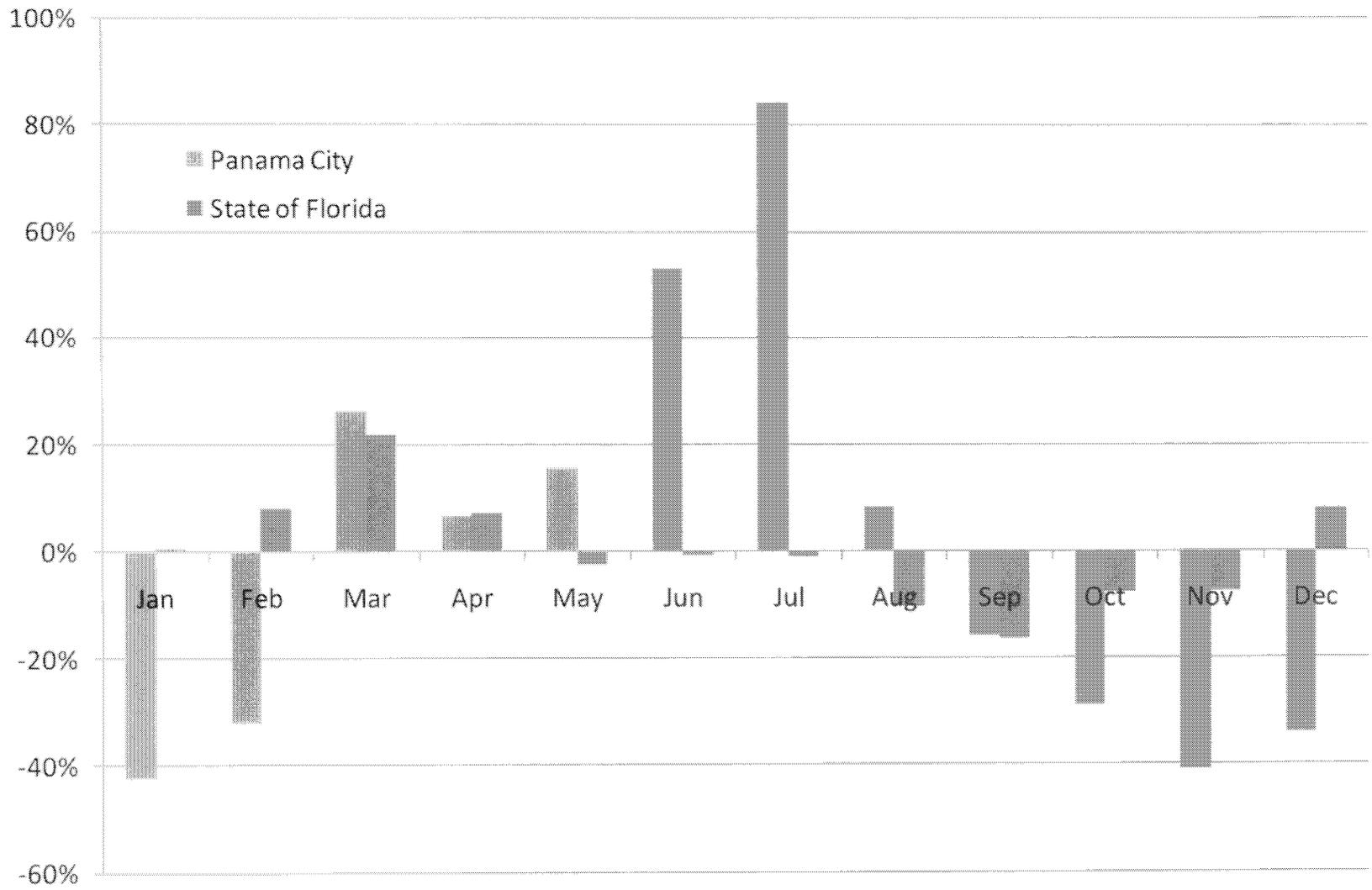




## Why is this Important?

- ▶ According to VISIT FLORIDA's Research Department:
- ▶ NW FL has by far the highest share of visitors (52%) reporting that their top activities are beach/waterfront.
- ▶ The only one of the 8 Florida tourism regions where the top season is summer.
- ▶ Ranks fourth of 8 in per person, per day spending
- ▶ \$378 per party per day in 2007
- ▶ Highest share of non-air travel among FL regions.

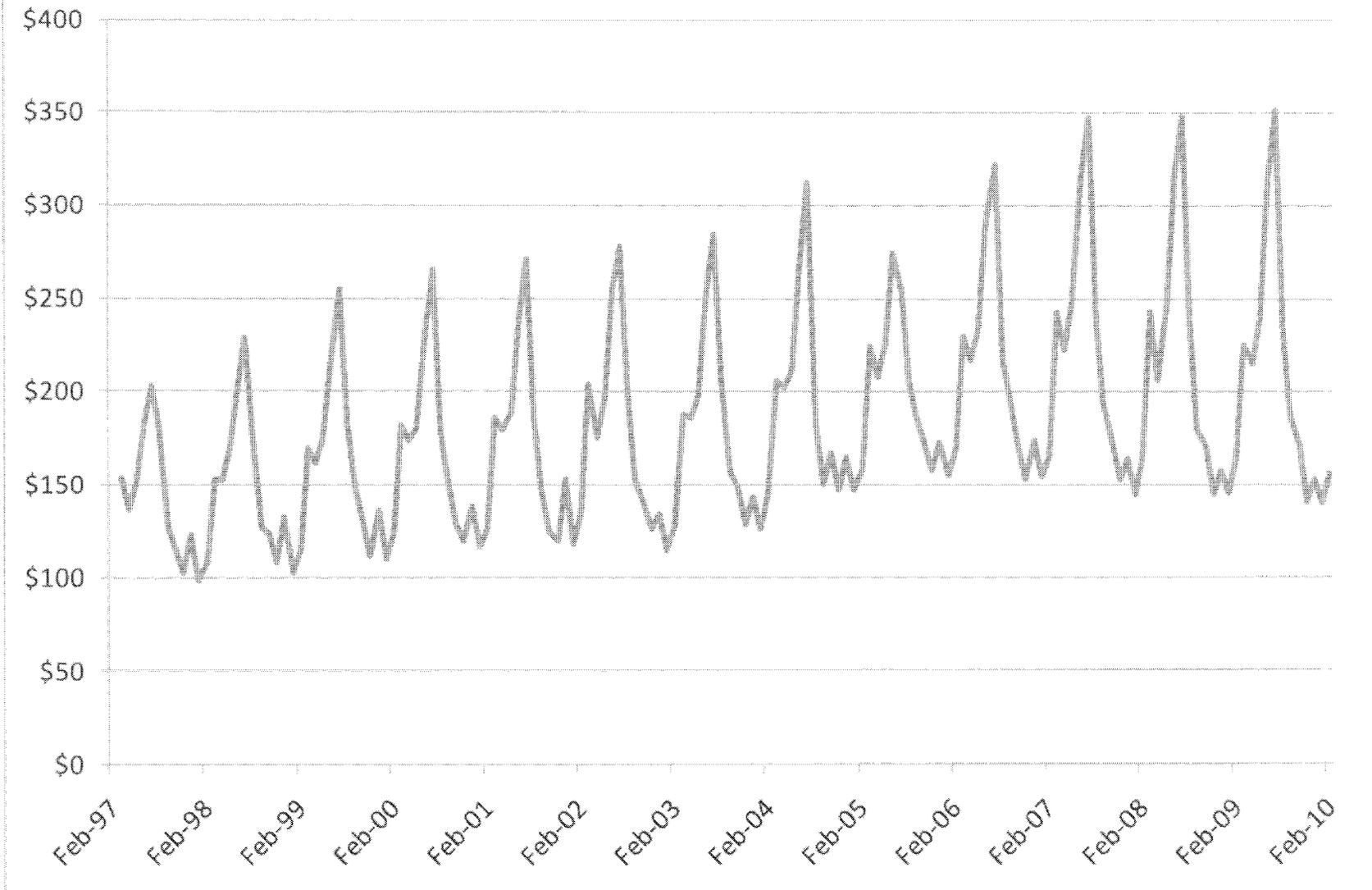
Seasonality: Monthly Deviation from Average Monthly Tourism Sales  
 Panama City and State of Florida

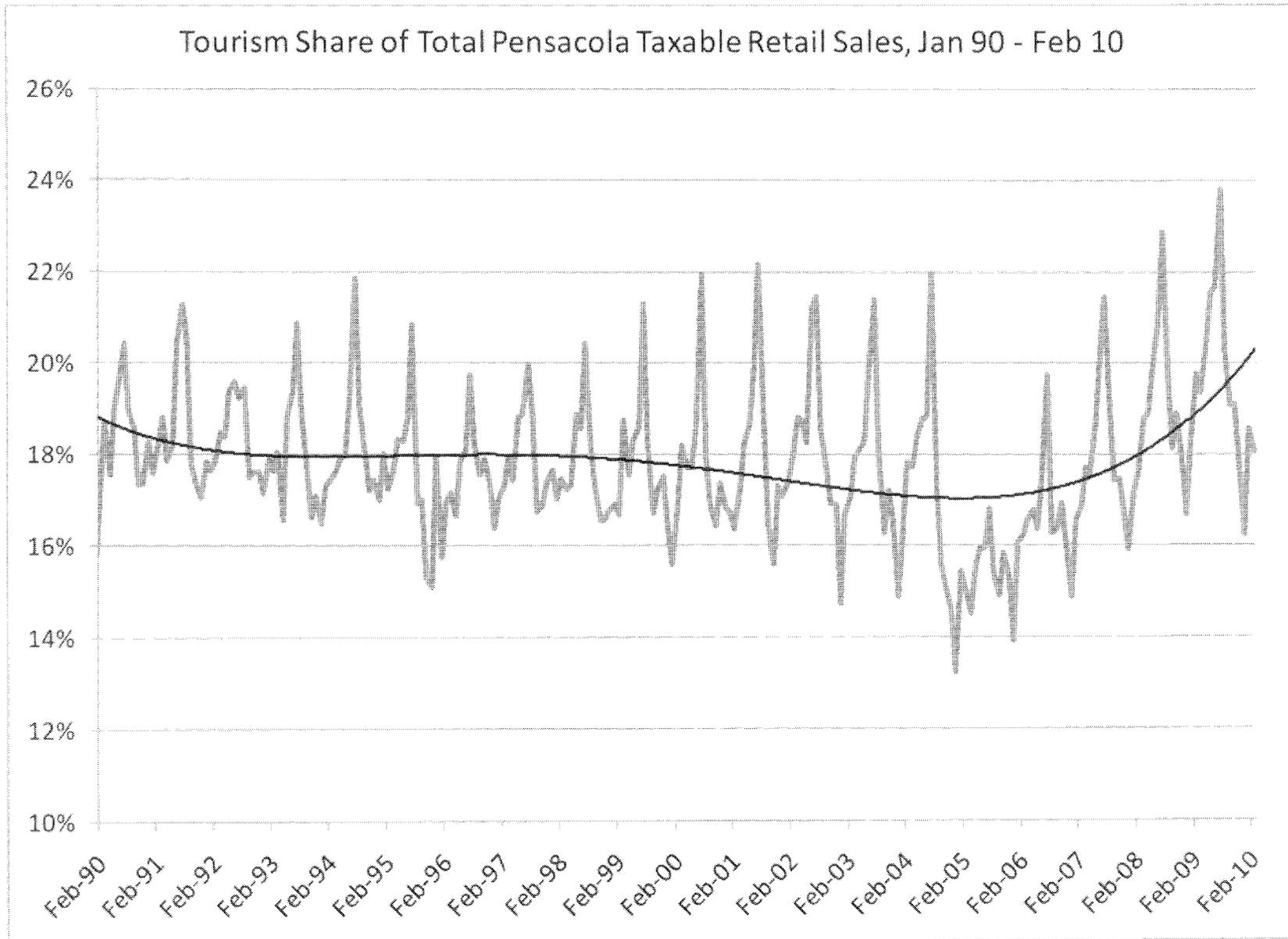


## **How Big is the Visitor Industry in NW FL?**

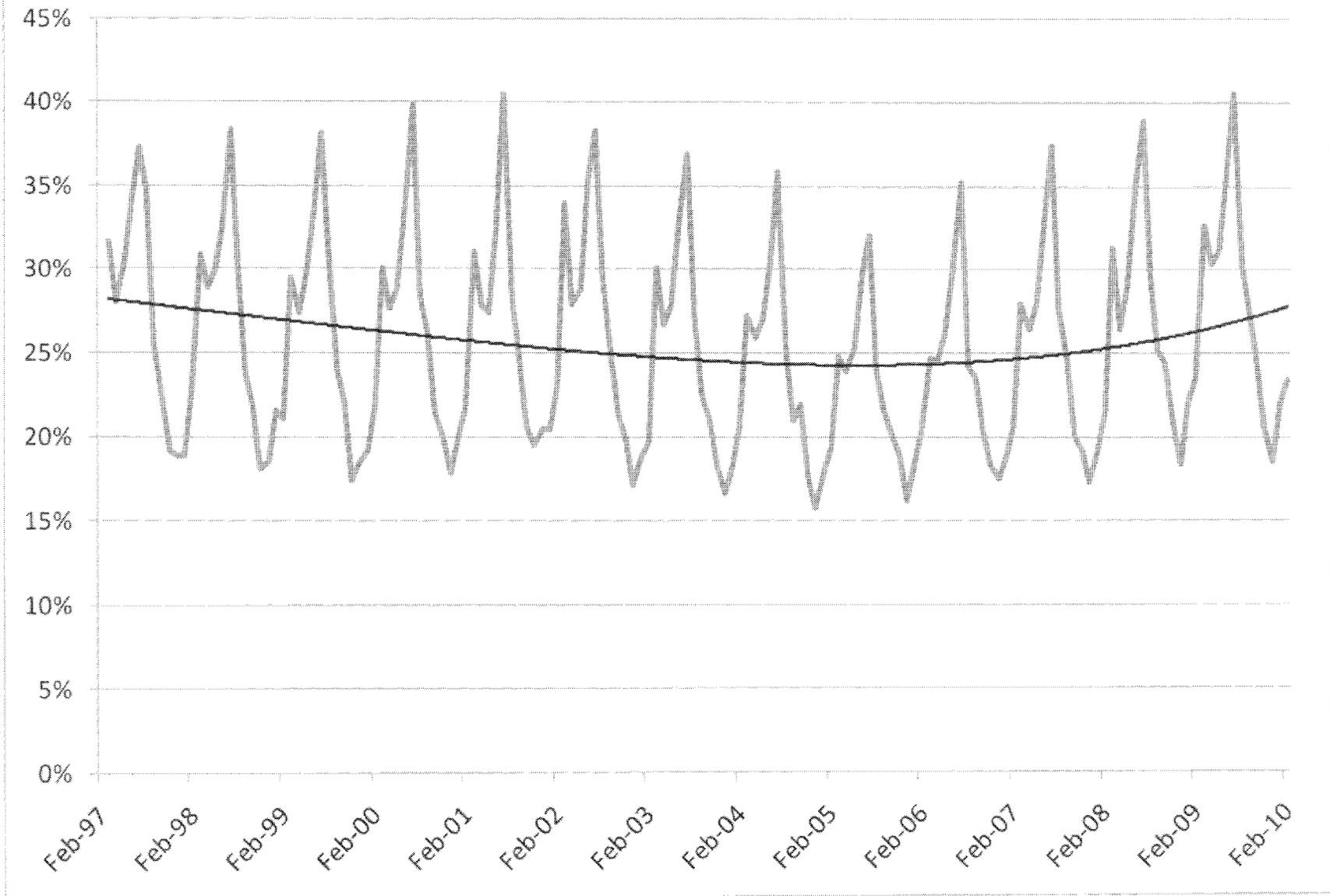
- ▶ National data provider EMSI puts the total size of the visitor industry in the 7-county coastal NW FL area in 2010 at 53,046 jobs and over \$1.5 billion in employee earnings.
- ▶ Trails only military as an employment generator
- ▶ Largest taxable sector of the economy – visitors pay sales and use tax, bed tax, and indirectly, property tax.

**Taxable Sales in Tourism for 3 NW FL Coastal MSA's, 3/97 - 2/10**  
in millions of dollars per month





Bay County Tourism Taxable Sales as Share of Total Taxable Sales

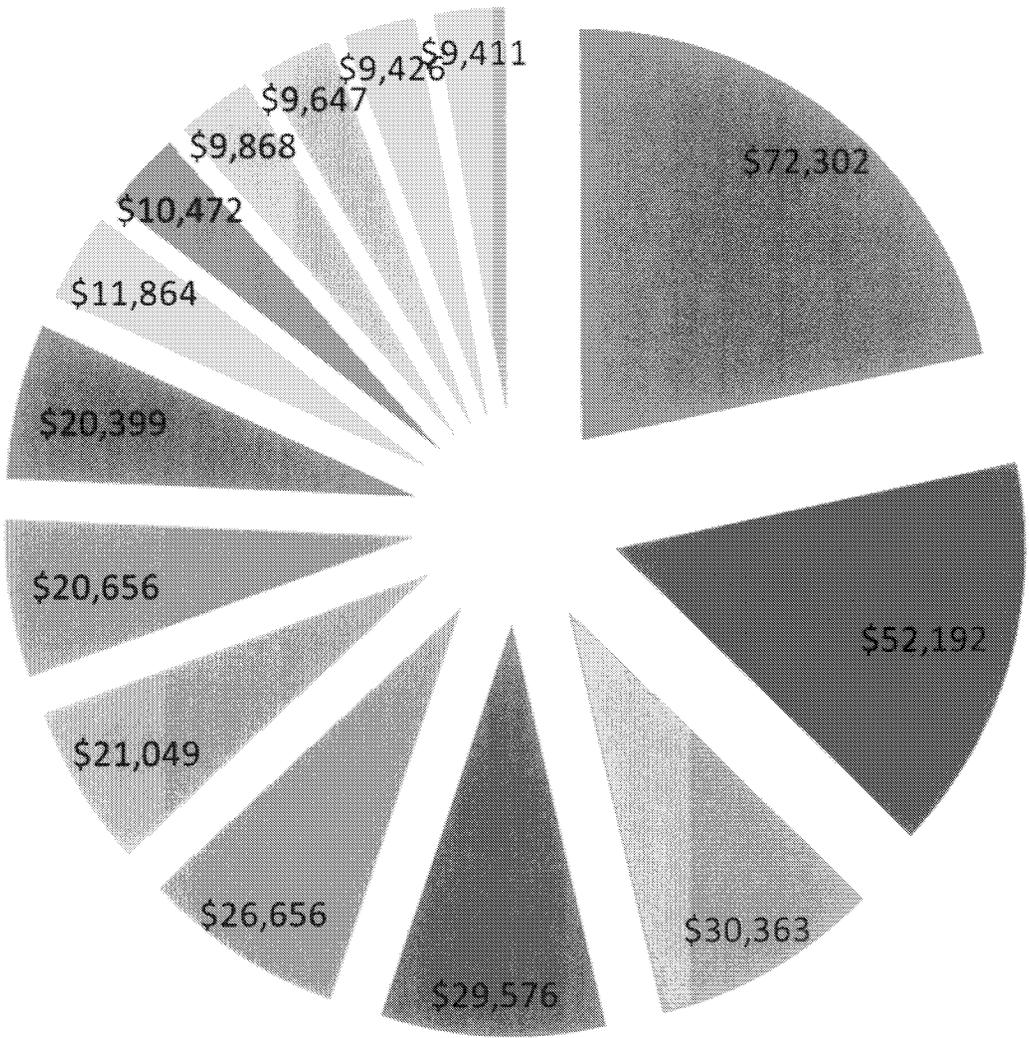


Taxable Retail Sales in the Tourism Sector are 100% higher, on average, during the three summer peak months than in the three winter trough months.

For the three NW FL coastal metro areas, this difference means a loss of about \$150 million per month in tourism sector taxable sales in each of the peak months.

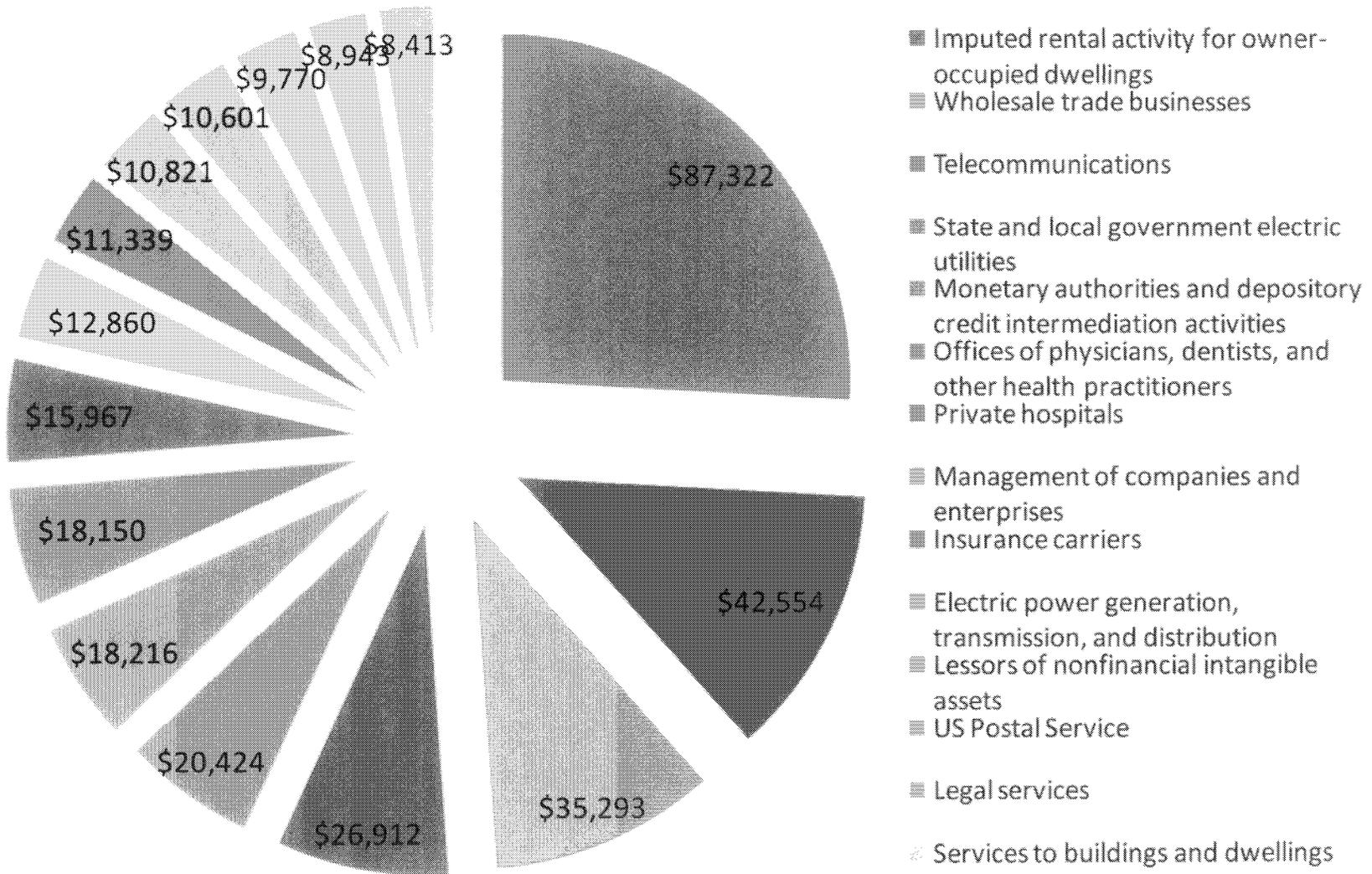
Oil spill-related reductions in tourism sales cascade into other sectors of the local economy, reducing sales, GSP and employment across a broad array of supporting sectors.

**\$1mm Lost Tourism Cascades Economically**



- Imputed rental activity for owner-occupied dwellings
- Real estate establishments
- Offices of physicians, dentists, and other health practitioners
- Food services and drinking places
- Private hospitals
- Telecommunications
- Monetary authorities and depository credit intermediation activities
- Wholesale trade businesses
- Insurance carriers
- Retail Stores - Food and beverage
- US Postal Service
- Retail Stores - General merchandise
- Couriers and messengers
- State and local government electric utilities

**\$1mm in Lost Restaurant Output Cascades Economically**



The IMPLAN impact modeling software applies FL average tax rates across sectors and calculates the following state and local tax impacts (flowing from taxes on corporations, households, employee compensation, sales and use) of a \$1 million change in spending:

Real Estate Leasing	\$146,208
Charter Fishing	\$131,404
Hotels/motels	\$124,019
Restaurants	\$ 94,376

The economic impact to Florida of the oil spill cannot yet be calculated with precision.

However, the effect will be substantial, even for counties not physically touched by the spill, because of the important role that perceptions play in planning and decision-making for our customers.

The effects will be seen first in our visitor industry, including all of the businesses that rely on visitor spending in the key summer season. Those effects will have collateral damage as they ripple through the economy.

Changes in asset values will be more severe if the perceptions of risk and damage are more pronounced.

Non-market valuations of environmental amenities will also suffer.

The fiscal impact to local and state government will be seen in reduced revenue and increased spending.

These effects will only become larger should a hurricane or tropical storm exacerbate the potential for damage.

The more quickly the oil flow can be completely stopped, and the spill contained, the less the damage will be.

# **January in July: The Economic Impact of the BP Oil Spill**

## **Questions?**

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July 20<sup>th</sup>, 2010

## **SUBMERGED LAND LEASE FEE REFUND PROGRAM**

### **Background**

Currently, there is no program to provide relief for owners or entities who have paid for submerged land leases that have been negatively impacted by the Deepwater Horizon oil spill.

Florida's sovereignty submerged lands are those public trust lands below navigable waters that the United States Congress transferred to the State of Florida in 1845 when Florida was granted statehood. Lands below navigable water includes all lands within the boundaries of the state, which are covered by non-tidal waters, which are navigable under the laws of the United States. Generally, Florida's territorial waters extend seaward 3 miles from the Atlantic Coast and 10 miles (3 leagues) from the Gulf Coast. Submerged lands are held in trust by the Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the citizens of the state, as set forth in Article X, Section 11 of the State Constitution, and are managed by the Department of Environmental Protection (department)

There are currently 2,641 leases covering approximately 2,054 acres of the 9 million acres of sovereignty submerged land. Standard leases are available for five-year terms; however, extended lease terms are available for up to 25 years if certain lease conditions are met. Activities that require leases include marina operations, oil and gas exploration, aquaculture harvesting operations, special events, and easements. Each lease application has a unique set of requirements and application fees associated with the submission.

Payments for the use of and lease fees collected for, sovereignty submerged lands are calculated based on formulas established by department rule. During the 2007 – 2008 fiscal year, \$14,806,809 in revenue, easement fees, and application fees were generated from the use of sovereignty submerged lands.

### **Proposal**

Monetary relief could be provided for those lessees who are suffering the economic effects of the oil spill. Such relief could include provisions for a submerged land lease fee refund/credit program that:

- Are revenue neutral – refunds/credits will be paid from a trust fund funded by the responsible party or any other federal or independent claims process;
- Authorize prorated refunds/credits for submerged land lease fees paid or due during the declared state of emergency related to the Deepwater Horizon oil spill;
- Enumerate simple eligibility requirements for lessees of such leases; and
- Give the department emergency rule making authority to administer the program.

All lessees within counties included in the declared state of emergency due to the Deepwater Horizon oil spill could be eligible if they meet specific requirements. Such requirements could include filing a claim and being compensated for their loss or injury from the responsible party or other federal or independent claims process. This trigger mechanism would ensure that the legislation applies to those who have been negatively impacted by the oil spill.

# **TOLLING PERMITS AND EXTENSIONS DURING A DECLARED STATE OF EMERGENCY**

## **Background**

Under current operating procedures, permits are not affected during declarations of emergency. Permit holders must apply for permit extensions during these times to the issuing agency to avoid expiration of their permits.

Pursuant to SB 1752, F.S.,<sup>1</sup> certain state and local permits, approvals, and development orders having expiration dates between September 1, 2008, and January 1, 2012, are extended for two years following the date of expiration. The holder of the permit must notify the agency or local government by December 31, 2010, in writing with a request to extend the expiration date for two years for permits issued by the following:

- The Department of Environmental Protection;
- A water management district pursuant to part IV of chapter 373, F.S.;
- Local governments, including development orders, building permits and buildout dates;
- Any other permit eligible under ch. 2009-96, L.O.F.

However, the legislation specifically exempts certain types of permits from eligibility for the extension. These are:

- Permits issued by the U.S. Army Corps of Engineers;
- Permit-holders who are determined to be in significant noncompliance with the conditions of the permit; and
- Permits that would delay or interfere with court orders.

Additionally, the legislation allows local governments flexibility to require that permit holders maintain and secure their properties in safe and sanitary conditions.

## **Proposal**

Legislation could be drafted to:

- Toll permits during a declared state of emergency;
- Grant an automatic six month extension to the previous expiration date;
- Exclude application to permits issued by the Army Corps, owners found to be in significant noncompliance with permit conditions, or extensions that would violate court orders; and
- Maintain the original rules under which the permit was issued, with certain exceptions.

Because ch. 2010-147, L.O.F., applies to permits expiring between September 1, 2008 and January 1, 2012, such legislation could apply to all permits that may expire during a declared state of emergency. Once a state of emergency is declared, all permits could be automatically tolled and extended six months after conclusion of the emergency order.

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<sup>1</sup> Ch. 2010-147, L.O.F.

Such legislation could streamline the extension process and remove an administrative layer for those affected permit holders during difficult times. Automatically extending permits during these times will relieve the burden from people likely suffering the effects of the precipitating event that lead to the declaration of the state of emergency.

# **DEVELOPMENT OR MODIFICATION OF MULTI-STATE COMPACT FOR ENVIRONMENTAL DISASTERS**

## **Background**

The use of compacts in order to address specific issues that impact multiple states is a well established method for creating a preset and equitable process that ensures states are acting in a coordinated fashion to protect each other's interests and provide necessary resources should one of the members need assistance.

An example of this is the Emergency Management Assistance Compact established in federal law Public Law 104-231 and codified in Chapter 252, Part III, Florida Statutes. In part the compact provides:

“..for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.”

## **Proposal**

Legislation could be drafted to modify or establish a compact to clearly delineate a state entity responsible for negotiating amendments or developing a new compact for man-made environmental disasters. Such areas that the entity may review could include:

- Evaluating potential improvements to federal laws to ensure that regulations and industry practices would yield effective oversight, monitoring, and response capabilities, and protect public health and safety, occupational health and safety, and the environment and natural resources.
- The establishment of a Gulf-wide disaster relief fund.
- The need for a unified and uniform claims advocacy process.
- The need for changes to interstate coordination elements to reduce potential for lawsuits.

## CIVIL COMPENSATION REMEDIES

### Background

Key existing remedies to compensate individuals, businesses, and governmental entities harmed by an oil discharge are:

I. **Federal Oil Pollution Act (OPA)**: Enacted following the *Exxon Valdez* oil spill, OPA unified a variety of then-existing federal liability provisions into a single oil-discharge framework, under which a “responsible party” is liable for removal costs and damages incurred by governmental or private entities. A central component of the framework is the non-court submission of claims to the responsible party designated by the federal government. Specifically, under OPA:

- Removal costs include eligible costs incurred by governments, individuals, and businesses.
- Damages include:
  - *Natural resource* injury, destruction, or lost use;
  - *Real or personal property* injury, as well as economic losses from destruction of property;
  - *Revenues* lost by governmental entities due to property or natural resource damage;
  - *Profits or earning capacity* lost or impaired due to property or natural resource damage;
  - *Public service* increases or additions during or after removal activities (e.g., providing protection from fire, safety, or health hazards); and
  - *Subsistence-use* losses if natural resources depended on for subsistence-use purposes have been injured, destroyed, or lost.
- Punitive damages are not available.
- A claimant shall submit the claim first to the responsible party.
- If the responsible party denies liability or the claim is not settled in 90 days, the claimant may:
  - File a lawsuit in state or federal court; or
  - Present the claim to the federal Oil Spill Liability Trust Fund, which is funded through a federal tax on oil of 8 cents per barrel.
- The responsible party is liable for interest beginning on the 30th day after a claim is presented.
- OPA imposes strict liability.
  - In the case of an offshore facility, removal costs are not limited but damages are limited to \$75 million.
  - The claimant must establish that the damages qualify for compensation and establish the amount of the damages.

II. **Independent Claims Process**: In June, the White House announced the creation of an “independent claims process” for the Deepwater Horizon discharge, to be administered by Kenneth Feinberg, who administered the September 11th Victim Compensation Fund. An escrow account, to which BP agreed to contribute \$20 billion over a four-year period, will fund

the claims process. It is anticipated that the independent claims process will, at a minimum, take over from BP administration of claims by individuals and businesses. August is the anticipated start of the independent claims process. The administrator has yet to issue program guidance; thus, the interplay between this claims process and the standards and procedures of OPA is not known.

**III. State Pollutant Discharge Prevention and Control Act (Pollutant Discharge Act):** This act is a comprehensive regulatory scheme designed to protect the state's coastal waters from discharges of pollutants. The act's definition of "pollutant" is not limited to oil. With respect to liability, the Pollutant Discharge Act:

- Provides for the Department of Environmental Protection to designate a responsible party in the event of a discharge.
- Makes a responsible party liable to an affected "person," which includes individuals, businesses, and governments, for destruction to or loss of real or personal property.
  - The types of damages available are not as broad as under the federal OPA (e.g., state law does not cover lost profits or earning capacity or increased public services).
  - Under state law, damages are not capped; under OPA they are.
  - Under state law, cleanup costs are capped; under OPA they are not.
- Authorizes a private cause of action against a responsible party (s. 376.205, F.S.). An additional cause of action related to a pollutant discharge is authorized separately from the Pollutant Discharge Act (s. 376.313, F.S.).
- Establishes the Florida Coastal Protection Trust Fund (Fund) to ensure moneys are available for abatement of discharged pollutants and for remediation and restoration of environmental resources. The Fund is funded through a state excise tax on each barrel of pollutant produced in or imported into the state, as well as through fines, fees, and recoveries under the act. (Currently, the Fund is expected to have a balance of \$818,054 at the end of Fiscal Year 2010-11.)
- Authorizes a person to make a claim against the Fund. However:
  - The person must first present the claim to the responsible party.
  - If the responsible party denies liability or the claim is not paid in 90 days, the person may present the claim to the Fund.
- Makes the responsible party liable to the Fund for cleanup costs, subject to prescribed limits.

**IV. Common Law Claims:** Persons damaged by pollutant discharges may have a variety of common law causes of action, such as negligence, trespass, nuisance, or products liability. For example, in June the Florida Supreme Court, in *Curd v. Mosaic Fertilizer*, held that commercial fishermen can recover for economic losses proximately caused by the negligent release of pollutants (in that case a spill into Tampa Bay resulting from inland mining waste), even though the fishermen do not own any property damaged by the pollution.

A sample lawsuit might include counts under common law, the state Pollutant Discharge Act (or the separate cause of action under s. 376.313, F.S.), and the federal OPA. Under case law, a federal court dismissed an OPA claim when the plaintiff had not first presented the claim to the

responsible party under the non-court process prescribed in OPA. A lawsuit based solely on a common law theory of recovery presumably would not be dependent upon making a non-court claim to a responsible party under OPA. Similarly, making a non-court claim to the responsible party does not appear to be an explicit condition precedent to filing a lawsuit under the state Pollutant Discharge Act.

## Policy Options

To the extent the Legislature identifies gaps in the coverage of, or problems in the operation of, existing compensation remedies, categories of policy options for addressing the current or a future discharge include:

- Creating additional statutory causes of action for persons injured by pollutant discharges and prescribing the specific remedies available under them.
- Prescribing sanctions or litigation advantages (e.g., awards of attorney's fees, punitive damages, or prejudgment or post-judgment interest);
- Providing for alternative dispute resolution or other processes to facilitate the expeditious resolution of litigation once it is filed in the state courts system.
- Revising the state Pollutant Discharge Prevention and Control Act to expand remedies or revise procedures under the act.
- Pursuing protections for businesses and individuals as they navigate non-court claims processes.

## Considerations/Research

- *Retroactive Application:* There will be limits on the retroactive application of statutory enactments, particularly substantive provisions, to certain claims stemming from the current oil discharge.
- *Management of Cases:* The potential volume of litigation stemming from an oil discharge may create a need to manage the cases and the awards (e.g., addressing the potential awarding of multiple, separate punitive damage awards). To the extent a policy option purports to affect practice and procedure in the courts system, it may raise concerns about encroachment on the constitutional authority of the Florida Supreme Court to govern court procedures.
- *Jurisdiction/Venue:* If a case is brought in state court, a defendant in litigation of this type most likely will remove the lawsuit from state to federal court. There is also the possibility – in light of the volume and complexity of the litigation – that the federal court system's multidistrict litigation (MDL) process may result in the transfer of all federal oil litigation cases to one federal court for coordinated and consolidated pretrial proceedings.
- *Practitioners' Perspectives:* Consultation with private or governmental attorneys who are experienced in complex environmental litigation may aid in the identification of gaps in existing compensation remedies and the development of policy responses.

## CRIMINAL PROSECUTION

### Question

Are there sufficient criminal statutes to prosecute crimes either directly or indirectly related to the Deepwater Horizon discharge?

### Existing Criminal Liability for Discharge and Ancillary Acts

For criminal liability relating directly to the discharge itself, chapters 376 and 403 in Florida law are the most relevant.

Chapter 376, entitled the State Pollutant Discharge Prevention and Control Act, is a comprehensive regulatory scheme designed to protect the state's coastal waters from discharges of pollutants. The act's definition of "pollutant" is not limited to oil. With respect to criminal penalties, the act provides a **misdemeanor** for discharges upon surface or ground waters or lands of the state in violation of DEP rules. The violation must be willful. Every day the discharge occurs constitutes a separate misdemeanor offense (s. 376.302, F.S.).

Chapter 403, entitled the Florida Air and Water Pollution Control Act, is a broad regulatory scheme covering a wide array of pollutants. This act provides **felony** penalties for willfully causing pollution which harms or injures human health or welfare, animal, plant or aquatic life or property and for discharging of pollutants into Florida's coastal waters when the discharges are intentional or due to reckless indifference or gross careless disregard (s. 403.161, F.S.) The act also provides for a third degree **felony** for the dumping of litter in coastal waters when the volume exceeds 100 cubic feet or 500 pounds in weight (s. 403.413, F.S.).

Other criminal acts may be ancillary to the Deepwater Horizon discharge event itself. For example, damaging a boom, misrepresenting training and employment opportunities related to the clean-up efforts or destroying a public health warning sign posted on a contaminated beach could be punished under existing crimes such as **criminal mischief under chapter 806, fraudulent practices under chapter 817 or theft under chapter 812**. Preliminary consensus among prosecutors is relatively strong that existing criminal statutes are sufficient for these ancillary criminal acts.

### Opposing State Prosecutors' Perspectives

The Statewide Prosecutor indicates that his office may need expanded jurisdiction and a better and more appropriate prosecution tool than Florida's littering law (s. 403.413, F.S.).

On the other hand, according to State Attorney Bill Eddins of the First Judicial Circuit, the circuit most directly impacted by the Deepwater Horizon discharge, current laws are sufficient.

## **Legal Uncertainties with Creating New Penalties**

- *Retroactive Application:* More than likely there will be significant limits on the retroactive application of prosecutions under a new criminal law stemming from the current and continuing oil discharge.
- *Jurisdiction/Venue:* There is no guidance in Florida case law on the question of whether the state may prosecute discharges that emanate from federal waters but spread to or pollute Florida's coastal waters.

# **REDUCING UNEMPLOYMENT COMPENSATION LIABILITY FOR FLORIDA BUSINESSES**

## **Background**

The Unemployment Compensation (UC) Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own and who meet the requirements of state law. The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's UC laws.

A qualified claimant may receive UC benefits equal to 25 percent of his or her wages, not to exceed \$7,150 in a benefit year. Benefits range from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual.

## **Issues**

Because individuals will be making claims for unemployment compensation benefits, such claims will impact employers' liability for unemployment compensation taxes for 2011. Currently, AWI is tracking state unemployment claims attributed to the Deepwater Horizon oil disaster.

As part of the state claim against BP, Florida will submit an invoice for reimbursement to BP for UC claims paid due to the oil spill. There is a potential that if money is reimbursed, the impact to employers' tax accounts could be mitigated – if, prior to the calculation of the 2011 UC tax rates, statutory changes were made to allow for non-charging of those employer's accounts.

However, if such a statutory change is made and BP does not reimburse the state for unemployment claims associated with the oil spill, then such costs to the UC Trust Fund will be socialized across all employers in the state. The number, duration, and amount of claims will determine the impact of this shift in liability.

There have been indications that BP may not honor the state's reimbursement request for individuals who received both unemployment and full income replacement by BP. BP recently began asking individuals submitting wage loss claims about receiving UC benefits. Because the BP claims process intends to "make-up" for 100 percent of an individual's lost income, it seems that the company may be reducing any claim awarded by the amount of unemployment benefits an individual receives.

A statutory provision to prohibit those who receive BP claims funds from receiving unemployment benefits would eliminate the issue of reimbursement and charging employer accounts, thereby reducing UC tax liability. Also it would ensure that BP, as the responsible

party, makes individuals whole without reducing their claim by any UC benefits received. Implementation of this last option resolves both issues going forward.

# **TEMPORARY OIL DISASTER RECOVERY AND CLAIMS ADVOCATE OFFICE**

## **Background**

BP, as the responsible party of the Deepwater Horizon oil disaster, is currently paying claims under the Oil Pollution Act of 1990. It has been reported that BP is paying individual claims on average 4 days from the date of claim, and 8 days for business claims.

However, in a few weeks, an independent claims administrator will take over individual and business claims to be paid from an escrow account funded by BP. It is unknown at this time how the claims process will change.

It is anticipated that an adverse affect of the oil disaster may be an increase in demand for a broad spectrum of social services and public assistance.

State agencies have call centers available to assist Floridians, and individuals may find information and apply for services online. Computers are available at many public facilities, like libraries and One-Stop Career Centers. Further, the State Emergency Response Team (SERT) has been assisting with recovery efforts, including assisting individuals and businesses.

## **Issues**

A temporary Oil Disaster Recovery and Claims Advocate Office could be established to provide centralized, one-stop locations for individuals and businesses affected by the oil disaster to get information and assistance.

Operating with a small number of personnel, the office could provide constituent services, including:

- Providing technical assistance to file claims with BP/independent escrow account, including on-site BP claims intake processing;
- Assisting individuals in accessing social, job search, and training programs;
- Assisting businesses applying for SBA loans;
- Providing information to individuals on programs offered through, or referrals by, the Florida Bar; and
- Providing referrals to non-profits providing services.

Existing state personnel and resources would be used to the maximum extent possible. The Legislature would determine the organization structure and administrative location for the office, including possibly implementing this idea itself.

## MEMORIAL TO CONGRESS TO PROVIDE OIL SPILL UNEMPLOYMENT ASSISTANCE

### **Background**

The Disaster Unemployment Assistance (DUA) program is administered by the Agency for Workforce Innovation (AWI) and funded by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) through the U.S. Department of Labor. The program benefits individuals who become unemployed as a direct result of a declared *natural* disaster, and, unlike unemployment compensation, benefits individuals, including the self-employed, who are not eligible for regular state and federal unemployment compensation. DUA is a federally funded program and would not impact Florida's Unemployment Compensation Trust Fund balance.

Legislation proposed by the White House creates a program similar to DUA for individuals who are unemployed as a result of a spill of national significance and who are not eligible for other unemployment compensation (Oil Spill Unemployment Assistance Program).

Additionally, the recovery effort and response to the oil disaster has created the need for thousands of jobs and volunteer opportunities that require properly trained individuals. Legislation proposed by the White House also creates a program that includes providing employment and training on projects regarding clean-up, restoration, and humanitarian assistance (Oil Spill Relief Employment Assistance Program).

The federal government would seek money from the responsible party to pay for both of these programs.

### **Issue**

The Florida Legislature may encourage the U.S. Congress to pass this legislation to aid Floridians out of work as a result of the oil disaster, but who are not eligible for regular unemployment, and to provide reemployment services to individuals affected by the oil disaster.

**MEMORIAL TO CONGRESS TO PROVIDE ASSISTANCE TO**  
**FISHERMEN AND**  
**FISHERY-DEPENDENT BUSINESSES**

**Background**

The White House proposed a budget amendment to the federal 2011 budget to provide an additional \$15 million to the National Oceanic and Atmospheric Administration (NOAA) for responding to economic impacts on fishermen, aquaculturists, and fishery-dependent businesses following an incident related to a spill of national significance, such as the Deepwater Horizon oil disaster. The funds would be used by the National Marine Fisheries Service for distribution to eligible recipients of assistance for nationally declared fishery resource disasters and commercial fishery failures.

The amount would not be available unless the Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, determines that the resources provided by other governmental programs or the responsible parties are insufficient for the response effort.

The U.S. Secretary of Commerce signed a fishery disaster declaration for Florida on June 2, 2010; on June 13, 2010, the Florida Fish and Wildlife Conservation Commission, in coordination with Florida's Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the Department of Health, issued an executive order to temporarily close a portion of coastal state waters offshore of Escambia County to the harvest of saltwater fish, crabs, and shrimp; and on July 4, 2010, the National Oceanic and Atmospheric Administration extended the area of fishery closure in Federal waters to include some waters off of Florida's Gulf Coast, which prohibits all commercial and recreational fishing, including catch and release in the closed areas.

**Issues**

The Florida Legislature may encourage the U.S. Congress to pass this legislation to aid Floridians in these industries that are impacted by the Deepwater Horizon oil disaster.

**MEMORIAL TO CONGRESS TO PROVIDE ADDITIONAL FUNDING**  
**FOR THE**  
**ECONOMIC DEVELOPMENT ASSISTANCE PROGRAM**

**Background**

The White House proposed a budget amendment to the federal 2011 budget to provide an additional \$5 million to the Economic Development Administration's Economic Adjustment Assistance program in states affected by the Deepwater Horizon oil disaster. The Economic Adjustment Assistance program may award grants to state, local, and non-profit entities in the Gulf Coast for strategic planning and technical assistance, including short- and long-term economic recovery plans, and state and local economic recovery coordinators.

The Economic Development Administration's mission includes "fostering entrepreneurship, innovation, and productivity through investment in infrastructure development, capacity building, and business development in order to attract private capital investments and high-skill, higher-wage jobs to distressed regions" and assisting regions experiencing sudden and severe economic distress.

Typically, the Economic Adjustment Assistance Program provides a wide range of technical, planning, and infrastructure assistance in regions experiencing adverse economic changes that may occur suddenly or over time. The program is designed to allow for flexibility in its response to pressing economic recovery issues.

**Issues**

The Florida Legislature may encourage the U.S. Congress to pass this legislation to increase funding for this program, which will help the state, local, and non-profit entities in Florida respond to the oil disaster and pursue economic recovery.

# **MEMORIAL TO CONGRESS TO PROVIDE FEDERAL TAX RELIEF**

## **Background**

BP is currently committed to paying claims for all removal costs and applicable damages incurred by individuals, businesses, and state and local governments as a result of the oil spill. In a few weeks, this process for individual and business claims will transfer over to an independent claims administrator who will pay claims through an escrow account funded by BP.

The Internal Revenue Service (IRS) has determined that claims paid for lost wages, income, and profits, certain property damages claims, and payments for emotional distress are taxable. Although Mr. Feinberg, the independent claims administrator, has stated in news reports that he has not yet determined if the claims would be taxed, in general all income can be taxed under federal law unless specific exceptions are made by the Treasury Department or Congress. BP has stated that it will report any claims it pays to the IRS.

Attorney General Bill McCollum sent a letter to U.S. Congressional members asking them to consider legislation that would exempt oil spill claim payments made to Floridians by BP from 2010 federal income taxes.

U.S. Senator Bill Nelson introduced an amendment to the tax extenders bill (H.R. 4213) that would allow fishing and tourism-related businesses to carry back their losses from the oil spill for an additional 3-taxable years (“Gulf Coast net operating loss carryback amendment”). Currently the net operating loss carryback period allows businesses to amend tax returns from the previous 2 years to account for losses and receive a refund for past taxes paid.

Senator Nelson’s amendment would allow Gulf Coast fishing and tourism-related businesses with \$5 million or less in revenue to look back 5 years. Losses otherwise eligible for the carryback period are reduced by any amounts the business receives from BP for lost profits and earning capacity.

Congress enacted a similar rule for businesses following Hurricane Katrina in 2005 and the Midwestern storms, tornadoes, and floods in 2009. Additionally, farming losses permanently qualify for a 5-year carryback period.

## **Issues**

The Florida Legislature may encourage the U.S. Congress to enact law to exempt payments made to victims of the Deepwater Horizon oil disaster from federal income taxes and to extend the net operating loss carryback period from 2 years to 5 years.

The memorial could be further expanded to exempt disaster unemployment assistance or other social assistance monies paid to affected individuals from the federal income tax.

# **PROPERTY TAX OPTIONS FOR PROPERTIES WHOSE VALUES HAVE BEEN IMPACTED BY THE DEEPWATER HORIZON EVENT**

## **Timeline of Property Tax Process**

Certain Northwest Florida Property Appraisers have raised the issue that property owners will experience loss in value due to the oil spill and resulting decreased tourist and other business activity. Yet this loss in value will not be reflected in the tax bills received this November.

## **Property Tax Timeline**

- January 1, 2010 - assessment date
- July 1, 2010 - date for certification of Tax Roll
- Mid August 2010 – Notice of Proposed Taxes sent
- First week in November 2010 - Tax notice sent
  - Due upon receipt, Delinquent as of April 1
    - Discounts provided
      - 4% for first 30 days following mailing
      - 3% for December 2010
      - 2% for January 2011
      - 1% for February 2011
- June 1 2011– Tax Certificates sold on Delinquent Properties
  - Holder of tax certificate can force a tax deed sale as soon as April 2013

## **Possible Options for Relief**

1. Provide for Alternate Valuation date for impacted properties
2. Provide refunds for impacted properties
3. Create a new tax deferral program for affected properties
4. Extend Discount periods to allow for greater time to pay taxes and still receive 4% discount

## **Alternate Valuation Date**

- Assessment date established for certain properties in the Florida Constitution (Article VII, Section 4) –
  - For Homestead Properties – established as January 1 each year
  - For properties eligible to receive the ten percent limitation and for non-school levies only, the constitution provides for an annual assessment date as provided by law
    - Constitution silent as to the assessment date for school purposes for these properties
  - Assessment date is established in statute as January 1 for all property (Section 192.042)
- Conversations with the Property Appraiser’s Association of Florida indicate that appraisers are concerned that:
  - The information necessary to conduct valuations as of an alternate date will not be available in a timely fashion

- There is not enough time to conduct valuation process to provide any relief prior to the mailing of the tax bill
- That value adjustment boards are meeting during the time frame within which the alternate valuation would have to take place
- The appraisers instead suggest providing relief via refund.

## **Prior Property Tax Relief for Natural Disasters**

### Refunds - History

- Relief has been provided six times to property owners for natural disasters
  - Tornados (1988, 1998, 1999, 2007)
  - Fire (1985, 1999)
  - Hurricanes (1999, 2004)
  - Sinkholes (1999)
- Relief only provided to Homestead or Residential Properties
  - In order to be eligible, structure had to be either unable to be occupied or unable to be used for its primary purpose for 60 days
- Relief provided by Refund
  - Refund calculation -  $(\text{Days unusable} \div 365) \times \text{Property tax due}$
  - Refund provided by local governments (1985, 1988, 1998, 1999)
  - Refund provided by State (2004, 2007)
- **Refund Decision Points:**
  - Eligible properties
  - Measurement of relief
  - Funding for relief (State, Local)

### Other Past Relief

- Additional Relief provided for 2004-05 Hurricanes
  - \$15 M was appropriated to 12 counties in the 2005 General Appropriations Act to offset revenue losses resulting from 2004 storms.
  - Allowed for an extension of the discount periods by local option for 2005 hurricanes
    - Extended 4% discount until January 31 (two months)
    - 3% discount until February 28
    - 2% discount until March 31

## **Taxpayer Protections – Property Tax Deferrals**

In order to provide protections from the possibility of the sale of a Tax Certificate and the potential then created for a tax deed sale if the certificate is not redeemed, certain property owners have been granted additional protection of an option to defer property taxes until the property is sold.

- Two models for tax deferrals currently exist
  - Homestead properties – available to all homestead properties
    - Some or all of property taxes may be deferred
    - Deferral operates like a circuit breaker
      - Allows all homestead owners to defer the amount that exceeds 5% of their household income
      - For homesteaders 65 or older, allows deferral of the amount that exceeds 3% of their household income

- Allows for a total deferral for all homesteaders if their household income is less than \$10,000
    - Allows for a total deferral for homesteaders 65 and older if their household income is less than \$25,780
  - **Local option tax deferral**
    - Working Waterfront and Affordable Housing Properties
    - City or county can grant a tax deferral for their own levy only and specify:
      - The location of the eligible property (Can be less than jurisdiction wide)
      - The type of eligible property
      - Percentage or amount of deferral
- In all cases, certain requirements for eligible properties:
  - Must maintain certain insurance
  - Deferred taxes along with all other liens cannot exceed 85% of the value of the property
  - Accrual of interest
  - Constitutes a prior lien on the property

Extend Discount Periods to allow for greater time to pay and still receive 4% discount
- Current law allows for the following discounts for payment of property taxes:
  - Discounts provided
    - 4% for first 30 days following mailing
    - 3% for December 2010
    - 2% for January 2011
    - 1% for February 2011
  - 2005 extension of discounts
  - Could be coupled with other proposals

## **Other Components of Florida’s Constitutional Framework for Property Taxes**

- Much of Property Tax structure established in Article VII of the Florida Constitution
  - Exemptions established (Section 3)
  - Just or Fair Market valuation of all property required unless otherwise provided in the Constitution (Section 4)
  - Tax Rate – Required to be uniform within each taxing unit (Section 2)
- Article III, Section 11 prohibits certain special laws or general laws of local application
  - Subsection (2) specifically prohibits special law or general law of local application for the assessment or collection of taxes for state or county purposes, including:
    - Extension of time

## PROPERTY TAX TIMELINE

Date	Action	Explanation or Comment	Statutory or Constitutional Reference
January 1, 2010	Date of Assessment	All real and personal property is assessed at its just value as of January 1 of each year	S. 192.042, F.S. Art. VII, sec. (4)(d), State Constitution (homestead property)
March 1, 2010	Exemption Application Date	Application for homestead exemption and other property tax exemptions and classifications and applications for assessment limitation "portability" transfers must be received by the property appraiser	
April 1, 2010	Deadline for filing tangible personal property returns		S. 193.062, F.S.
June 1, 2010	Estimate of property value	Property appraiser must deliver to each taxing authority an estimate of total taxable value for the current year for budget planning purposes	S. 2000.065(8)
July 1, 2010	Notice of exemption denials	Property appraiser must notify property owners in writing of denials of exemptions and classifications Taxpayer may petition VAB within 30 days after mailing	Ss. 196.193(5)(a-c), 193.461(2), 196.151, F.S.
July 1, 2010	Complete assessment of all property and certification of tax roll	Property appraiser must certify to each taxing authority the taxable value therein, and provide instructions describing how to compute the "rolled-back" millage rate.	S. 193.023(1), F.S.S. 200.065(1)

Taxpayers	Property Appraisers	Tax Collectors	Local Government	Department of Revenue	Value Adjustment Board
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July 1, 2010	Assessment roll review	Property Appraiser must submit each assessment roll to DOR for review	S. 192.1142(1), F.S.
July 19, 2010	Certify school tax roll	No later than 2 working days before July 19, DOR must certify to the Commissioner of Education its estimate of the tax roll for school purposes, including the prior year's level of assessment	S. 1011.62(4)(a-b), F.S.
Early-mid August 2010	Taxing authority	Within 35 days after certification, each taxing authority must advise the property appraiser of the proposed millage rate, rolled-back rate, and budget hearing	S. 200.065(2)(b)
Mid August 2010	TRIM notice	Within 55 days after certification, the property appraiser must send notices of proposed taxes. Taxpayer may petition VAB for issues involving value by 25 days following mailing of TRIM notice	S. 200.065(2)(b), F.S.
Mid-late August 2010	School district tentative budget hearing	Adopt tentative budget and millage rate	S. 200.065(2)(f)1., F.S.
Early-mid September 2010	Taxing Authority public hearing	Taxing authority shall hold a public hearing on tentative budget and proposed millage rate	S. 200.065(2)(c), F.S.
Mid-late September 2010	Taxing Authority final budget hearing	Within 15 days of adopting the tentative budget and millage rate.	S. 200.065(2)d,(3), F.S.
30 to 60 days after TRIM notices are mailed, 2010	VAB	Meet to hear complaints (meetings on appeals pertaining to denials of exemptions and classifications may take place July 1 or later)	S. 194.032, F.S.

Taxpayers	Property Appraisers	Tax Collectors	Local Government	Department of Revenue	Value Adjustment Board
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Mid October 2010	Certify final adopted millage rates	Within 101 days of certification of value, final adopted rates certified to the property appraiser and DOR	S. 200.065(4), F.S.
After all VAB hearings have been held, 2010	Notification taxing authorities of VAB and other assessment roll changes	Property appraiser must notify each taxing authority of the aggregate change in the assessment roll resulting from VAB changes and correction of errors, and taxing authorities may adjust millage rates.	S. 193.122(1), F.S.
After certification of tax rolls by VAB, 2010	Property appraiser must certify tax rolls with required extensions		S. 193.122(1),(2), F.S.
November 1, 2010	Local Government fiscal year		S. 218.33, F.S.
November 1, 2010 or as soon as the assessment roll comes to the tax collector	Taxes are due	The tax collector must publish a notice that the tax roll is open for collection	Ss. 197.322(2), 197.333, F.S.
Early-mid November 2010	Tax notices mailed	Within 20 working days after receipt of the certified tax roll the tax collector must mail tax notices	S. 197.322(3), F.S.
November 2010	4% discount	Discount on property taxes paid in November	S. 197.162, F.S.
December 2010	3% discount	Discount on property taxes paid in December	S. 197.162, F.S.
January 2011	2% discount	Discount on property taxes paid in January	S. 197.162, F.S.
January 31, 2011	Deferral application deadline	Deadline for applying for deferral of payment of taxes	S.197.252(1), F.S.
February 2011	1% discount	Discount on property taxes paid in February	S. 197.162, F.S.
April 1, 2011	Taxes become delinquent		S. 197.333, F.S.
By June 1, 2011	Advertisement of upcoming tax certificate sale	Once each week for three weeks	S. 197.402(3), F.S.
June 1, 2011	Tax certificate sale		S. 197.402(3), F.S.

Taxpayers	Property Appraisers	Tax Collectors	Local Government	Department of Revenue	Value Adjustment Board
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## PROPERTY TAX RELIEF PROVIDED FOR NATURAL DISASTERS

**Year:** 1985

**Reason:** Fire and other Natural Disasters that occurred during 1985

**Law:** Chapter 85-322, Laws of Florida

**Eligible Properties:** Houses or other residential structures

**Requirements:** Building or structure must be unusable for the purpose for which it was constructed for at least 60 days.

**Relief calculation:**  $(\text{Days unusable} \div 365) \times \text{Property tax due}$

**Relief Mechanism:** Tax collector instructed to reduce tax bill

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**Year:** 1988

**Reason:** Windstorm or tornado occurred during 1988

**Law:** Chapter 88-101, Laws of Florida

**Eligible Properties:** Houses or other residential structures

**Requirements:** Building or structure must be unusable for the purpose for which it was constructed for at least 60 days.

**Relief calculation:**  $(\text{Days unusable} \div 366) \times \text{Property tax due}$

**Relief Mechanism:** Tax collector instructed to reduce tax bill

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**Year:** 1998

**Reason:** Tornados occurred during 1998 in south and central Florida,

**Law:** Chapter 98-185, Laws of Florida

**Eligible Properties:** Houses or other residential structures

**Requirements:** Building or structure must be unusable for the purpose for which it was constructed for at least 60 days.

**Relief calculation:**  $(\text{Days unusable} \div 365) \times \text{Property tax due}$

**Relief Mechanism:** Tax collector instructed to reduce tax bill  
**Extent of Damage:** DCA estimated 4,755 houses, apartments, and mobile homes were damaged  
**Estimated impact:** (\$1.4 million) local property tax revenue

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**Year:** 1999  
**Reason:** Tornados, Hurricanes, Tropical Storms, Fires, Sinkholes  
**Law:** Chapter 99-190, Laws of Florida  
**Eligible Properties:** Houses or other residential structures  
**Requirements:** Building or structure must be unusable for the purpose for which it was constructed for at least 60 days.  
**Relief calculation:** (Days unusable ÷ 365) × Property tax due  
**Relief Mechanism:** Tax collector instructed to reduce tax bill

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**Year:** 2004  
**Reason:** Hurricane or Tropical Storms  
**Law:** Chapter 2004-474, Laws of Florida  
**Eligible Properties:** Homestead Property (property tax)  
Mobile homes not treated as real property (sales tax)  
**Requirements:** Building or structure must be uninhabitable for at least 60 days.  
**Relief calculation:** (Days unusable ÷ 366) × Property tax due not to exceed \$1500  
**Relief Mechanism:** Reimbursement from appropriated amount administered by the Department of Revenue (\$35 M appropriated, \$13.3 M actually paid)

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**Year:** 2007  
**Reason:** Tornado that occurred February 2, 2007  
**Law:** Chapter 2007-106, Laws of Florida

<b>Eligible Properties:</b>	<b>Homestead Property (property tax) Mobile homes not treated as real property (sales tax)</b>
<b>Requirements:</b>	<b>Building or structure must be uninhabitable for the purpose for which it was constructed for at least 60 days.</b>
<b>Relief calculation:</b>	<b>(Days unusable ÷ 365) × Property tax due not to exceed \$1500</b>
<b>Relief Mechanism:</b>	<b>Reimbursement from appropriated amount administered by the Department of Revenue (\$1.3 M appropriated)</b>
<b>Extent of Damage</b>	<b>FEMA estimated 1,266 houses, apartments, and mobile homes were damaged</b>
<b>Estimated impact</b>	<b>\$922,500 was appropriated from the General Revenue for purposes of paying a partial reimbursement of property taxes as provided by this act.</b>

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Notes – Relief has only been granted to residential or household structures and at times was limited to only homestead property. In all prior instances, the residential structure had to be either uninhabitable for 60 days or unable to be used for the purpose for which it was constructed for 60 days in order to be eligible for relief.

# **FLORIDA SHELLFISH PRODUCTION**

## **Background**

Florida is a significant producer of fresh oysters and clam or shellfish. Our fishers sell annually over \$21 million worth at the dock. The overall shellfish economic impact to Florida from shellfish production exceeds \$70 million annually. Apalachicola produces the majority of oysters, while the Cedar Key producers supply most of the farm-raised clam. Shellfish is the economic life line for these rural counties. Florida panhandle counties employ over 1680 oyster fishers and approximately 370 clam farmers lease 2,398 acres of sovereign submerged lands to produce hard clams. Those clam farmers have planted over 500 million clams on their leases. In addition, there are 91 certified shellfish processing plants that handle these products for distribution to markets. The Department of Agriculture and Consumer Services, Division of Aquaculture is the agency responsible for those activities and manages Florida's shellfish harvesting waters.

The panhandle counties' waters represent 405,353 acres of shellfish harvesting areas out of a total of 1.4 million acres of Florida waters managed by the Division of Aquaculture. Shellfish harvesting waters are opened or closed to harvest based on water quality.

## **Issues**

Oil found in a shellfish harvesting area would require the department to close those waters to harvest. Florida has not ever experienced an oil spill of this magnitude and vicinity to our shellfish harvesting areas. Any area closed to harvest due to oil presence would take weeks to reopen, because of the extensive chemical testing that must occur before product could be sold on the market. Currently, a significant bottleneck for reopening waters is the ability to conduct the tests. Due to the uniqueness and first time occurrence of this spill, the department's food safety lab can only run 20 samples per week. Hundreds of samples, both fish and shellfish will have to be tested over an extended period of time. Testing will have to be done to reopen and to reassure the purchasing public that our seafood is safe to eat for years. The department continues to work with our federal partners and the other four affected states to make sure each state will help the other.

To meet the need and overcome the bottleneck which can cost the industry millions, the department needs approximately \$2 million for equipment and additional personnel to operate that equipment. The state has the burden to prove to consumers that seafood from Florida is safe. This request is an investment in our seafood industry's future and the health of our state's economy.

## **General Fishery Statistics**

- Florida's recreational saltwater fishery has an annual economic impact of \$5.4 billion, supporting over 54,000 jobs.

- Commercial saltwater fishing annually contributes \$1 billion to Florida's economy and 10,000 jobs.
- In 2008/2009 over 3,400 for-hire fishing licenses were purchased, generating over \$1 million in revenue. Over 1 million individuals bought a marine recreational fishing license.
- Total revenue for all saltwater fishing license sales is over \$24 million annually. The revenue from the licenses primarily supports the FWC law enforcement program.
- West Florida recreational anglers took 16.9 million trips: 9.6 million private/rental, 6.7 million by shores, and 595,000 by party/charter boat.
- Top targeted recreational species include: King and Spanish mackerel, Spotted sea trout, Red Drum, Grouper/Snapper, and Dolphinfish.
- In 2008 NOAA Fisheries ranked Florida the eleventh state in commercial landings with over 86 million pounds and seventh in commercial product value of \$170 million.
- For the 2008/2009 fiscal year, 11,404 Salt Water Products Licenses were sold generating \$1.3 million in revenue, and 1,415 Wholesale License Dealer Licenses were sold generating \$571,000 in revenue.
- Florida's top commercial species in 2009 by commercial product value include: Stone Crabs- \$15.9 million, Spiny Lobster -\$11.9 million, Pink shrimp- \$10 million, Red Grouper- \$9.8 million and King Mackerel- \$8 million.