



Federal Affairs Subcommittee MEETING PACKET

**Tuesday, January 17, 2012
12 HOB
3:30 PM – 5:00 PM**

**Dean Cannon
Speaker**

**Clay Ford
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Federal Affairs Subcommittee

Start Date and Time: Tuesday, January 17, 2012 03:30 pm

End Date and Time: Tuesday, January 17, 2012 05:00 pm

Location: 12 HOB

Duration: 1.50 hrs

Consideration of the following bill(s):

HM 1249 Federal Spending Cap by Oliva

HM 1281 Patient Protection and Affordable Care Act by Brodeur

HM 1293 Taiwan Policy Act of 2011 by Bernard

NOTICE FINALIZED on 01/12/2012 16:17 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1249 Federal Spending Cap
SPONSOR(S): Oliva
TIED BILLS: IDEN./SIM. BILLS: SM 1742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett <i>PH</i>	Camechis <i>CC</i>

SUMMARY ANALYSIS

From 1946 to 2008, federal spending averaged 19.6% of the GDP. By 2011, federal spending had increased to 24.7% of GDP -- the highest level since 1946. This memorial urges Congress to cap federal spending at 20% of the United States Gross Domestic Product (GDP). The memorial does not specify the manner in which the cap should be established or enforced.

The memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to cap federal spending cap at 20% of the United States Gross Domestic Product (GDP) without specifying the manner in which the cap should be established or enforced.

Current Situation

Background¹

Federal spending can be divided generally into two broad categories, discretionary and mandatory spending. Discretionary spending is controlled by annual congressional appropriations acts. Mandatory spending encompasses spending on entitlement programs and spending controlled by laws other than annual appropriation acts. Entitlement programs such as Social Security, Medicare, and Medicaid make up most of mandatory spending. There are no fixed limits attached to the amount of spending on these entitlement programs; rather, if federal statutory eligibility requirements are met for a specific mandatory program, outlays are automatic.

From 1946 to 2008, federal spending averaged 19.6% of the GDP.² In FY2000, revenues equaled 20.6% of GDP but, by FY2010, federal revenue collection totaled 14.9% of GDP -- its lowest level since FY1950. In contrast, federal spending in the last decade relative to the economy as a whole (as measured by GDP) has increased. For example, in FY2000, federal spending equaled 18.2% of GDP but, by FY2010, federal spending had reached 23.8% of GDP.³ The pattern of increased spending continued in 2011, when spending increased to 24.7% of GDP -- the highest level since 1946.⁴

Spending Caps as a Measure of Budget Control⁵

This memorial does not specify whether the spending cap should be imposed through adoption of a federal constitutional amendment, federal statute, or Congressional Rule. Generally speaking, however, a federal spending limitation is imposed by Congress adopting a statute that defines a specific spending limit for each year. During each year, Congress would be informed of a projected overall spending total and the amount by which the statutory spending limit is projected to be breached. After a period of time, during which Congress would presumably attempt to achieve compliance with the spending limits through legislative action, a final determination would be made as to whether the spending limit had been exceeded. If spending exceeds the limit, an enforcement mechanism would impose spending reductions. Most spending cap legislation includes exemptions for specific programs and provides for suspension of enforcement under specific circumstances, such as war or natural disaster.

Enforcement of Federal Spending Caps

In the past, nearly all spending limit enforcement mechanisms currently used in the congressional budget process rely on Congressional Rules-based procedures, namely legislative points of order (as opposed to sequestration [automatic] reduction mechanisms). Rules-based enforcement mechanisms operate before enactment of spending legislation by relying on members of Congress to affirmatively raise points of order on the House or Senate floor against legislation that would violate the statutory spending limits. Points of order can be waived by a simple majority or super-majority of each chamber. This method only applies to

¹ Information for this section generally obtained from: U.S. Congressional Research Service, *Statutory Limits on Total Spending as a Method of Budget Control*, (R41938; Oct 13, 2011) by Megan Suzanne Lynch. (CRS Report)

² *Id.* at 8.

³ U.S. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, January 2011, available at <http://www.cbo.gov/doc.cfm?index=12039>.

⁴ CRS Report, *supra* note 1, at 8.

⁵ Information for this section generally obtained from CRS Report, *supra* note 1, at 1.

new spending legislation and cannot limit spending resulting from previously enacted legislation, which accounts for most spending.⁶

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to as the Gramm-Rudman-Hollings Act, is an example of legislation that primarily utilized the point of order enforcement mechanism. According to a report by the Congressional Research Service (CRS), "many question the act's success and some attribute a lack of success to the fact that no spending reductions or revenue increases were included because agreement on such changes could not be reached."⁷ Although the act included an automatic enforcement mechanism, one of its authors has stated that, "It was never the objective of Gramm-Rudman to trigger the sequester; the objective of Gramm-Rudman was to have the threat of the sequester force compromise and action."⁸

Conversely, the Budget Enforcement Act of 1990 created caps on discretionary spending and created "pay-as-you-go" rules for taxes and certain entitlement programs. The "pay-as-you-go" procedures required increases in direct spending, or decreases in revenues due to legislative action, to be offset so that there would be no net increase in the deficit. Violations of the discretionary limits or the pay-as-you-go requirement would be enforced through sequestration⁹. According to the CRS Report cited above, the act is considered by many to have been successful, in part because of these enforcement mechanisms.¹⁰ As a former Director of the Congressional Budget Office concluded, budget process mechanisms are better at enforcing agreements than forcing agreements.¹¹ The act expired in 2002.

Recent Federal Legislation

The recent growth in spending, both in dollar terms and relative to the economy, has generated support for spending caps, resulting in a variety of budget and spending reform proposals being introduced in Congress. On July 19, 2011, the House passed H.R. 2560, the Cut, Cap and Balance Act of 2011, which includes total spending limits for FY2013 through FY2021. The Senate voted to table the motion to proceed by a vote of 51 - 46. In addition, the House-passed budget resolution for FY2012, H.Con.Res. 34, includes a policy statement calling for Congress to enact total spending limits, but the Senate rejected a motion to proceed on the measure by a vote of 40-57.

The President signed the Budget Control Act of 2011¹² (BCA) on August 2, 2011. The BCA provided that an automatic spending reduction process will take place if a joint committee proposal cutting the deficit by at least \$1.2 trillion is not enacted by January 15, 2012. The BCA places non-specific adjustable spending caps on discretionary spending. For the first two fiscal years, the caps are on two categories of spending: security and nonsecurity. After the first two years, one limit on all discretionary spending is created. Decisions about how these caps will affect specific agencies or programs will be made by Congress and the President through the regular appropriations process.¹³

During the current 112th Congress, numerous and varied proposals have been introduced seeking to impose federal spending limits.¹⁴

⁶ CRS Report, *supra* note 1, at 10.

⁷ *Id.* at 7

⁸ *Id.* at 15.

⁹ If appropriation bills passed separately by Congress provide for total government spending in excess of the limits Congress earlier laid down for itself in the annual Budget Resolution, and if Congress cannot agree on ways to cut back the total (or does not pass a new, higher Budget Resolution), then an "automatic" form of spending cutback takes place. This automatic spending cut is what is called "sequestration." Under sequestration, an amount of money equal to the difference between the cap set in the Budget Resolution and the amount actually appropriated is "sequestered" by the Treasury and not handed over to the agencies to which it was originally appropriated by Congress.

¹⁰ *Id.* at 7.

¹¹ Robert D. Reischauer, Director, Congressional Budget Office, statement before the Subcommittee on Legislation and National Security, Committee on Government Operations, U.S. House of Representatives, May 13, 1993.

¹² P.L. 112-25.

¹³ U.S. Congressional Research Service, *The Budget Control Act of 2011*, (R41965; Aug. 19, 2011) by Bill Heniff, Jr.

¹⁴ H. Res. 223: passed in the House by a vote of 243-181; H. Res. 355: Motion to table the motion to proceed to the bill agreed to in Senate by a vote of 51 - 46; H. Res. 1605: Referred to House Rules; H. Res. 1848: Referred to the Committee on the Budget, and in addition to the Committee on Rules; H. Res. 2041: Referred to House Rules; H. Con. Res 37: Referred to the House Committee on the Budget; S. 245: Read twice and referred to the Committee on the Budget; S. Con. Res 18: Motion to proceed to consideration of measure rejected in Senate by a vote of 0 - 97; S. Con. Res 19: Placed on Senate Legislative Calendar under General Orders; S. Con. Res 20: Motion to proceed to consideration of measure rejected in Senate by a vote of 7 - 90; S. Con. Res 21: Motion to proceed to consideration of measure rejected in Senate by a vote of 42 - 55.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HM 1249

2012

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House Memorial

A memorial to the Congress of the United States,
urging Congress to cap federal spending as a
percentage of gross domestic product.

WHEREAS, the current national debt is over \$14.3 trillion,
a cost of approximately \$46,000 for each man, woman, and child
in the United States, and is growing at an alarming rate, and

WHEREAS, the national debt as a percentage of gross
domestic product (GDP) is at historic highs and projected to
continue rising if action to constrain spending is not taken,
and

WHEREAS, the United States does not have a revenue problem,
it has a spending problem, and

WHEREAS, every dollar the Federal Government takes out of
the American economy is a dollar that cannot be used by American
companies and entrepreneurs to create jobs and economic growth,
and

WHEREAS, the nation's current budget crisis, if continued,
will burden future generations with massive amounts of debt, and

WHEREAS, it is prudent to establish a statutory,
enforceable cap to align federal spending with average revenues
at 20 percent of GDP and, thus, reduce the national debt and
protect America's financial future, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

HM 1249

2012

28 That the Florida Legislature respectfully urges the
 29 Congress of the United States to cap federal spending at 20
 30 percent of gross domestic product.

31 BE IT FURTHER RESOLVED that copies of this memorial be
 32 dispatched to the President of the United States, to the
 33 President of the United States Senate, to the Speaker of the
 34 United States House of Representatives, and to each member of
 35 the Florida delegation to the United States Congress.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 1249 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Federal Affairs
2 Subcommittee
3 Representative Oliva offered the following:

Amendment (with title amendment)

6 Remove lines 28-30 and insert:

7 That the Florida Legislature respectfully petitions the
8 Congress of the United States to propose to the states an
9 amendment to the United States Constitution that requires
10 federal spending to be capped at 20 percent of gross domestic
11 product.

T I T L E A M E N D M E N T

15 Remove lines 2-24 and insert:

17 A memorial to the Congress of the United States,
18 urging Congress to propose an amendment to the
19 Constitution of the United States that requires a cap

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 1249 (2012)

Amendment No. 1

20 on federal spending as a percentage of gross domestic
21 product.

22
23 WHEREAS, the current national debt is over \$15 trillion, a
24 cost of approximately \$50,000 for each man, woman, and child in
25 the United States, and is growing at an alarming rate, and

26 WHEREAS, the national debt as a percentage of gross
27 domestic product (GDP) is at a historic high and projected to
28 continue rising if action to constrain spending is not taken,
29 and

30 WHEREAS, the United States does not have a revenue problem,
31 it has a spending problem, and

32 WHEREAS, every dollar the Federal Government takes out of
33 the American economy is a dollar that cannot be used by American
34 companies and entrepreneurs to create jobs and economic growth,
35 and

36 WHEREAS, the nation's current budget crisis, if continued,
37 will burden future generations with massive amounts of debt, and

38 WHEREAS, it is prudent to establish a cap to align federal
39 spending with average revenues at 20 percent of GDP and, thus,
40 reduce the national debt and protect America's financial future,

41 NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1281 Patient Protection and Affordable Care Act

SPONSOR(S): Brodeur

TIED BILLS: IDEN./SIM. **BILLS:** SM 1854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Camechis	Camechis

SUMMARY ANALYSIS

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA"). The PPACA consists of 2,562 pages of text and several hundred sections of law, which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

In response to the enactment of the PPACA, many state legislatures have considered statutory or constitutional measures that attempt to remove or lessen the impact of the PPACA's policy provisions. State constitutional amendments are pending a vote by the electorate in at least three states, including Wyoming, Montana, and Florida.

The PPACA has also been the subject of various legal challenges in the federal courts. A joint lawsuit filed by twenty-six states, including Florida, is challenging the constitutionality of the law. As a result of these challenges, some federal courts have upheld the PPACA in whole or in part, while others have invalidated part or all of the law as an unlawful exercise of Congressional power. Due to the conflicting decisions issued by federal appellate courts, the United States Supreme Court has agreed to review the law and determine the constitutionality of several sections of the PPACA. The Court will hear oral arguments over a three-day period in March 2012.

This memorial has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

Current Situation

A. *Patient Protection and Affordable Care Act*

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA").¹ The PPACA consists of 2,562 pages of text and several hundred sections of law², which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

Effective for health plan years that begin after September 23, 2010:

- All new private health insurance plans are required to cover immunizations, preventive care for infants, children and adolescents, and additional preventive care and screenings for women.
- Health insurers are prohibited from rescinding insurance coverage from members of a health insurance plan, except in case of fraud or material misrepresentation.
- Denial of coverage by health insurers for children with pre-existing conditions is prohibited.
- Lifetime limits on the amount paid out by the health insurance plan are prohibited.
- Copayments or deductibles for certain preventative services are prohibited.
- Coverage is required for dependents up to 26 years of age.

In 2011, health insurance companies are required to spend at least 85 percent of premium dollars on medical services in large group policy markets and 80 percent of premium dollars on medical services in small group and individual policy markets. The failure of insurers to reach the new medical loss ratio targets will result in the issuing of rebates to policyholders.

Effective in 2014:

- Health insurance coverage will be mandatory for almost all U.S. citizens. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from \$95 in 2014 to \$750 in 2016, and is indexed for subsequent years.³ Exemptions for mandatory health insurance coverage will be granted for American Indians, in cases of extreme financial hardship, for those objecting to the mandatory provision for religious reasons, individuals without health insurance for less than three months, and individuals in prison.⁴
- Health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.

¹ P.L. 111-148, 124 Stat. 119 (2010); P.L. 111-152, 124 Stat. 1029 (2010).

² Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at <http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf>.

³ The federal government expects to raise \$17 billion from penalties by 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than \$1,000. See Congressional Budget Office and the staff of the Joint Committee on Taxation, "Payments of Penalties for Being Uninsured under PPACA", April 22, 2010.

⁴ Hinda Chaikind, et al., *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*, CRS Report R40942.

- Companies with 50 or more full time employees that do not provide health insurance coverage to its workers, resulting in at least one worker qualifying for a subsidy to purchase health insurance coverage through an exchange, must pay a tax penalty of \$2,000 for every full time employee, less 30 workers.⁵
- An excise tax will be imposed on health care plans costing more than \$10,200 for individual coverage and \$27,500 for family coverage.
- Denials of coverage to anyone with a pre-existing condition will be prohibited.
- All plans must cover federally defined “essential benefits”.
- Plan rating factors will be set by federal law, which limits the degree of pricing differential among differently situated people.

Other provisions of PPACA include:

- Medicaid eligibility is expanded to include those individuals with incomes up to 138 percent of the federal poverty level, resulting in coverage of 32 million previously uninsured Americans by 2019.
- Medicare payment rates for certain services will be permanently reduced.
- Various additional changes will be made to the federal tax code, Medicare, Medicaid, and other social programs necessary to fully implement the new law.

Nearly 1 in 4 Americans are receiving Medicaid benefits.⁶ Over the next ten years, the federal government will spend \$4.4 trillion on the Medicaid program.⁷ The Congressional Budget Office (CBO) originally estimated new state spending on Medicaid, as a result of the provisions of PPACA, at \$20 billion between 2017 and 2019. More recently, the CBO has estimated a cost to the states of \$60 billion through 2021.⁸ However, a report issued by the Senate Finance Committee estimates that PPACA will cost state taxpayers at least \$118.04 billion through 2023.⁹

The Florida Agency for Health Care Administration has estimated the financial impact of added Medicaid costs to the state, under the provisions of PPACA, to be \$12.944 billion from FY 2013 through FY 2023.¹⁰

B. State Reaction to Federal Health Care Reform¹¹

After PPACA was enacted, members of at least 45 state legislatures proposed legislation to limit, alter, or oppose selected state or federal actions, including single-payer provisions and mandates that require the purchase of insurance. In general, many of the opposing measures considered in 2010 and 2011:

- Focus on not permitting, implementing or enforcing mandates (federal or state) that would require purchase of insurance by individuals or by employers and impose fines or penalties for those who fail to do so.

⁵ S. 4908H(a), PPACA, as amended by the Reconciliation Act, s. 1003 (2010). The Congressional Budget Office estimates that company penalties will cost businesses \$52 billion from 2014 through 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010. At least 728 waivers have been issued to employers by the Obama administration as of February 2011, exempting the employers from the provisions of PPACA. The list is available at http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html (last viewed March 25, 2011).

⁶ Congressional Budget Office, *Spending and Enrollment Detail for CBO's August 2010 Baseline: Medicaid*, August 2010; available at <http://www.cbo.gov/budget/factsheets/2010d/MedicaidAugust2010FactSheet.pdf>.

⁷ Office of Management and Budget, *FY 2012 Budget of the U.S. Government*, February 2011; available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf>.

⁸ *Medicaid Expansion in the New Health Law: Costs to the States*, Joint Congressional Report by Senate Finance Committee, U.S. Congress, March 1, 2011, at page 1; available at <http://energycommerce.house.gov/media/file/PDFs/030111MedicaidReport.pdf>.

⁹ *Id.* at pg. 2.

¹⁰ *Overview of Federal Affordable Care Act*, Florida Agency for Health Care Administration, January 4, 2011; available at http://ahca.myflorida.com/Medicaid/Estimated_Projections/medicaid_projections.shtml.

¹¹ See State Legislation and Actions Challenging Certain Health Reforms, 2011, National Conference of State Legislatures, <http://www.ncsl.org/IssuesResearch/Health/StateLegislationandActionsChallengingCertai/tabid/18906/Default.aspx?tabid=18906>, last accessed January 12, 2012.

- Seek to keep in-state health insurance optional, allowing citizens to purchase any type of health services or coverage they choose.
- Contradict or challenge policy provisions contained in the 2010 federal law.

The language varies from state to state and includes statutory changes and constitutional amendments, as well as binding and non-binding state resolutions. In 2011, there were several new approaches:

- Several states considered bills that would prohibit state agencies or officials from applying for federal grants or using state resources to implement provisions of the PPACA, unless authorized to do so by state legislation.
- Sixteen states considered measures to create an "Interstate Freedom Compact," joining forces across state lines to coordinate or enforce opposition (four states now have enacted laws).
- Several states considered bills that propose the power of "nullification," seeking to label the federal law "null and void" within state boundaries.

C. 2010 Florida Legislation: CS/CS/HJR 37

During the 2010 Regular Session, the Florida Legislature passed CS/CS/HJR 37 by the required three-fifths vote in each chamber. The joint resolution proposed an amendment to the Florida Constitution to create Section 28 of Article I relating to health care services. Specifically, the proposed constitutional amendment:

- Prohibited persons and employers from compelled participation in a health care system;
- Allowed direct payment of health care services and prohibits penalizing persons, employers and health care providers from utilizing a direct payment system;
- Allowed the purchase or sale of health insurance in the private market, subject to certain conditions;
- Exempted from the prohibition any general law passed by a 2/3 vote of the membership of each house of the Legislature, passed after the effective date of the Amendment, provided that such law stated with specificity the public necessity justifying such exception; and
- Exempted laws enacted prior to March 1, 2010, from requirements of the amendment.

Following passage of CS/CS/HJR 37, it was filed with the Department of State for inclusion on the statewide ballot for the 2010 general election, and the proposed amendment was designated as Amendment 9 by the Division of Elections.

Thereafter, a group of citizens filed a lawsuit in the Second Judicial Circuit Court in Tallahassee asking the court to determine whether the legislative ballot summary contained in the joint resolution proposing Amendment 9 complied with the legal requirements for ballot summaries.¹² Ultimately, the Florida Supreme Court, upholding the Circuit Court's decision, removed the proposed amendment from the ballot after finding the ballot summary provided by the Legislature contained misleading and ambiguous language.¹³

¹² See *Fl. Dept. of State v. Mangat*, 43 So.3d 642, 646 (Fla. 2010); see also s. 101.161(1), F.S., states, "Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no', and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

¹³ *Id.*

D. 2011 Florida Legislation: CS/SJR 2

During the 2011 Regular Session, the Florida Legislature passed CS/SJR 2 by the required three-fifths vote in each chamber. CS/SJR 2 proposes an amendment to the Florida Constitution to create Section 28 of Article I relating to health care. Specifically, the proposed constitutional amendment:

- Prohibits a law or rule from compelling, directly or indirectly, any person or employer to purchase, obtain, or otherwise provide health care coverage;
- Allows a person or employer to pay directly for lawful health care services and allows a health care provider to accept direct payment for lawful health care services;
- Prohibits the imposition of taxes or penalties on health care providers who choose to participate in a direct payment system;
- Provides that the purchase or sale of health insurance in private health care systems may not be prohibited by rule or law; and
- Exempts laws or rules in effect as of March 1, 2010.

Following adoption, CS/SJR 2 was filed with the Secretary of State and the proposed amendment was designated as Amendment 1 by the Division of Elections. If approved by 60 percent of the voters in the 2012 general election, the amendment will take effect on January 8, 2013.

To date, CS/SJR 2 has not been challenged in court.

E. *Legal Challenges to PPACA*

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.¹⁴ At the time suit was filed, Florida was joined by twelve states, by and through their individual Attorneys General. Currently, twenty six states and several private parties are plaintiffs in the federal action.¹⁵

The lawsuit argues that the PPACA violates the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. In addition, the lawsuit targets the expansion of eligibility for Medicaid as an infringement on states' rights. The choice given the states by the new law, according to the lawsuit, is to fully shoulder the costs of health care or forfeit federal Medicaid funding by opting out of the system. Finally, the lawsuit contends that the expansion of Medicaid eligibility to include individuals within 138 percent of the federal poverty level "commandeers" states and their resources to complete federal tasks and achieve federal goals, all in violation of the Tenth Amendment to the Constitution.¹⁶ Most of the counts raised in the plaintiffs' Amended Complaint were dismissed through a pre-trial motion, but the claims alleging violation of the Commerce Clause, regarding the individual mandate, and alleging the Medicaid program under PPACA essentially "commandeers" state resources, were allowed to stand.¹⁷

On January 31, 2011, Judge Vinson of the District Court for the Northern District of Florida in Pensacola entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.¹⁸ Judge Vinson also ruled that, because the remaining provisions of PPACA were rendered ineffective without the individual mandate and the law lacked a severability clause, the entire Act was void.

The federal government complied with conditions established by Judge Vinson that were necessary to stay his order, and appealed the order to the U.S. Appeals Court for the 11th Circuit. On August 12, 2011, the U.S. Appeals Court for the 11th Circuit decided by a 2 to 1 vote that Congress exceeded its

¹⁴ *State of Florida v. U.S. Dept. of Health and Human Services*, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

¹⁵ In addition, Virginia filed its own federal lawsuit challenging the constitutionality of PPACA. *State of Virginia v. Kathleen Sebelius*, Case No.: 3:10-cv-188-HEH (E.D. Va.).

¹⁶ Kathleen S. Swendiman, *Health Care: Constitutional Rights and Legislative Powers*, CRS Report R40846, page 10, FN 66.

¹⁷ *Florida v. U.S. Dept. of HHS*, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.

¹⁸ *Florida v. U.S. Dept. of HHS*, ---F.Supp.2d---, 2011 WL 285683 (N.D. Fla.)

constitutional authority by requiring individuals to buy coverage; however, the court unanimously reversed the lower court's decision to invalidate the entire law. Because the court's decision conflicted with decisions of other federal appellate courts that upheld part or all of the PPACA, the case was appealed to the United States Supreme Court for resolution.

On November 14, 2011, the Supreme Court agreed to hear arguments regarding the constitutionality of certain provisions of the PPACA.¹⁹ Oral arguments are scheduled to take place over three days beginning on March 28, 2012.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁹ *Florida et al v. U.S. Dept. of Health and Human Services*, U.S., No. 11- 400 (docketed Sept. 29, 2011).
STORAGE NAME: h1281.FAS.DOCX
DATE: 1/12/2012

HM 1281

2012

1 House Memorial

2 A memorial to the Congress of the United States,
 3 urging Congress to repeal the Patient Protection and
 4 Affordable Care Act signed into law by President Obama
 5 in 2010.

6
 7 WHEREAS, the health insurance mandate within the Patient
 8 Protection and Affordable Care Act is a form of government
 9 interference in the free market and an all-out assault on
 10 personal liberties, and

11 WHEREAS, the mandate for individuals to purchase health
 12 insurance exceeds the scope and authority of Congress, and

13 WHEREAS, as the United States economy continues to struggle
 14 and the unemployment rate holds steadfast at alarming
 15 percentages, the employer mandate to provide health insurance to
 16 employees will raise the cost of hiring new employees and have
 17 an adverse effect on the state of our economy, and

18 WHEREAS, as the cost of employing workers rises, it will
 19 become increasingly vital that employers get more production out
 20 of their more highly paid employees, which will lead to higher
 21 and more sustained unemployment for the lower skilled workforce,
 22 NOW, THEREFORE,

23
 24 Be It Resolved by the Legislature of the State of Florida:

25
 26 That the Florida Legislature urges the United States
 27 Congress to repeal the Patient Protection and Affordable Care
 28 Act signed into law by President Obama in 2010.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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2012

29 BE IT FURTHER RESOLVED that copies of this memorial be
30 dispatched to the President of the United States, to the
31 President of the United States Senate, to the Speaker of the
32 United States House of Representatives, and to each member of
33 the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1293 Taiwan Policy Act of 2011
SPONSOR(S): Bernard
TIED BILLS: **IDEN./SIM. BILLS:** SM 1486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Camechis	Camechis

SUMMARY ANALYSIS

This memorial urges Congress to pass House Resolution 2918, the Taiwan Policy Act of 2011.

On September 14, 2011, United States Representative Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, introduced H.R. 2918, the Taiwan Policy Act of 2011 (Act). The Act is intended to complement the Taiwan Relations Act of 1979 by strengthening and clarifying commercial, cultural, and other relations between the people of the United States and the people of Taiwan. The resolution is co-sponsored by 29 members of Congress, including Florida Representatives Bilirakis, Diaz-Balart, and Ross. Seven Democrats are among the co-sponsors.

According to the U.S. Department of State, the Obama Administration is already engaged in implementing most of the bill's provisions. Thus, the Congressional Budget Office estimates that implementing the bill will have a discretionary cost of less than \$500,000 a year, totaling \$1 million over the 2012-2016 period, assuming the availability of appropriated funds.

The Congressional Budget Office also asserts that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to pass House Resolution 2918, the Taiwan Policy Act of 2011.

Current Situation

*Background*¹

Taiwan is an island located in the western Pacific Ocean and is separated from the southeastern coast of China by the 99 mile wide Taiwan Strait. For all practical purposes, Taiwan is a multi-party democracy that has been independent since 1950; however, China regards Taiwan as a rebel region that must be reunited with the mainland.

Taiwan's rapid economic growth in the decades after World War II has transformed it into an industrialized developed country. It is categorized as an advanced economy by the International Monetary Fund and as a high-income economy by the World Bank. Its advanced technology industry plays a key role in the global economy. Taiwanese companies manufacture a large portion of the world's consumer electronics, although most of them are now made in their factories on mainland China.

In 1979, the United States Congress passed the Taiwan Relations Act (TRA) to (1) help maintain peace, security, and stability in the Western Pacific and (2) promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.² In addition, the TRA states that "the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." The TRA also asserts that the U.S. would "consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States."

The security relationship between Taiwan and the United States has a long history reaching back as early as World War II, and the United States has long been a guarantor of Taiwan's security.³ In the past, the military threat from the mainland has been partly offset by the pivotal relationship between Taiwan and the United States, which is the main weapons supplier to the island - one of the world's biggest buyers of arms. However, in 2010, when President Obama announced an agreement to sell \$6.4 billion in arms to Taiwan, including missiles, Black Hawk helicopters and mine-clearing ships, China broke off military contact with Washington for months. China later called the proposed sale of new F-16s a "red line" that must not be crossed.⁴ In September 2011, Rep. Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, said, "Taiwan needs our help. China is on the march in Asia, and its primary target remains democratic Taiwan."⁵

Also in September 2011, Andrew N.D. Yang, Taiwan's vice minister of national defense, said, "These years, China is showing stronger and stronger reaction to U.S.-Taiwan arms sales," which he said has made the United States "more wary with arms sales." His comments were made in response to the Obama Administration's September 2011 offer to sell Taiwan supplies to upgrade aging Taiwanese warplanes

¹ Taiwan country profile, BBC News, found at http://news.bbc.co.uk/2/hi/americas/country_profiles/1285915.stm.

² Taiwan Relations Act, Public Law 96-8, 96th Congress, Jan. 1, 1979.

³ The Brookings Institution Taiwan-U.S. Quarterly Analysis, *The United States and Taiwan's Defense Transformation*, Feb. 2010, http://www.brookings.edu/opinions/2010/02_taiwan_defense_huang.aspx

⁴ Information in this paragraph obtained from *Obama administration defends decision not to sell new F-16s to Taiwan*, William Wan and Keith B. Richburg, The Washington Post, Sept. 19, 2011.

⁵ Ros-Lehtinen Opening Statement at Hearing on Taiwan, Committee on Foreign Affairs, Oct. 04, 2011, found at http://foreignaffairs.house.gov/press_display.asp?id=2006.

rather than 66 F-16 fighter jets as requested. Taiwan's government said it would continue to request the later generation jets to help defend itself against potential aggression against China.

Current Situation

On September 14, 2011, United States Representative Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, introduced H.R. 2918, the Taiwan Policy Act of 2011 (Act). The Act is intended to complement the Taiwan Relations Act of 1979 (TRA) by strengthening and clarifying commercial, cultural, and other relations between the people of the United States and the people of Taiwan. The resolution is co-sponsored by 29 members of Congress, including Florida Representatives Bilirakis, Diaz-Balart, and Ross. Seven Democrats are among the co-sponsors. As of January 12, 2012, a companion measure to HR 2918 had not been introduced in the U.S. Senate.

On November, 17, 2011, the House Committee on Foreign Relations adopted HR 2918. The resolution has been referred to the House Judiciary Committee, the Subcommittee on Immigration Policy and Enforcement, and the House Ways and Means Committee, but has not been heard in those committees.

The Act specifies that it shall be the policy of the United States to:

- Support Taiwan and the human rights of its people;
- Permit senior leaders of Taiwan to enter the United States under conditions of appropriate respect and permit meetings between high level Taiwanese and U.S. officials in all U.S. executive departments;
- Sign a comprehensive extradition agreement;
- Accept a letter of request from Taiwan for price and availability data or for a formal sales offer regarding the F-16C/D Fighting Falcon aircraft; and
- Include Taiwan in the visa waiver program.⁶

The Act also states that, in conducting relations with Taiwan and China, the United States continues to assent to the six assurances provided to Taiwan in 1982. The Six Assurances are that the United States: has not agreed to set a date for ending arms sales to Taiwan; has not agreed to hold prior consultations with China regarding arms sales to Taiwan; will not play a mediation role between China and Taiwan; will not revise the Taiwan Relations Act; has not altered its position regarding sovereignty over Taiwan; and will not exert pressure on Taiwan to enter into negotiations with the China.

The Act also authorizes the President to make available to Taiwan defense items or defense services, including air, maritime, and ground capabilities.

According to the Congressional Budget Office (CBO), the Act will affect various aspects of U.S. policy with respect to Taiwan by:

- Requiring the Department of State to ensure Taiwan's meaningful participation in certain international organizations and provide annual reports and briefings to the Congress on its progress;
- Authorizing the President to transfer defense articles and services to Taiwan and require detailed briefings and annual reports to the Congress on such transfers; and
- Requiring reports to the Congress regarding an extradition agreement between the two countries, current security policy toward Taiwan, and the potential for Taiwan's inclusion in the Visa Waiver Program.

⁶ The Visa Waiver Program (VWP) enables nationals of 36 participating countries to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. The program was established to eliminate unnecessary barriers to travel, stimulating the tourism industry, and permitting the Department of State to focus consular resources in other areas. VWP eligible travelers may apply for a visa, if they prefer to do so. Nationals of VWP countries must meet eligibility requirements to travel without a visa on VWP, and therefore, some travelers from VWP countries are not eligible to use the program. VWP travelers are required to have a valid authorization through the Electronic System for Travel Authorization (ESTA) prior to travel, are screened at the port of entry into the United States, and are enrolled in the Department of Homeland Security's US-VISIT program. See U.S. State Department, found at http://travel.state.gov/visa/temp/without/without_1990.html#vwp.

According to the Department of State, the Administration is already engaged in implementing most of the bill's provisions. Thus, the CBO estimates that implementing the bill will have a discretionary cost of less than \$500,000 a year, totaling \$1 million over the 2012-2016 period, assuming the availability of appropriated funds.⁷

The CBO also asserts that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.⁸

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁷ Congressional Budget Office Cost Estimate, H.R. 2918 Taiwan Policy Act of 2011, November 30th, 2011. Available at: <http://www.cbo.gov/ftpdocs/125xx/doc12579/hr2918.pdf>.

⁸ See footnote 1.

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2012

1 House Memorial

2 A memorial to the Congress of the United States,
 3 urging Congress to pass House Resolution 2918, the
 4 Taiwan Policy Act of 2011.

5
 6 WHEREAS, House Resolution 2918, the Taiwan Policy Act of
 7 2011, was introduced on September 14, 2011, and is currently
 8 pending before the 112th Congress, and

9 WHEREAS, House Resolution 2918 seeks to encourage and
 10 strengthen the commercial, cultural, and other interests between
 11 the people of the United States and Taiwan, as set forth in the
 12 Taiwan Relations Act which was enacted in 1979 (Public Law 96-8;
 13 22 U.S.C. ss. 3301 et seq.) and which has served for 33 years as
 14 the foundation of United States-Taiwan relations, and

15 WHEREAS, we are reminded that the Taiwan Relations Act has
 16 functioned to ensure peace and stability in the Western Pacific
 17 and that it continues to be a priority of the United States to
 18 maintain that international stability, and

19 WHEREAS, this nation must be vigilant to encourage the
 20 secure future of Taiwan and must do all that is within our
 21 ability to encourage the military self-defense capabilities of
 22 Taiwan, and

23 WHEREAS, economically, Taiwan is the ninth largest trading
 24 partner with the United States and that trade translated into
 25 approximately \$57 billion in 2010, and

26 WHEREAS, both nations realize that it is in the best
 27 economic interests of the United States and in the national

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28 security interests of Taiwan that these two nations continue to
 29 cultivate the intricate ties between them, NOW, THEREFORE,

30

31 Be It Resolved by the Legislature of the State of Florida:

32

33 That the Congress of the United States is urged to pass
 34 House Resolution 2918, the "Taiwan Policy Act of 2011," in
 35 recognition that the passage of the act is a necessary step
 36 toward nurturing and maintaining the diverse interests that bind
 37 the people of the United States and the people of Taiwan.

38

39 BE IT FURTHER RESOLVED that copies of this memorial be
 40 dispatched to the President of the United States, to the
 41 President of the United States Senate, to the Speaker of the
 42 United States House of Representatives, and to each member of
 the Florida delegation to the United States Congress.