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# **Federal Affairs Subcommittee MEETING PACKET**

**Tuesday, January 24, 2012  
12 HOB  
3:00 PM – 4:30 PM**

**Dean Cannon  
Speaker**

**Clay Ford  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Federal Affairs Subcommittee

**Start Date and Time:** Tuesday, January 24, 2012 03:00 pm

**End Date and Time:** Tuesday, January 24, 2012 04:30 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

HR 1447 Nation of Israel by Plakon

**NOTICE FINALIZED on 01/20/2012 16:03 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	Camechis

**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

###### *Background<sup>1</sup>*

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.<sup>2</sup> 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.<sup>3</sup> The pattern of increased spending continued in 2011, when spending increased to 24.7% of GDP -- the highest level since 1946.<sup>4</sup>

###### *Spending Caps as a Measure of Budget Control<sup>5</sup>*

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

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<sup>1</sup> 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)

<sup>2</sup> *Id.* at 8.

<sup>3</sup> 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>.

<sup>4</sup> CRS Report, *supra* note 1, at 8.

<sup>5</sup> 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.<sup>6</sup>

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."<sup>7</sup> 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."<sup>8</sup>

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 sequestration<sup>9</sup>. According to the CRS Report cited above, the act is considered by many to have been successful, in part because of these enforcement mechanisms.<sup>10</sup> As a former Director of the Congressional Budget Office concluded, budget process mechanisms are better at enforcing agreements than forcing agreements.<sup>11</sup> 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 2011<sup>12</sup> (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.<sup>13</sup>

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

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<sup>6</sup> CRS Report, *supra* note 1, at 10.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> 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.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> 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.

<sup>12</sup> P.L. 112-25.

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

<sup>14</sup> 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.

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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

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1 Committee/Subcommittee hearing bill: Federal Affairs  
2 Subcommittee

3 Representative Oliva offered the following:  
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5 **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.  
12

13 -----  
14 **T I T L E A M E N D M E N T**

15 Remove lines 2-24 and insert:  
16

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

923627 - Line 28 - Oliva.docx

Published On: 1/13/2012 4:14:20 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 1249 (2012)

Amendment No. 1

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

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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").<sup>1</sup> The PPACA consists of 2,562 pages of text and several hundred sections of law<sup>2</sup>, 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.<sup>3</sup> 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.<sup>4</sup>
- Health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.

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

<sup>2</sup> 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>.

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup>
- 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.<sup>6</sup> Over the next ten years, the federal government will spend \$4.4 trillion on the Medicaid program.<sup>7</sup> 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.<sup>8</sup> However, a report issued by the Senate Finance Committee estimates that PPACA will cost state taxpayers at least \$118.04 billion through 2023.<sup>9</sup>

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.<sup>10</sup>

#### B. *State Reaction to Federal Health Care Reform*<sup>11</sup>

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.

<sup>5</sup> 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](http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html) (last viewed March 25, 2011).

<sup>6</sup> 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>.

<sup>7</sup> 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>.

<sup>8</sup> *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>.

<sup>9</sup> *Id.* at pg. 2.

<sup>10</sup> *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](http://ahca.myflorida.com/Medicaid/Estimated_Projections/medicaid_projections.shtml).

<sup>11</sup> See *State Legislation and Actions Challenging Certain Health Reforms, 2011*, National Conference of State Legislatures, <http://www.ncsl.org/IssuesResearch/Health/StateLegislationandActionsChallengingCertain/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.<sup>12</sup> 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.<sup>13</sup>

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<sup>12</sup> 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."

<sup>13</sup> *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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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

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

<sup>15</sup> 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.).

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

<sup>17</sup> *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.

<sup>18</sup> *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.<sup>19</sup> 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.

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<sup>19</sup> *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  
DATE: 1/15/2012

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.

HM 1281


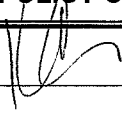
2012

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 #: HR 1447 Nation of Israel  
SPONSOR(S): Plakon  
TIED BILLS: IDEN./SIM. BILLS: SR 1396

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

SUMMARY ANALYSIS

This resolution resolves that the members of the Florida House of Representatives commend Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida and support Israel in its legal, historical, moral, and God-given right of self-governance and self-defense upon the entirety of its own lands, recognizing that Israel is neither an attacking force nor an occupier of the lands of others, and that peace can be afforded the region only through a whole and united Israel governed under one law for all people.

Israel declared its Independence on May 14, 1948. On that same day, the President of the United States recognized the provisional government as the de facto authority of the new State of Israel. Since then, the relationship between the U.S. and Israel has been a cornerstone of U.S. policy in the Middle East. The two nations have developed a close alliance based on common democratic values, religious affinities, and security interests. These relations have evolved through legislation; memoranda of understanding; economic, scientific, military agreements; and trade. The U.S. demonstrates its commitment to Israel's security and well-being through continued economic and security assistance.

This resolution has no fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Effect of Proposed Changes

This resolution resolves that the members of the Florida House of Representatives commend Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida and support Israel in its legal, historical, moral, and God-given right of self-governance and self-defense upon the entirety of its own lands, recognizing that Israel is neither an attacking force nor an occupier of the lands of others, and that peace can be afforded the region only through a whole and united Israel governed under one law for all people.

##### Present Situation

##### History

The birthplace of the Jewish people is the Land of Israel. There, a significant part of the nation's long history was enacted, of which the first thousand years are recorded in the Bible; there, its cultural, religious, and national identity was formed; and there, its physical presence has been maintained through the centuries, even after the majority was forced into exile. During the many years of dispersion, the Jewish people never severed its bond with Israel. With the establishment of the State of Israel in 1948, Jewish independence, lost 2,000 years earlier, was renewed.<sup>1</sup>

The State of Israel proclaimed its independence on May 14, 1948. Subsequent to Israel's declaration of independence, a state of hostility has existed, varying in degree and intensity, between Israel and its neighboring Arab countries: Egypt, Jordan, Lebanon, and Syria. Peace treaties between Israel and neighbors Egypt and Jordan were reached in 1977 and 1994, respectively, but there are currently no peace treaties between Israel and Syria or Lebanon. Israel has given high priority to gaining wide acceptance as a sovereign state with an important international role, and today Israel has diplomatic relations with 163 states.<sup>2</sup>

##### Relations with the United States

On the date of its independence, President Harry Truman issued a signed press release stating that, "This Government has been informed that a Jewish state has been proclaimed in Palestine, and recognition has been requested by the provisional Government thereof. The United States recognizes the provisional government as the de facto authority of the new State of Israel."<sup>3</sup> Since that time, the U.S. and Israel have developed a close alliance, based on common democratic values, religious affinities, and security interests.<sup>4</sup> Relations have evolved through legislation; memoranda of understanding; economic, scientific, military agreements; and trade. The relationship between the U.S. and Israel has been a cornerstone of U.S. policy in the Middle East, and the U.S. commitment to Israel's security and well-being is demonstrated by its continued economic and security assistance to Israel.

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<sup>1</sup> Information in this paragraph was obtained from the website of the Israel Ministry of Foreign Affairs, located at <http://www.mfa.gov.il/MFA/Facts+About+Israel/History/Facts+about+Israel+History.htm>.

<sup>2</sup> Bureau of Near Eastern Affairs, Background Note: Israel, December 1, 2011. Available at: <http://www.state.gov/r/pa/ei/bgn/3581.htm>

<sup>3</sup> Press Release: Recognition of Israel, President, Harry S. Truman. Available at: <http://www.archives.gov/global-pages/larger-image.html?i=/education/lessons/us-israel/images/recognition-press-release-1.jpg&c=/education/lessons/us-israel/images/recognition-press-release.caption.html>

<sup>4</sup> Congressional Research Service, *Israel: Background and U.S. Relations*, at 22 (February 14, 2011; RL33576) by Casey L. Addis.

## *Peace Process*

The U.S. has been the principal international proponent of the Arab-Israeli peace process since President Jimmy Carter mediated the Israeli-Egyptian talks at Camp David, which resulted in the 1979 peace treaty between the two nations. President George H.W. Bush and President Clinton helped facilitate a series of agreements between Israel and the Palestinians, as well as the Israeli-Jordanian peace treaty of 1994. In the 2000's, both President George W. Bush and current President Barack Obama attempted to advance the peace process, but the administrations were unable to reach material progress in peace talks between Israel and Syria, Lebanon, or the Palestinians.<sup>5</sup> President Obama has continued to encourage and negotiate the peace process between Israel and its Arab neighbors.<sup>6</sup>

## *Trade and Defense*

The U.S. and Israel signed a free trade agreement (FTA) in 1985 that, over the next 10 years, progressively eliminated tariffs on most goods traded between the two countries. A subsequent trade accord was signed in November 1996 and addressed the remaining goods not covered in the 1985 FTA, but some trade barriers remain in the agricultural sector. The U.S. is currently Israel's largest single trading partner, accumulating \$22.3 billion in bilateral trade in 2009.<sup>7</sup>

In 1983, the U.S. and Israel established the Joint Political Military Group, which meets twice a year. Both the U.S. and Israel participate in military planning and combined exercises, and have collaborated on military research and weapons development. In 2009, U.S. military aid to Israel totaled \$2.55 billion; this has increased to \$3 billion in 2012, and will total \$3.15 billion per year from 2013 to 2018.<sup>8</sup>

## *Other Bilateral Relations*

In addition to the bilateral relations described above, the U.S. and Israel have worked together on: "bilateral science and technology efforts (including the Binational Science Foundation and the Binational Agricultural Research and Development Foundation); the U.S.-Israeli Education Foundation, which sponsors educational and cultural programs; the Joint Economic Development Group, which maintains a high-level dialogue on economic issues; the Joint Counterterrorism Group, designed to enhance cooperation in fighting terrorism; and a high-level Strategic Dialogue."<sup>9</sup>

## Relationship with Florida

### *Previous Legislative Resolutions*

In the recent past, the Florida Legislature has approved various resolutions regarding Israel, including:

- In 2003, the Florida Legislature adopted without objection HR 9021, by Representative Hasner and others, expressing solidarity with Israel in its fight against terrorism.
- In 2006, the Legislature unanimously adopted HR 1637 by Representative Gelber and others, reiterating its abhorrence of terrorism and reaffirming its affinity with and support of the people and State of Israel.
- In 2008, the Legislature unanimously adopted HR 9081, by Representative Hasner and others, recognizing the 60<sup>th</sup> anniversary of the State of Israel's independence.
- In 2009, the Legislature unanimously adopted HR 1A by Representative Hasner and HR 66-A by Senator Deutch, expressing solidarity with Israel in its defense against terrorism in the Gaza Strip.

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<sup>5</sup> *Id.*

<sup>6</sup> *Obama promises to consult Jordan on Israeli-Palestinian peace talk issues*, by Avi Issacharoff and Natasha Mozgovaya, January 18<sup>th</sup>, 2012. Available at: <http://www.haaretz.com/print-edition/news/obama-promises-to-consult-jordan-on-israeli-palestinian-peace-talk-issues-1.407872>

<sup>7</sup> See Background Note: Israel, *supra* note 1.

<sup>8</sup> See Background Note: Israel, *supra* note 1.

<sup>9</sup> *Id.*



## *Florida-Israel Linkage Institute*

The Florida Legislature created several linkage institutes in s. 288.8175, F.S., including the Florida-Israel Institute, which is jointly administered by Florida Atlantic University and Broward College.

According to the statute, the primary purpose of linkage institutes is to assist in the development of stronger economic, cultural, educational, and social ties between this state and strategic foreign countries through the promotion of expanded public and private dialogue on cooperative research and technical assistance activities, increased bilateral commerce, student and faculty exchange, cultural exchange, and the enhancement of language training skills between the postsecondary institutions in this state and those of selected foreign countries.

As required by statute, each linkage institute is governed by an agreement between the Board of Governors of the State University System for a state university and the State Board of Education for a community college with the counterpart organization in a foreign country. Each institute must report to the Department of Education (DOE) regarding its program activities, expenditures, and policies, and must ensure that minority students are afforded an equal opportunity to participate in the exchange programs. A linkage institute may not be created or funded except upon the recommendation of the DOE and except by amendment to s. 288.8175, F.S.

Each institute may offer up to 25 full-time scholarships to students per year from the host countries to study in any of the state universities or community colleges in this state as resident students. The institute directors develop criteria, to be approved by the DOE, for the selection of these students. Students must return home within 3 years after their tenure of graduate or undergraduate study for a length of time equal to their exemption period.

According to the Florida-Israel Institute, its primary purpose "is achieved through the formation of cooperative initiatives in research, academic development, student and faculty exchange, cultural exchange, and technical assistance between Florida and Israeli institutions of higher learning as well as private sector commercial endeavors. The Institute acts as a facilitator forging collaborative efforts between Israel's world renowned academic institutions and Israel's highly innovative hi-tech industry with Florida's higher-education institutions and Florida industry in areas essential to both states. Two groups assist FII in carrying out its mission: an all-purpose advisory committee consisting of members from academics, government and private industry; and a faculty committee that focuses exclusively on the academic activities of FII."<sup>10</sup> The Florida-Israel Institute offers 25 full-time scholarships each semester to Israeli students, asserting that it is the only program of its kind in the United States.<sup>11</sup>

B. SECTION DIRECTORY: Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

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<sup>10</sup> Florida-Israel Institute website at <http://www.floridaisrael.org/>.

<sup>11</sup> *Id.*

**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: Not applicable.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

House Resolution

A resolution commending the nation of Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida.

WHEREAS, Israel has been granted her lands under and through the oldest recorded deed, as recorded in the Old Testament, a tome of scripture held sacred and revered by Jews and Christians, alike, as presenting the acts and words of God, and

WHEREAS, the claim and presence of the Jewish people in Israel has remained constant throughout the past 4,000 years of history, and

WHEREAS, the legal basis for the establishment of the State of Israel was a binding resolution under international law, which was unanimously adopted by the League of Nations in 1922 and subsequently affirmed by both houses of the United States Congress, and

WHEREAS, this resolution affirmed the establishment of a national home for the Jewish people in the historical region of the Land of Israel, including areas of Judea, Samaria, and Jerusalem, and

WHEREAS, Article 80 of the United Nations charter recognized the continued validity of the rights granted to states or peoples which already existed under international instruments, and, therefore, the 1922 League of Nations resolution remains valid, and the 650,000 Jews currently

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2012

28 | residing in the areas of Judea, Samaria, and eastern Jerusalem  
29 | reside there legitimately, and

30 |       WHEREAS, Israel declared its independent control and  
31 | governance of these lands on May 14, 1948, with the goal of  
32 | reestablishing its God-given and legally recognized lands as a  
33 | homeland for the Jewish people, and

34 |       WHEREAS, the United States, having been the first country  
35 | to recognize Israel as an independent nation and as Israel's  
36 | principal ally, has enjoyed a close and mutually beneficial  
37 | relationship with Israel and her people, and

38 |       WHEREAS, Israel is the greatest friend and ally of the  
39 | United States in the Middle East and the values of our two  
40 | nations are so intertwined that it is impossible to separate one  
41 | from the other, and

42 |       WHEREAS, there are those in the Middle East who have  
43 | continually sought to destroy Israel, from the time of its  
44 | inception as a state, and those who demonstrate animosity toward  
45 | Israel also demonstrate animosity toward, and seek to destroy,  
46 | the United States, and

47 |       WHEREAS, the State of Florida and Israel have enjoyed  
48 | cordial and mutually beneficial relations since 1948, a  
49 | friendship that continues to strengthen with each passing year,  
50 | NOW, THEREFORE,

51 |

52 | Be It Resolved by the House of Representatives of the State of  
53 | Florida:

54 |

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55           That the members of the Florida House of Representatives  
56 commend Israel for its cordial and mutually beneficial  
57 relationship with the United States and with the State of  
58 Florida and support Israel in its legal, historical, moral, and  
59 God-given right of self-governance and self-defense upon the  
60 entirety of its own lands, recognizing that Israel is neither an  
61 attacking force nor an occupier of the lands of others, and that  
62 peace can be afforded the region only through a whole and united  
63 Israel governed under one law for all people.