

# **Select Policy Council on Strategic and Economic Planning**

## **Policy Matrix**

### **A: The Leasing Process**

#### **Issue A1 - Governing Entity**

Under Current law, the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is delegated authority to lease for royalties the right to explore for and develop oil and gas beneath sovereign submerged lands.

Should the Board of Trustees continue to have this authority with respect to sovereign submerged lands beneath Florida's territorial waters in the Gulf of Mexico or should the Legislature delegate the authority over the leasing of sovereign submerged lands for oil and gas exploration and production to a new governing entity? If another entity, why and which existing or proposed new entity should perform this function?

<b>Respondent</b>	<b>Response to Issue A1</b>
Florida Association of Counties (FAC)	The Board of Trustees should continue to have exclusive authority for leasing, given their long-established role in determining the public interest and upholding the public trust doctrine.

**Issue A2 - Demarcating Florida's Territorial Waters for Leasing**

In order for specific lease areas to be identified in Florida's waters, should the Legislature require lease blocks to be identified by a specific mechanism, such as extending the federal government's lease block protraction maps into Florida's territorial waters, or should the Legislature authorize the Board of Trustees, or other governing entity responsible for granting the leases, to determine how lease areas in Florida's waters are to be identified? Please explain the rationale for either recommended approach.

<b>Respondent</b>	<b>Response to Issue A2</b>

**Issue A3 - Method for Defining Proposed Lease Areas Open for Bidding**

Under current law, whenever the Board of Trustees determines there is demand for the purchase of any lease area, the Board of Trustees is required<sup>1</sup> to place such lease on the market in any block or tract the Board of Trustees designates.

Should the Legislature maintain the current process or require the Board of Trustees to hold lease sales on some predetermined, regular basis? Under current law, the Board of Trustees accepts nominations and then places leases on the market in blocks or areas it designates. Should this process be continued? Should the governing entity accept nominations from potential bidders or determine what areas are offered for lease independently? Should the governing entity continue to have discretion as to what areas to offer for lease, or be required to place a nominated area on the market in such block or area designated in the nomination? Please explain the rationale for the recommended approach?

<b>Respondent</b>	<b>Response to Issue A3</b>

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<sup>1</sup> The Courts have ruled that although s. 253.52, F.S., provides that the Board shall put a lease on the market when there is demand, this statutory provision does not create an unconditional obligation on the part of the state to lease the land for oil exploration when there is a demand and it makes economic sense to do so. The First District Court of Appeal further ruled that this statutory section must be read in conjunction with the public trust doctrine contained in the constitution as well as the general police powers of the state to protect the public health, safety, and welfare.

**Issue A4 - Nomination of Proposed Lease Area**

Although current statutes are silent, the Board of Trustees’ rules require nominations for the lease of sovereign submerged lands to include the following:

- Name and address of the applicant or nominee;
- Legal description of the parcel nominated, including the surface acreage;
- Identification of the state agency vested with the ownership of the petroleum products;
- Percentage of the petroleum interests held by the State;
- Identification of any municipal corporation in which all or part of the parcel sought is located or within 10 miles thereof;
- Identification of any improved beach outside a municipal corporation or lands in the tidal waters of the State of Florida abutting on or immediately adjacent to any improved beach in which or part of the parcel sought is located or within 3 miles thereof; and
- A \$200 non-refundable processing fee.

Should the Legislature require nominations to include any additional information (known seismic data for area being nominated, map showing the location of the nominated area, identification of competing uses, environmental inventory, sand source inventory, etc.)? Please describe additional information that should be included and the rationale for its inclusion.

<b>Respondent</b>	<b>Response to Issue A4</b>
Florida Association of Counties (FAC)	Ideally, the state should complete a sand source inventory prior to granting any leases. However, nominations should include not only a sand source inventory, but also an environmental inventory and identification of all competing uses.

### **Issue A5 - Areas Within Florida's Territorial Waters Open for Leasing**

Should the Legislature allow all areas of Florida's territorial waters to be open to leasing for oil and gas development, or should the Legislature specify any areas of Florida's territorial waters that are not available? Several options are available. The Legislature could explicitly prohibit leases in certain areas, such as aquatic preserves or areas where military activities occur on a regular basis, or it could delegate responsibility to the governing entity to determine, based on specific criteria provided in statute, whether certain areas should be excluded. For example, the Legislature could direct the governing entity to submit any area nominated or considered for leasing to the U.S. military for review and comment. The military could indicate no identified conflict, specify conditions that would avoid any conflict, or indicate the existence of conflicts that could not be mitigated and therefore preclude inclusion of the area in any lease sale. For areas of special environmental concern, such as areas in aquatic preserves or near mangroves, estuaries or other fishery spawning areas, the governing entity could be required to consider the potential impacts and the ability to avoid or mitigate these impacts prior to offering such areas for lease. Please briefly explain your recommended approach.

<b>Respondent</b>	<b>Response to Issue A5</b>
Florida Association of Counties (FAC)	<p>FAC would oppose any proposed or planned drilling operations in the Gulf of Mexico that would impair, restrict or negatively impact the ability of the United States military, and specifically Eglin Air Force Base, Tyndall Air Force Base, Hurlburt Field, Duke Field or the NAS Pensacola assigned, tenant, remote and/or guest units, to fully utilize the existing Joint Gulf Range Complex (JGRC) airspace and surface waters for ongoing or planned aircraft test, weapons test and/or training missions.</p> <p>At a minimum, the U.S. military review and comment period described above should be implemented. However, the Legislature should consider explicitly prohibiting leases in areas where military activities occur on a regular basis.</p> <p>The Legislature should also consider explicitly prohibiting leases in areas of special environmental concern, including but not limited to aquatic preserves and estuaries.</p> <p>FAC supports the recommendations of the Florida Beach and Shore Preservation Association (FSBPA) relating to the protection of offshore sand sources. Leases should be explicitly prohibited in certain top priority sand source areas. Other sand sources should receive some degree of protection, as outlined in the FSBPA recommendations.</p>

**Issue A6 - Bid Submission**

Current law only requires that bids submitted for oil and gas leases include written offers of a cash consideration, including the advertised fee for the first lease year, with the amount offered above the fee being the competitive bid; all bids must contain a certified statement as to the bidder's state lease holdings.

Should the Legislature require that bids include a separate, nonrefundable application fee? If so, what amount? Should the Legislature specify minimum bids and the form bids must take, such as royalty payments or allowing upfront payments, or should some or all of these decisions be left to the discretion of the governing entity? Please explain the rationale for your recommendation.

<b>Respondent</b>	<b>Response to Issue A6</b>

**Issue A7 - Bid Selection and What is the “Highest and Best” Bid**

Under current law, the Board of Trustees is required to hold a public meeting to consider all bids submitted for a proposed oil and gas lease and, at the Board’s discretion, award the lease to the highest and best bid. The statutes are silent as to what constitutes the “highest and best” bid, leaving the determination to the discretion of the Board.

Should the legislature establish criteria in statute that the governing entity must consider when making its determination of whether a bid is the “highest and best” bid? If so, what criteria should be considered?

<b>Respondent</b>	<b>Response to Issue A7</b>

**Issue A8 - Bid Selection and the Public Interest Determination**

Under current law, the Board of Trustees is not required to select the highest and best bid if the bids, in the judgment of the Board, do not represent the fair value of the lease or leases offered for sale, the execution of lease is contrary to the public welfare, the financial responsibility of the bidder offering the highest amount has not been established to the Boards satisfaction, or for any other reason. Current law does not specify factors to consider when determining whether a lease sale is not contrary to the public welfare. The Florida Supreme Court has long upheld the public trust doctrine that navigable waters of the state are of a public character and title to lands beneath navigable waters is held by the state in its sovereign capacity in trust for all the people of the state. The courts have also established in the common law that the rights of the people of the state to the navigable waters and lands thereunder, relate to navigation, commerce, fishing, bathing, and other lawful easements and these rights cannot be impaired except for an overriding public purpose. This common law doctrine has also been codified in Article X, Section 11 of the Florida Constitution, which provides that:

“The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.”

Should the Legislature require the governing entity to make an explicit determination that a lease sale is not contrary to the public interest? Should the Legislature establish criteria in statute the governing entity must consider when making its determination as to whether the execution of a particular lease is not contrary to the public interest? If so, what criteria should be considered and why?

<b>Respondent</b>	<b>Response to Issue A8</b>

**Issue A9 - Length of Leases**

For oil and gas leases of state owned uplands, current Board of Trustees' rules provide that leases must be limited to a primary term of ten years, lessees must complete the drilling of at least one test well on the leased area within the first 2 1/2 years of the lease term, and if no test well for an oil or gas is completed within the first 2 1/2 years of the lease term or each succeeding 2 1/2 year period, the lease shall become void at the end of the applicable 2 1/2 year period.

Should the Legislature establish such limits or leave these decisions to the discretion of the governing entity? Should the Legislature require offshore oil and gas leases to be for a set maximum time period unless oil or gas development is occurring, and should the Legislature provide that if no oil and gas activity occurs on a lease for a certain time period the lease becomes void and all rights revert back to the state? Please explain.

<b>Respondent</b>	<b>Response to Issue A9</b>

**Issue A10 - Financial Responsibility**

Current law requires that a lessee of oil and gas rights provide the Board of Trustees with a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility prior to mining, drilling, or extracting oil or gas to pay for any damages caused by mining or drilling operations. Current law also provides that damages shall include, but not be limited to, air, water, and ground pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

Should the Legislature require that lessees pay for damages occurring as a result of any other aspects of the oil and gas development process, such as potential damages resulting from transportation, shore based operations, decommissioning, etc? Should economic damages to affected coastal businesses and governments be included? Please explain.

<b>Respondent</b>	<b>Response to Issue A10</b>
Florida Association of Counties (FAC)	A statewide disaster fund should be created in the event of a spill, which should include an economic development fund to address local government and business recovery from the impact of a spill.

**Issue A11 - Amount of Financial Responsibility**

Should the Legislature place a cap on the amount of liability that a lessee can incur for damages related to oil and gas development activities (as does federal law), or should the Legislature provide for unlimited liability (as do several other states)? What maximum amount of proof of financial responsibility, if any, should the Legislature require a lessee to provide to the Board of Trustees? What “proof of financial responsibility” should be accepted?

<b>Respondent</b>	<b>Response to Issue A11</b>
Florida Association of Counties (FAC)	The Legislature should provide for unlimited liability for damages related to oil and gas development activities.

## **B: Regulatory Conditions and Limitations**

### **Issue B1 - What agency or agencies should regulate oil and gas exploration and production activities in Florida's coastal waters?**

Under current law, the Department of Environmental Protection (DEP) is authorized to issue the following permits governing oil and gas exploration and production activities: permits for the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land; permits to explore for and extract minerals that are subject to extraction from the land by means other than through a well hole; and, permits to construct wells for the injection and recovery of any natural gas for temporary storage in subsurface reservoirs.

What agency or agencies should regulate oil and gas exploration and production activities in Florida's coastal waters? Should the Legislature establish a comprehensive regulatory process to govern oil and gas activities in coastal waters (as with the Power Plant Siting Act that governs permitting of electric power plants)?

<b>Respondent</b>	<b>Response to Issue B1</b>
Florida Association of Counties (FAC)	The Department of Environmental Protection (DEP) should regulate oil and gas exploration and production activities in Florida coastal waters. The Legislature, in conjunction with DEP, should establish a comprehensive regulatory process. However, FAC would oppose any preemption of local government land use regulatory authority. Local governments must have the authority to ensure that refineries and other associated infrastructure are sited in the proper place. Additionally, the Legislature should not reduce or restrict any opportunity for local governments to review, comment, and/or consent to proposed leases that is currently provided in the Florida Statutes.

**Issue B2 - Geophysical (Seismic) Permitting Requirements**

Current law requires that before any geophysical operation in search of oil and gas can be conducted, the person seeking to conduct the geophysical activity must submit an application the Department of Environmental Protection (DEP), which must contain the location where the geophysical activity is intended to be conducted. Once the geophysical activity is completed the person conducting the activity is further required to provide DEP with “noninterpreted information derived from the geophysical activities.”

Should the Legislature require that persons seeking to conduct geophysical activity in Florida’s territorial waters be required to provide additional information prior to being granted a permit by DEP, or other governing entity, such as a more specific description of the area that geophysical activity will be occurring, the type of technology to be used to carry out the geophysical activity, a biological assessment, or identification of any marine mammals in the surveying area, and measures to be taken to mitigate any potential impacts. Please explain.

<b>Respondent</b>	<b>Response to Issue B2</b>

**Issue B3 - Visibility of Offshore Drilling Structures**

Should the Legislature require that no drilling structures or facilities located in Florida’s territorial waters be visible from the coastline, or should the Legislature allow drilling structures to be visible but limit the length of time they can be visible or how close from the coastline they can be placed? Please explain.

<b>Respondent</b>	<b>Response to Issue B3</b>
Florida Association of Counties (FAC)	No drilling structures or facilities in Florida’s territorial waters should be visible from the coastline.

**Issue B4 - Visibility of Offshore Production Facilities**

Should the Legislature require that no production structures or facilities (as opposed to temporary drilling structures) located in Florida’s territorial waters be visible from the coastline, or should the Legislature allow production structures to be visible but limit how close from the coastline they can be placed? If the latter, what distance should be established as the limit? Please explain.

<b>Respondent</b>	<b>Response to Issue B4</b>
Florida Association of Counties (FAC)	No production structures or facilities located in Florida’s territorial waters should be visible from the coastline.

**Issue B5- Designate the Type of Drilling, Production, and Transportation Technology to be Used**

Should the Legislature require the use of specific technologies or, if appropriate, specify performance standards without regard to specific technologies? For instance, the Legislature could restrict permits to drill in specified areas to directional drilling from shore? Similarly, the Legislature could limit production of oil and gas in specific areas to subsea production technology? Should the Legislature require that transportation from a production facility to a processing facility only occur via pipeline instead of shipping? Please explain

<b>Respondent</b>	<b>Response to Issue B5</b>
Florida Association of Counties (FAC)	The Legislature should require that the best available technologies be utilized. Additionally, the Legislature should consider limiting production of oil and gas to subsea production technology.

**Issue B6 - Exploration Plan**

Should the Legislature mirror the requirements for oil and gas exploration in federal waters and require that prior to being issued a permit for exploratory drilling activities, lease holders submit an exploration plan, which provides information to the governing entity, such as:

1. Location of the exploration activity;
2. Type of technology being used;
3. Description of any onshore support facilities;
4. Timeframe and schedule of the exploration activity;
5. How drilling wastes will be processed and disposed of in accordance with the requisite environmental laws;
6. Oil spill response plan;
7. Proof of filing and status of all required permits; and
8. Proof of financial responsibility.

What items and issues should be addressed in a required exploration plan?

<b>Respondent</b>	<b>Response to Issue B6</b>
Florida Association of Counties (FAC)	The Legislature should, at a minimum, mirror the most stringent state, federal, or international regulatory requirements currently in place. Additionally, the Board of Trustees (BOT) should have the discretion to require more stringent protections on a case-by-case basis.

**Issue B7 - Production Plan**

Should the Legislature mirror the requirements for oil and gas production in federal waters and require that prior to being issued a permit for production activities, lease holders submit an exploration plan, which provides information to the governing entity, such as:

1. Location of all production activities;
2. Type of production installations to be used;
3. How oil and gas will be processed and transported;
4. How production waste and produced water will be processed and disposed of in accordance with the requisite environmental laws;
5. Estimated level of production;
6. Proof of filing and status of all required permits;
7. Proof of financial responsibility;
8. Description of any onshore support facilities; and
9. Oil spill response plan.

What items and issues should be addressed in a required production plan?

<b>Respondent</b>	<b>Response to Issue B7</b>
Florida Association of Counties (FAC)	The Legislature should, at a minimum, mirror the most stringent state, federal, or international regulatory requirements currently in place. Additionally, the Board of Trustees (BOT) should have the discretion to require more stringent protections on a case-by-case basis.

**Issue B8 - Discharge Requirements for Drilling Muds, Cuttings, and Produced Water**

Federal law requires that there be no discharge of drilling muds and cuttings into navigable waters within 3 miles from the coastline, and allows produced water to be discharged as long as it meets certain effluent limitations. Federal law allows the states to set their own discharge requirements as long as they are not less stringent than the federal standards.

Should the Legislature maintain the federal standards, or should the Legislature establish a zero discharge requirement for all of Florida's territorial waters for drilling muds, cutting, and/or produced water? Please explain.

<b>Respondent</b>	<b>Response to Issue B8</b>
Florida Association of Counties (FAC)	The Legislature should establish a zero discharge requirement for all of Florida's territorial waters for drilling muds, cutting, and produced water.