

# Broward SLI

State Legislative Information

March 18, 2011

Number 8 - Volume XIII

## Session Week 2

### CONTENTS

#### TABOR (Smart Cap)

#### Medicaid Reform

#### Ocean Outfall Bill Passes Senate Committee

#### Seaport Security Legislation Moves

#### Seaport Investment Bill Clears First Committee

#### Environmental Permitting

#### Growth Management

*HB 7001, HB 7003, and HB  
93*

*PCB CMAS 11-04*

#### Pension Reform

#### Free Trade Agreements

#### Local Business Taxes

#### Homestead/Nonhomestead Property Tax

#### Communications Services Tax

#### Qualified Target Industry Tax Refund

#### State Budget Shortfall

#### Bills of Interest Up Next Week

## TABOR (Smart Cap)

The Florida Senate on Tuesday passed CS/SJR 958 (27-13). The Taxpayer Bill of Rights (TABOR), sponsored by Sen. Bogdanoff, is a proposed constitutional amendment that would restrict the state's ability to raise revenue; local governments are not currently included in the bill. The Joint Resolution, to date, has no companion bill in the House. If approved by sixty percent of voters in 2012, it would limit future growth in the state budget to a formula based on changes in population and inflation.

Broward County opposes any legislative or constitutional efforts to impose expenditure or revenue caps on local governments.

## Medicaid Reform

On Monday, the House Health and Human Services Committee (HHSC) heard public testimony on two committee bills to move Florida's Medicaid program to a managed care model, similar to that which has been in place in Broward for five years. Then, on Thursday, the committee met again to review a modified version of the bill.

Broward County Commissioner Barbara Sharief met with members of the House committee, including Chair Schenck, to discuss the bill's content and make suggestions for additional efficiencies, cost-saving and fraud-reduction measures. At the committee hearing Thursday, Commissioner Sharief testified and the Chair again offered to make amendments to the bill based upon her suggestions. The HHSC voted 12 to 6 to approve the Medicaid Reform package, shifting hundreds of thousands of Medicaid beneficiaries into HMOs and other managed-care plans.

The Low Income Pool (LIP) distribution formula was altered, creating a stir among hospitals and many counties. Tony Carvalho testified that the revision would jeopardize approximately \$125 million for teaching and children's hospitals, while providing additional funds to community hospitals. A follow-up meeting will be held Monday at the Florida Association of Counties to discuss the issue.

Rep. Pafford offered a series of amendments, all of which were voted down, several of which proposed delays in implementation of specific elements of the bill. The bill calls for seniors requiring long-term care to be moved into managed care by Oct. 1, 2013; Rep. Pafford's amendments sought a delay until October 2014. With backing from top House leaders, the bill is almost certain to pass the full House in the coming weeks.

The Senate draft proposal remains significantly different from that which passed out of the House committee yesterday. Among other things, they disagree about how to break the state into managed-care regions and how to hold HMOs and other types of plans accountable for serving beneficiaries. As a result, it is expected that the final version of a statewide Medicaid Reform package will be resolved during the appropriations conference process. After which time, the state will need to seek and be granted waivers from the federal CMS.

## **Ocean Outfall Bill Passes Senate Committee**

---

Ocean outfall legislation intended to lessen the fiscal impact to local governments who must cease discharging treated wastewater through the five remaining ocean outfalls in Southeast Florida passed the Senate Environmental Preservation and Conservation Committee by a 6 to 1 vote Thursday. The Committee considered and approved a strike-everything amendment to SB 796 by Sen. Diaz de la Portilla. The amendment was the result of continuing discussions between the Florida Department of Environmental Protection (DEP) and wastewater utility stakeholders.

As approved, the bill:

- Extends by five years (from 2018 to 2023) the compliance deadlines for treating wastewater discharged through an ocean outfall to advanced wastewater treatment (AWT) requirements.
- Extends from 2025 to 2030 the elimination of wastewater discharges through the outfalls.
- Extends by five years the various deadlines concerning the outfall local governments' plan submissions and reporting to DEP.
- Exempts cumulative peak flow wastewater discharges that do not exceed 5% (as opposed to 10% in the original bill) from AWT requirements.
- Allows a utility to demonstrate compliance with the 60% reuse requirement by applying the 60% to the utility's entire wastewater flows instead of just the outfall flows, thereby gaining credit for reuse that is already planned at facilities not served by the outfalls.
- Requires the detailed plan that an outfall utility must submit to DEP to identify technically and economically feasible reuse options, and to include an analysis of the costs associated with meeting state and local water quality requirements, and comparative costs for reuse using outfall flows and other domestic wastewater flows.
- Requires the detailed plan to evaluate reuse demand in context with several factors considered in the South Florida Water Management District's (SFWMD) Lower East Coast Regional Water Supply Plan.
- Requires DEP, SFWMD and the outfall utilities to consider the above information for the purpose of adjusting, as needed, the reuse requirements, and requires DEP to report to the Legislature any changes that may be necessary in the reuse requirements by February 15, 2019.

The bill next moves to the Senate Community Affairs Committee, where changes to some of the compliance dates will likely occur, along with some outstanding issues still under discussion with DEP.

**Follow us on  
Twitter  
@BrowardSLI**

OIAPS STAFF  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

## Seaport Security Legislation Moves

This week, House and Senate committees heard and passed legislation to repeal duplicative state seaport security standards. The state's public seaports, unions, and the seaport industry have been unified over the last few years in pushing legislation bring an end to costly, and often cited as unnecessary, state criminal background checks, duplicative credentials, and state-only seaport security standards. The current security standards and requirements were adopted prior to both the September 11 events and the enactment by Congress of major legislation addressing terrorism and security threats at the nation's seaports.

On March 15, 2011, the House Transportation & Highway Safety Subcommittee unanimously passed HB 283 by Rep. Young, after adopting four technical and clarifying amendments. HB 283, like SB 524 which passed the Senate Military Affairs, Space and Domestic Security Committee last week, makes the following changes to the state's seaport security laws:

- Repeals the statewide minimum seaport security standards.
- Provides that seaports may implement security standards more stringent than the federal standards.
- Removes the authority for FDLE to exempt all or part of a seaport from the state's seaport security requirements, if FDLE determines that it is not vulnerable to criminal activity or terrorism.
- Revises the requirements for seaports to update their security plans, consistent with federal requirements.
- Deletes the Access Eligibility Reporting System in the Florida Department of Law Enforcement (FDLE).
- Prohibits seaports from charging a fee for an access control credential in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC), except for a seaport specific access credential, where a seaport may charge a fee no greater than its administrative cost to produce and issue the credential.
- Removes the state criminal history screening and the state specific disqualifying offenses for working in a seaport.
- Removes the ability for the Office of Drug Control and FDLE to waive state-specific seaport security requirements.
- Repeals the Seaport Security Standards Advisory Council.

Should the bill pass, Florida will join the nation's 49 other states whose seaports and maritime industry workers are regulated solely under federal seaport security requirements and standards.

The Senate Transportation Committee also passed SB 524. The bill was amended to include the technical and clarifying amendments made to HB 283. In addition, the bill's sponsor and Committee Chair, Sen. Latvala, sponsored an amendment limiting seaports' authority to charge an administrative fee for a port-specific access credential that is in addition to the federal Transportation Worker Identification Credential (TWIC). After July 1, 2013 a seaport may only charge a fee for a seaport-specific access credential when:

- An individual seeking to gain secured access to the port is a new hire as defined in federal regulations; or

**Follow us on  
Twitter  
@BrowardSLI**

### OIAPS STAFF

Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

- An individual has lost or misplaced his or her federal TWIC.

SB 524 now moves to the Senate Budget Committee and HB 283 will next be considered in the House Criminal Justice Subcommittee.

## Seaport Investment Bill Clears First Committee

SB 768, by Sen. Ring, addresses several financing and permitting provisions intended to facilitate seaport infrastructure improvement projects to make Florida's public seaports more globally competitive. As unanimously passed by the Senate Commerce and Tourism Committee, this week, CS/SB 768 includes the following:

- Creates within the Florida Seaport Transportation and Economic Development (FSTED) Council a "Seaport Infrastructure Bank" that can provide financing for projects at the 14 seaports meeting specific criteria.
- Allows the Florida Ports Financing Commission to refinance and extend two existing bond issues and use the additional principle to finance capital improvement projects.
- Exempts from state stormwater permits all piers, docks and similar structures at any of the fourteen ports that are not part of a stormwater system and meet other criteria, provided that the port has a Stormwater Pollution Prevention Plan pursuant to federal law.
- Requires the state Department of Environmental Protection (DEP) to issue a notice of intent for a port conceptual permit or a final permit within thirty days after receiving the application;
- Specifies that DEP's notice of intent to issue a port conceptual permit creates a "rebuttable presumption" that the project or projects covered in the conceptual permit meet water-quality standards and sovereign-submerged land authorization requirements;
- Requires DEP to issue any requested construction permits from a port (that has been issued a conceptual permit) within 30 days of the request; and
- Clarifies conditions under which maintenance dredging activities conducted by the 14 seaports are exempt from permits under Chapter 403, F.S.

Before passing the bill, however, the Committee amended the bill to remove two sections that would have raised the minimum allocation of state transportation funds for seaport projects from \$8 million to \$20 million on July 1, 2012, and, thereafter, increasing that amount to \$50 million annually. Despite this setback, advocacy efforts continue in earnest to raise the level of the state's commitment for important seaport infrastructure projects.

## Environmental Permitting

HB 991, by Rep. Patronis, passed in the Agriculture and Natural Resources Subcommittee, its first committee of reference, by a vote of 10 to 5. The bill proposes sweeping changes to permitting and plan amendment processes, including, but not limited to, the following:

- Reduces the period of time in which an agency must approve or deny a permit application from 90 days to 60 days.
- Prohibits a local government from conditioning the approval of a permit on an applicant first obtaining a permit or approval from any other state agency.

Follow us on  
Twitter  
@BrowardSLI

OIAPS STAFF  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

Follow us on  
Twitter  
@BrowardSLI

OIAPS STAFF  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

This section would shift the responsibility for obtaining other requisite permits or approvals to the applicant, and further provides that a local government's issuance of a development permit would not render the local government liable in the event that the applicant fails to secure proper state or federal approval.

- Requires local governments to consider biofuel processing and renewable energy generation facilities as valid and permitted land uses and to develop and expedited review process for such facilities; however, this would not mandate that a local government approve such a land use.
- Creates an extensive Incentive Based Permitting section.
- Changes the standing requirements for a person challenging a comprehensive plan amendment by revising the term "affected person" to require that a person who owns property, resides in, or owns or operates a business within the local government whose plan is being reviewed must show that his or her substantial interest will be affected by the plan or plan amendment. This will reduce the scope of persons able to challenge plan amendments.
- Changes the standing requirements for challenging a local government development order by revising the term "aggrieved or adversely affected party" to require that a local government or person must show that their substantial interest will be affected in order to be granted standing to challenge the order.
- Requires counties having populations of 75,000 or more to apply for delegation of Environmental Resource Permit (ERP) program authority by June 1, 2012. Upon delegation of authority, the DEP and WMD would be prohibited from regulating activities subject to that delegation; however, this would not prohibit a local government from adopting a pollution control program to regulate wetlands or surface water management if the local government applies for ERP delegation within one year after adopting such a program. Currently, Broward County has been delegated this authority; however, it is unclear whether this would require the County to reapply for delegation.

Given the scope of this bill's application, many parties, including local governments, are concerned about its impacts. Rep. Patronis has indicated his willingness to continue to work with stakeholders to address their various concerns. HB 991 has four remaining committee stops. The Senate companion, SB 1404, has been referred to four committees but is yet to be heard.

## Growth Management

---

### HB 7001, HB 7003, and HB 93

On Wednesday, the House passed the three bills that together reenact SB 360, 2009's comprehensive growth management reform legislation. HB 7003, which reenacts the portion dealing with affordable housing, and HB 93, which reenacts the portion dealing with security cameras, passed with relatively little debate. The more controversial bill, HB 7001, which reenacts the portions related to comprehensive planning and land development, garnered more opposition, but ultimately passed by a vote of 80 to 39. The bill preserves the County's exemption from the Development of Regional Impact (DRI) and maintains the County's existing concurrency system. The Senate companion



**Follow us on  
Twitter  
@BrowardSLI**

**OIAPS STAFF**

Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

bills, SB 172, SB 174, and SB 176, are on second reading on the Senate Calendar.

## **PCB CMAS 11-04**

The House Community and Military Affairs Subcommittee unveiled a new growth management reform proposal this week. PCB CMAS 11-04 re-designates the Local Government Comprehensive Planning and Land Development Regulation Act, Florida's current growth management law, as the "Community Planning Act." The following lists some highlights of the proposal:

- The ultimate goal of the bill is to limit the state's growth management role to protecting the functions of important statewide resources and initiatives. Thus, the state land planning agency's role would virtually be eliminated from local planning decisions. Specifically, the bill repeals Rule 9J-5, which outlines the state's role and procedures used in reviewing comprehensive plan amendments.
- Most plan amendments would be adopted through an expedited review process. The bill details the scope of commenting allowed by local governments, regional planning councils, and other state agencies, and limits the state land planning agency's commenting to important state resources and facilities outside the jurisdiction of other commenting state agencies.
- The current optional sector plan program is expanded to be available statewide. Sector plans are intended for long-range, large-scale planning of areas encompassing 15,000 acres or more.
- Concurrency requirements would be altered, making concurrency optional except for solid waste, drainage, potable water and sanitary sewer facilities. However, under the proposal, should a local government adopt optional concurrency requirements, it can only rescind such requirements through a comprehensive plan amendment.
- The bill would change the legal standard of review, making it more difficult for the state and citizens to challenge land use planning decisions.

PCB CMAS 11-04 passed the Community and Military Affairs Subcommittee, with six amendments, by a vote of 11 to 4. Additional committees of reference have not yet been named; there is not yet a Senate companion bill.

## **Pension Reform**

---

On Thursday, the House Government Operations Subcommittee favorably approved CS/HB 1405 (9-5). The bill is intended to shift the state from a traditional pension plan to investment accounts and require state and local employees to pay into it. The bill, sponsored by Rep. Workman, would affect nearly one million active members and retirees of the Florida Retirement System (FRS).

Members of the FRS currently have two plan options available for participation: the defined benefit plan, also known as the pension plan; and the defined contribution plan, also known as the investment plan. The bill changes the name of the FRS defined benefit program to the Florida Retirement System Pension Plan (Pension Plan), and changes the name of the defined contribution program from the Public Employee Optional Retirement Program to the Florida Retirement System Investment Plan (Investment Plan). The bill has a significant fiscal impact on the state and local governments and would become effective on July 1, 2011.

**Follow us on  
Twitter  
@BrowardSLI**

OIAPS STAFF  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

#### CS/HB 1405:

- Requires all employees to contribute five percent of their salaries to their pension and end traditional benefits for new employees; however, it was amended somewhat from its original version by retaining cost of living increases, disability and health care provisions and accelerated accrual rates for those in the most dangerous lines of work.
- Raises the retirement age to 65 for new employees or 33 years of service, up from 62 years of age or 30 years of service. For police, firefighters and other special risk employees, the retirement age would go up under the bill from the current 55 to 60 years of age, or 30 years of service instead of 25.
- Requires new employees hired after July 1 to enroll in a 401(k) type retirement account that does not guarantee a final benefit payout but instead sets aside monthly contributions that are invested in the private market. Existing employees would be allowed to stay in the traditional retirement system.
- Ends the state's early retirement program, known as the Deferred Retirement Option Program (DROP).

CS/HB 1405 differs from the Senate bill, CS/SB 1130 (sponsored by Broward Sen. Ring), which was dramatically changed at its first committee stop last week, reducing the impact on most state workers by eliminating contribution requirements for employees making less than \$40,000.

### Free Trade Agreements

---

HB 189, sponsored by Rep. Ray, was favorably approved by the House Federal Affairs Subcommittee (15-0) on Monday. This memorial asks the United States Senate to support the approval of pending free trade agreements between the United States and Colombia, Panama and the Republic of Korea.

The County strongly supports this memorial to increase growth, create new jobs and improve economic development.

### Local Business Taxes

---

HB 4195, sponsored by Rep. O'Toole, has not yet been heard in committee and is currently pending before the House Finance and Tax Committee; however, there is no House companion bill at this time. The bill would repeal Chapter 205, F.S., the "Local Business Tax Act," and become effective on July 1, 2011. The measure, in its current form, would significantly impact Broward County's economic development activity initiatives and programs and would in effect eliminate funding for public/private partnerships entered into by the County, thereby significantly impacting economic growth and job creation. Staff is monitoring this bill very closely.

### Homestead/Nonhomestead Property Tax

---

CS/SB 658, sponsored by Sen. Fasano, was favorably approved (9-0) by the Senate Community Affairs Committee on Monday. The Joint Resolution, if passed by a three-fifths vote of the membership of both the Florida House and Senate and approved by

**Follow us on  
Twitter  
@BrowardSLI**

**OIAPS STAFF**  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

60 percent of Florida voters, would take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

The Joint Resolution proposes to amend the State Constitution to:

- Prohibit increases in the assessed value of homestead property if the just value of the property decreases.
- Reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 3 percent.
- Provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before the purchase of the current homestead property.

The County strongly opposes the bill in its current form; meanwhile, it has three additional committee stops (Judiciary, Budget and Rules) before it gets to the Senate floor. Similar bills include SB 390, SB 210, 273, and HB 381.

## **Communications Services Tax**

---

SB 1198, sponsored by Broward Sen. Bogdanoff, is currently pending before the Senate Communications, Energy and Public Utilities Committee. The bill, as filed, changes the tax calculation information the Department of Revenue (DOR) is to provide to communication service providers, which will in turn change how communications service providers calculate the amount of communications services tax owed. The new provision is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

Specifically, Section 1 of the bill amends s. 202.16, F.S., to provide that the information that DOR is required to provide to dealers must be based on a rounding algorithm that carries the tax computation to the third decimal place and rounds the tax to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Dealers may compute the tax due on a transaction, on an item, or an invoice basis, but must allow the rounding algorithm to be applied to the aggregate state and local taxes imposed pursuant the CST and the gross receipts tax. DOR may allow but cannot require a dealer to collect the tax based on a bracket system such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapters 202 and 203. This will change how communications service providers calculate the tax owed.

By changing how communications service providers calculate the amount of communications services tax owed, there will be an impact on the resulting tax revenue, the amount of which is unknown at this time.

## **Qualified Target Industry Tax Refund**

---

HB 879, sponsored by Rep. Eisnaugle, was favorably approved by the House Economic Development and Tourism Subcommittee (12-0) on Tuesday. It now moves to the House Finance and Tax Committee and then moves to its final committee stop, the Senate Economic Affairs Committee. The identical Senate bill, SB 1318, sponsored by Sen. Benacquisto, is pending before the Senate Commerce and Tourism Committee. It



**Follow us on  
Twitter  
@BrowardSLI**

OIAPS STAFF  
Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin

has one additional committee stop, Senate Budget.

The Qualified Target Industry Tax Refund Program (QTI) provides several criteria for the Governor's Office of Tourism, Trade, and Economic Development and Enterprise Florida to review when establishing the list of target industries for the incentive. HB 879 revises that criteria by adding enhancement of trade and requiring special consideration to be given to industries that strengthen the state's position as a global trade and logistics hub and is intended to encourage private sector economic activity in that particular industry.

QTI was created in 1994 to attract businesses that offer high-wage jobs, particularly headquarters, to relocate in Florida, providing refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes. Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone. In addition, a business is eligible for a \$1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a \$2,000 per job bonus if it exceeds 200 percent of the average wage. To qualify, the business must secure the local government's support. A local government is required to provide at least 20 percent of the amount of the state's award.

## State Budget Shortfall

---

State economists have predicted that incoming general revenue will be \$215.8 million less than previously expected, increasing the state's budget shortfall by just under one percent. The consensus revenue estimate's lower forecast is likely the result of historically slow recovery from the recession. Additionally, sales taxes have not recovered as robustly as was previously predicted.

## Bills of Interest Up Next Week

---

In Communication, Energy, and Public Utilities, Monday at 10:15AM

- SB 1198 relating to Communications Services Tax, which changes the tax calculation information the Department of Revenue is to provide to communication service providers.

In Criminal Justice, Tuesday at 8:00AM

- SBs 336 and 818 (if received) relating to Controlled Substances (prescription drug monitoring)
- SB 372 relating to Pretrial Programs. The Florida Association of Counties convened a stakeholders workgroup to discuss the House and Senate bills, which are significantly different, and to contemplate appropriate advocacy strategies. Sheriffs, State's Attorneys, Public Defenders, judges, county officials, pretrial programs and others were represented. The Broward Sheriff's Office worked closely with OIAPS staff and FAC to determine anticipated adverse affects on jail population; afterwards, lobbyists met with members of the Criminal Justice committee to discuss potential fiscal and operational impacts and express opposition to Sen. Bogdanoff's bill.

In Commerce and Tourism Committee, Tuesday at 1:15PM

- SB 1708 relating to Destination Resorts, SB 1710 relating to Destination Resort Trust Fund, and SB 1712 relating to Public Records
- SB 466 relating to Tourist Development Taxes

In Economic Development and Tourism Subcommittee, Tuesday at 12:00PM

- HB 493 relating to Tax on Sales, Use & Other Transactions, the House online travel companies (OTC) bill.

**Follow us on  
Twitter  
@BrowardSLI**

OIAPS STAFF

Gretchen Harkins  
Eddy Labrador  
Christopher Brown  
Susan Harbin