

# Broward SLI

State Legislative Information

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## Session Week 6

### CONTENTS

**Ocean Outfall Bill Passes House**

**Pretrial**

**Transportation Trust Fund Sweeps**

**Arrestee Medical Expenses**

**House Passes Seaport Security Bill**

**House Passes Bert Harris Act Changes**

**Pill Mills/Prescription Drug Abuse**

**Fertilizer Regulation**

**Growth Management**

*SB 1512*

*SB 1122 and the Adaptation Action Area Amendments*

**Economic Development Bills**

*Qualified Target Industry Tax Refund Program*

*Capital Formation for Infrastructure Projects*

**International Trade Bills**

*Florida-Caribbean Basin Trade Initiative*

*Free Trade Agreements*

**Tax Bills**

*TABOR (Smart Cap)*

*Homestead/Nonhomestead Property Tax*

*Online Travel Companies*

**Senate Medicaid Reform**

**Environmental Permitting Bills Not Heard**

## Ocean Outfall Bill Passes House

On Friday, the Florida House of Representatives passed CS/HB 613 on a 93-18 vote. As passed, the bill does the following:

- Extends the date for meeting advanced wastewater treatment and management (AWTM) requirements from December 31, 2018 to December 31, 2023.
- Maintains current law for eliminating ocean outfall discharges by December 31, 2025.
- For utilities operating more than one facility, the 60% reuse may be met from the entire wastewater systems' annual flow as of December 31, 2025.
- Maintains the current law requirement that backup discharges of domestic wastewater after December 31, 2025, meet AWTM treatment standards. Backup discharges through ocean outfalls are authorized during times of reduced demand for reclaimed water produced from the functioning reuse system outfall utilities must construct by 2025.
- Allows peak flow backup discharges not exceeding 5% of the facility's cumulative baseline flow, measured on a 5-year rolling average, and requires that such discharges meet the DEP's applicable secondary waste treatment and water-quality-based effluent limitations.
- Extends certain planning and reporting compliance dates.
- Requires the detailed plan that an outfall utility must submit to DEP by 2014, 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 now awaits Senate action. CS/CS/SB 796, which easily passed unanimously out of the Community Affairs Committee Monday, next goes to the Senate Budget Committee for its final hearing before floor consideration.

## Pretrial

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In the Senate, Sen. Bogdanoff successfully amended the substance of SB 372, Pretrial, on to SB 1398, also her bill, dealing with the court system. Stakeholders met this morning to discuss strategy. At this time, Senators who have voted against the bill are consistently urging the Senate President to re-refer the bill. On Wednesday in the House, the pretrial amendment was filed to a general court system bill, HB 7023, which was placed on Special Order calendar for Thursday; however, the bill was temporarily postponed (TP'd) and not heard this week on the House floor.

Opponents of the legislation continue reaching out to members of both houses to ensure they understand the issues, including significant public safety concerns expressed eloquently by former Governor Jeb Bush in his veto letter relating to similar legislation passed in 1999. Then-Governor Bush stated, as he vetoed the bill carrying the pretrial amendment, that "every defendant who posts bond would walk the streets without supervision by local authorities. I am unwilling to take this risk to public safety...." We expect SB 1398 to be taken up after the recess next week, while it is possible that HB 7023 could be considered when the House meets next Wednesday and Thursday.

## Transportation Trust Fund Sweeps

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The House's FY 2012 budget proposes a sweep of \$330 million from the State Transportation Trust Fund (STTF) to the state General Revenue Fund. The Senate budget has no such sweep. According to FDOT, the proposed House sweep equates to a \$1 billion impact to the work program. How the sweep will impact existing and proposed projects is still unknown; however, we have been informed by the Department that if the final budget contains a sweep of the STTF, the department will have to prioritize projects according to the amount and impact of the sweep. The Department will utilize a variety of criteria including, but not limited to: the type of project, significance of the project, job creation, schedule of construction, status of the project, etc.

## Arrestee Medical Expenses

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CS/SB 490 unanimously passed out of Senate Budget Subcommittee on Criminal and Civil Justice Appropriations on Wednesday after being amended to carve out Broward and Miami-Dade Counties. The amendment, sponsored by Sen. Smith, carves out charter counties with a population of 1.7 million or more. This carve-out will assist the County in averting the possible 56% increase in costs from the bill's passage. The bill authorizes counties to reimburse hospitals at 110% above Medicare prospective payment rate, or 125% above such Medicare rate if the hospital operated at a negative margin in the previous year.

## House Passes Seaport Security Bill

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CS/CS/CS/CS/HB 283, relating to seaport security, passed the House on Thursday by a 117-1 vote. The Senate measure, CS/SB 524, passed unanimously from the Senate Transportation and Economic Development Budget Subcommittee on Wednesday, and now goes to the full Budget Committee. However, there appears to be some disagreement between the House and Senate bill sponsors over the status of Port

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Citrus. The House bill allows Citrus County to apply for a grant to conduct a feasibility study concerning the establishment of Port Citrus, while the Senate bill changes several statutes to recognize Port Citrus as one of Florida’s public ports.

## **House Passes Bert Harris Act Changes**

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The House of Representatives, on Friday, passed CS/CS/HB 701 by a 97-15 vote. As passed the bill makes the following changes to the Bert J. Harris, Jr., Property Rights Protection Act:

- Provides that a temporary impact on development, which is in effect for longer than one year may, depending on the circumstances, constitute an “inordinate burden.”
- Separates the definition of “existing use” into two separate parts.
- Allows factual circumstances leading to the time elapsed between enactment of a law or regulation and its first application to private property to be considered when determining whether reasonable, investment-backed expectations are inordinately burdened.
- Modifies the required time period for notice to a governmental entity before an action may be filed under the act. A property owner seeking compensation must present, at least 150 days (rather than the present requirement of 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.
- Adds the “payment of compensation” to the list of remedies that may be offered by a governmental entity in a written settlement offer.
- Changes the term “ripeness decision” to “statement of allowable uses” and modifies provisions to specifically provide that the governmental entity’s failure to issue the statement of allowable uses during the applicable notice period is deemed a denial for purposes of allowing the property owner to file an action in circuit court under the act.
- Specifies that a law or regulation is “first applied” to the property upon enactment, if the impact of the law or regulation on the property is clear and unequivocal in its terms, and required notice is provided by mail to the affected property owner or registered agent. Any other law or regulation is first applied to the property when there is a formal denial of a written request for development or variance.
- Waives the state’s sovereign immunity, for itself, its agencies, and political subdivisions including counties and municipalities, for causes of action brought under the act.

The Senate measure, CS/SB 998, passed the Senate Budget Committee on Wednesday and is on the calendar of bills available for floor consideration. Though similar, CS/SB 998 does not have language which allows the passage of time between the enactment of a law or regulation and its first application to a property, reduces the notice period to 120 days, does not have the House’s language defining when a law or regulation is first applied, and has a more narrow waiver of sovereign immunity.

## **Pill Mills/Prescription Drug Abuse**

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On Tuesday, the House changed its course on targeting the state's pill mill problem. Originally, HB 7095 (formerly PCB HHS3) would have repealed the prescription drug monitoring program (PDMP) that was passed in legislation last year, and instead target

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the proliferation of pills mills and prescription drug abuse by prohibiting doctors from directly dispensing most prescription drugs. However, Rep. Schenck offered a strike-all amendment to HB 7095 that maintains the prescription drug monitoring program (PDMP). As amended, the bill also retains provisions setting new registration requirements on doctors and pharmacists and continues to prohibit doctors from directly dispensing Level II and Level III prescription drugs. The Attorney General, who has supported implementation of the PDMP, and the Governor, who supported repeal of the PDMP, both expressed their support for the amended bill. Broward County has consistently supported full implementation of the PDMP. HB 7095 passed unanimously with a CS in the Appropriations Committee.

## Fertilizer Regulation

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CS/CS/CS/HB 457 by Rep. Ingram passed unanimously in the House on Friday. Initially, Broward County and other local government groups vehemently opposed the bill because of its outright preemption of all aspects of fertilizer regulation to the state. However, the bill was amended last week to resolve all outstanding preemption issues; specifically, the version of the bill ultimately passed by the House provides that:

- Counties and municipalities may adopt additional or more stringent standards than the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (Model Ordinance), provided that certain circumstances are met. Originally, local governments were preempted from adopting regulations differing from or more stringent than the Model Ordinance.
- Local fertilizer ordinances adopted before July 1, 2011 are grandfathered in.
- Local governments are no longer preempted from regulating the use and application of fertilizer. However, the Department of Agriculture and Consumer Services (DACS) retains the authority to regulate the sale, composition, packaging, labeling, retail and wholesale distribution, and formulation of fertilizer, including nutrient content level and release rates.

## Growth Management

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### SB 1512

One of Sen. Bennett's growth management bills, SB 1512, passed unanimously with a CS in the Transportation Committee on Tuesday. The bill would essentially prevent local governments from being able to deny new development proposals based on lack of population growth. A strike-all amendment offered and adopted on March 21 removed some of the provisions the County found problematic, including the section requiring agreement on population projections by the end of 2011 and imposing severe funding sanctions for not meeting this requirement. On Tuesday, an amendment to the strike-all was offered by Sen. Benacquisto and adopted by the committee that requires local governments to evaluate their comprehensive plans every seven years to determine if plan amendments are necessary to reflect changing conditions and new legislative requirements. SB 1512 will be heard next in the Budget Committee.

### SB 1122 and the Adaptation Action Area Amendments

The Senate's other major growth management bill, SB 1122, also by Sen. Bennett, was heard Thursday morning in the Environmental Preservation and Conservation Committee. Major provisions of SB 1122 include:

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- Eliminating transportation and school concurrency at the state level but allowing counties and cities to retain concurrency by local option.
- Mandating the Alternative State Review Process in most cases.
- Revising extensively the Evaluation and Appraisal Report (EAR) process and eliminating state review of EARS.
- Eliminating financial feasibility compliance requirements.
- Abolishing Rule 9J-5, but retaining some of its standards in the bill.
- Expanding the optional sector planning pilot program to statewide application.

Broward County worked with Sens. Bennett and Sobel to amend SB 1122 to allow for the voluntary establishment of adaptation action areas in places particularly vulnerable to the effects of sea level rise. Sen. Sobel offered the amendment, which was supported by Sen. Bennett and adopted by the committee. This is a major success for Broward and the other Climate Compact Counties, who will be able to use this legislation as a tool to move forward with other Compact provisions.

## **Economic Development Bills**

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### **Qualified Target Industry Tax Refund Program**

CS/CS/SB 1318, sponsored by Sen. Benacquisto, relating to the Qualified Target Industry (QTI) Tax Refund Program, was favorably approved (14-0) by the Senate Budget Subcommittee on Transportation, Tourism and Economic Development Appropriations on Wednesday. The bill modifies the criteria by giving special preference to businesses that enhance trade opportunities and global logistics.

The QTI program is one of the most popular of the State’s incentives. According to EFI’s 2010 incentives report, of the 110 businesses that applied for the incentive last fiscal year, 78 were approved by OTTED and 63 have entered into agreements with OTTED. There are 69 active QTI projects. According to the incentives report, the owners of these projects have invested \$778 million in Florida, and created 7,427 jobs paying an annual average wage of \$46,345. The average statewide private-sector annual wage in 2010 was \$39,621, according to data compiled by the Florida Agency for Workforce Innovation.

### **Capital Formation for Infrastructure Projects**

CS/CS/HB 943, sponsored by Rep. Eisnagle, is currently pending on the House Calendar on second reading. The bill would create the Florida Infrastructure Fund Partnership, a contingent tax credit program designed to leverage investment and private funding for state infrastructure projects. The Partnership is authorized to raise \$700 million in private funds for direct investment in infrastructure projects including water or wastewater systems, communication systems, power systems, transportation systems, renewable energy systems, ancillary or support systems, or other strategic infrastructure needs. Tax credits are available for redemption no earlier than 2023 and will be used only as a guarantee on an investment partner’s principal investment. The Florida Opportunity Fund will serve as the general partner of the program. A separate entity, the Florida Infrastructure Investment Trust will administer the tax credit program. The Revenue Estimating Conference estimated that the bill will have a recurring negative indeterminate impact on both state and local government revenues,

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possibly beginning in 2023, due to contingent tax credits. No more than \$150 million in credits may be utilized in any one state fiscal year.

## **International Trade Bills**

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### **Florida-Caribbean Basin Trade Initiative**

CS/CS/SB 1346, sponsored by the Senate Committee on Commerce and Tourism, is currently pending on second reading in the House. In 2000, the Legislature created the Florida-Caribbean Basin Trade Initiative as part of the Seaport Employment Training Grant Program (STEP). STEP was required to establish and administer the Florida-Caribbean Basin Trade Initiative for the purpose of assisting small and medium-sized businesses to become involved in international activities and helping them to identify markets with product demand, identify strategic alliances in those markets, and obtain the financing to effectuate trade opportunities in the Caribbean Basin. Funding was appropriated for that year only and the program has been inactive since that time. CS/CS/SB 1346 repeals the section of law that created the Florida-Caribbean Basin Trade Initiative.

### **Free Trade Agreements**

HB 189, sponsored by Rep. Ray, was favorably approved by the House Economic Affairs Committee (16-0) last month. The bill is now pending on the House Calendar on second reading. The bill is a memorial that urges the United States Congress to support the approval of free trade agreements between the United States and Colombia, Panama and South Korea. Broward County strongly supports this memorial.

## **Tax Bills**

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### **TABOR (Smart Cap)**

HJR 7221, sponsored by Rep. Precourt, was favorably approved by the House Appropriations committee on Tuesday (14-10). The House bill now goes to the floor for consideration by the entire House body. The Senate companion bill, SJR 958, passed the entire Senate on March 15 and is pending in House messages. The proposed constitutional amendment replaces the existing state revenue limitation with a new state revenue limitation based on percentage population growth (plus one) and inflation (plus one). The proposals do not place any new cap on county government revenues or expenditures.

### **Homestead/Nonhomestead Property Tax**

CS/CS/CS/HJR 381, sponsored by Rep. Dorworth, was favorably approved by the House Appropriations Committee on Friday. The Joint Resolution, if passed by a three-fifths vote of the membership of both the Florida House and Senate and approved by 60 percent of Florida voters, would take effect on January 1, 2013, and would affect properties purchased on or after January 1, 2012. The proposals would 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.

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- 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 bill now moves to its final committee reference, Senate Economic Affairs. The Senate companion bill, CS/CS/658, passed (5-2) in the Senate Judiciary Committee on Monday, and was amended to only reduce the non-homestead cap to 5% instead of the previous 3% limitation.

## Online Travel Companies

CS/CS/HB 493, the Online Travel Companies bill sponsored by Rep. Brodeur, was passed out of the House Economic Affairs Committee on Thursday by a vote of 12-6. The bill now goes to the House floor. Broward County strongly opposes this bill.

## Senate Medicaid Reform

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CS/CS/CS/SB 1972, by Sen. Negrón, received its last committee hearing on Thursday in Senate Budget. Opponents of the legislation reiterated concerns about the "tort reform" elements of the bill; specifically the limitation on civil liability to \$200,000 per claimant and \$300,000 per occurrence. The Medically Needy portion of SB 1972, renames the program the "Medicaid Nonpoverty Medical Subsidy" (MNMS) and limits coverage to physician services only, with exceptions for pregnant women and children. Even pregnant women and children will be limited in the scope of services available, since MNMS will not cover skilled nursing facilities or intermediate care facilities for the developmentally disabled.

In committee, the association representing the Transportation Disadvantaged providers argued against Section 27 of the bill, which states that plans "are not required to purchase transportation services via the community coordinated transportation system under the umbrella of the Commission for the Transportation Disadvantaged." Presently, federal Medicaid law mandates the provision of transportation to "access covered services."

An amendment, by Sen. Fasano, would allow Community Care for the Elderly (CCE) lead agencies to form Provider Services Networks, should a CCE seek to do so and appropriately contract with the agency. The current Medicaid Reform pilot operates under a Section 1115 waiver from the federal government; a discussion of whether the Centers of Medicaid Services (CMS) would grant a statewide waiver to engage in the type of reform anticipated under this legislation occurred. The bill passed with only three dissenting votes; Broward's Sen. Sobel voted in the affirmative.

## Environmental Permitting Bills Not Heard

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Neither one of the controversial environmental permitting bills were heard in committee this week, despite both being placed on committee agendas. SB 1404 by Sen. Evers was not considered by the Environmental Preservation and Conservation Committee after being temporarily postponed by the committee last week; thus, the bill has failed to make it through its first committee of reference. HB 991 by Rep. Patronis was also not considered by the Economic Affairs Committee; however, the bill passed its first two committee stops, but has three remaining committee references before it can move to the House floor.

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