

# Broward SLI

State Legislative Information

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## Session Week 3

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## Broward Days 2012

Commissioners Holness, LaMarca, Lieberman, Ritter, and Mayor Rodstrom traveled to Tallahassee to meet with legislators and advocate for Broward County priorities. The Mayor spoke at the Broward Days opening luncheon, outlining Broward County goals and the importance of working together to further common objective. Other distinguished speakers included Governor Scott, Lt. Governor Carroll, and Broward Legislative Delegation Chair Jenne. Broward Days events consisted of discussion panels pertaining to education, media coverage of legislative topics, and destination resort gaming.

During his first trip as commissioner to Florida's capitol, Commissioner Holness met with Lt. Governor Carroll to request assistance with the County's efforts to expand economic development, film and entertainment industry presence, as well as growth and expansion of global trade. Commissioners LaMarca, Lieberman, and Ritter participated in a variety of member meetings to discuss priorities and appropriations. Overall, Broward Days 2012 was a success, thanks to the participation from our Commissioners, Mayor and staff.

## Budget

House Appropriations Subcommittees released their Chairs' budget proposals this week. While significant cuts are proposed in some areas, other programs retain level funding or small budgetary increases. Below, please find a sampling of appropriations proposals of interest to Broward County:

## Transportation & Economic Development Appropriations Subcommittee

- Libraries Grants-in-Aid funding remains level from last year, at \$21.3 million, allowing the state to benefit from federal matching dollars.
- Cultural and Museum grants receive \$3,025,000.
- Visit Florida is funded at \$27.5 million.
- Economic development incentive programs are consolidated into one line item, constituting \$73 million, from which the state may appropriate. Of concern is whether there will be an open, competitive selection process for eligible projects from this pot, or instead, an "earmarking" opportunity in an election year.
- Economic Gardening Technical Assistance Programs receive \$2 million.
- The Department of State sets aside \$1.2 million for reimbursement to counties for special election costs.
- The Transportation Work Program is proposed at over \$6.9 billion through a combination of expected federal funds and monies from the State Transportation

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Trust Fund.

- Unfortunately, three trust funds are being swept in TTED Appropriations: State Transportation Trust Fund (\$120 million); State Housing Trust Fund (\$28 million); and, Local Government Housing Trust Fund (\$63 million). The \$211 million of non-recurring dollars may be used to fill the budget gap or moved into other line items to retain programming; at this point it is unclear how those funds are being utilized.

## Health Care Appropriations Subcommittee

As expected, the House Health Care Appropriations Subcommittee retained or increased funding for several Broward priority programs. Last year, the House firmly maintained its positions on HHS appropriations, while the Senate proposed extensive cuts. In light of the Governor's expressed desire to seek significant cost savings in HHS that can be transferred to bolster education, we expect to see substantial reductions proposed by the Senate. However, as detailed below, the House proposals, for the most part, are conform with our positions:

- The House is proposing a \$1 million increase to the Community Care for the Elderly program, allowing the state to serve 187 additional older adults. Broward County administers this program directly within our community and generally has a waiting list of eligible applicants.
- Community Adult Mental Health and Adult Substance Abuse services are "restored" at \$24,315,520 and \$8,140,000, respectively, which appears to be level-funded from last fiscal year.
- Kidcare receives \$4,616,186 additional dollars to serve 11,612 new eligible youth; an increase of four percent over 2011.
- Of note is the complete elimination of podiatric and chiropractic services to Medicaid recipients, while limiting payments for non-pregnant adults receiving general physician services to two visits per month, for a total estimated cost savings of nearly \$8 million in 2012-2013.
- Home Health visits are limited to three per day, affecting 484 Medicaid-eligible individuals and saving the state \$1.1 million.
- The House assumes a \$12 million cost savings from implementing the managing entity structure for substance abuse and mental health services in 2012-2013.

## Agriculture & Natural Resources Appropriations Subcommittee

- The House would reduce funding for Storage Tank Compliance Verification, from the Inland Protection Trust Fund, to \$4.5 million; this represents a \$2.5 million cut from last year's funding level.
- Local government cleanup contracting would be maintained at \$7,000,000, from the Inland Protection Trust Fund.
- Air program funding would be level at \$5,438,616, which includes funding for local Title V and ambient air monitoring programs, from the Air Pollution Control Trust Fund.
- The House would also maintain motor vehicle tag fee distribution to counties at \$7,325,936, from the Air Pollution Control Trust Fund.
- Everglades restoration would receive \$30 million; this is \$10 million less than in the Governor's proposed FY 2012-2013 budget.
- The House would allocate \$12 million towards projects on the DEP's prioritized beach restoration project list.
- The proposal sweeps a total of \$45 million from DEP trust funds.

## Premises Liability

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HB 313, by Reps. Bemby/Steube and SB 802, by the Environmental Preservation and Conservation Committee, offers liability protection to large-tract landowners who open their property to the public for recreational purposes. Sovereign immunity would extend in instances where property owners meet all four of the following conditions:

- Notice is given to the public prior to entrance onto the land that such limited liability is in effect (this component of the legislation remains somewhat unclear, and was the subject of debate in the Senate when the bill was heard, since the type, and sufficiency, of notice remains a concern in actual practice);
- The landowner receives no pecuniary benefit for the public use of the land;
- No intentional injury has occurred; and
- The property owner has entered into a formal agreement with the state to offer the land for public recreational use. An amendment was added to the bill clarifying the language which must exist in the agreement between the landowner and the state.

Both bills passed unanimously out of their committees of reference on January 24, 2012. SB 802 is scheduled for hearing January 31st in the Judiciary Committee.

## Prison Privatization

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The Senate Budget Committee heard SB 2038, which would privatize correctional facilities in 18 southern Florida counties. The legislation has been fast-tracked, after last year's court ruling on the constitutionality of prison privatization, and is now ready for the floor. The bill met with extensive debate from members, most notably from Sen. Fasano, who questioned how the bill's purported cost-savings were derived. Other members questioned whether estimates of state responsibility for eligible leave pay-outs to existing correctional officers and state employees affected by the privatization, were accurate and reasonable. While current employees are given rights of first refusal to positions with the private companies taking over the facilities, several members expressed exasperation at the number of jobs that would be lost.

The Department of Management Services (DMS) testified to the responsibilities of entities taking over the prisons and tried to assure committee members that contracts would delineate consequences for failing to perform. Sanctions are in place in current contracts where privatization exists, and include liquidated damages or payment adjustments, when entities do not meet performance goals. The committee continued questioning both DMS and the Department of Corrections (DOC) on a variety of issues; notably, on the responsibility for capturing escapees and how the costs of retrieving escaped prisoners would be handled.

While clearly a contentious bill, the Chair agreed to a time-certain vote on the measure, allowing only three audience members to speak before the bill was voted out of committee. Former Senator Silver requested that the bill be delayed, so that the numerous audience members and expert witnesses who had traveled to address the legislation could be heard. Chair Alexander agreed to allow testimony subsequent to the time-certain, but refused to delay the vote. Opponents were infuriated and began shouting "shame!" subsequent to the bill's approval, 14-4, with Senators Rich and Sobel voting against the measure.

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## Regional Workforce Boards

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The Senate Committee on Commerce and Tourism heard SB 1398, by Sen. Gardiner, which significantly changes the local control over Regional Workforce Boards (RWB). As drafted and amended, the bill allows RWBs to select their own Chair and Executive Director; however, those individuals would then serve at the pleasure of the Governor. Several opponents testified about their concerns, including incoming Florida Association of Counties President, Bill Wilson, who suggested that the language would politicize the positions of Chair and Executive Director. Broward County adopted a resolution opposing the suggested changes to the RWBs.

In defending his bill, which is a response to improper use of funds by the RWB within his district, Sen. Gardiner reminded the committee that accountability was necessary. Public testimony and committee members suggested that the legislation appeared to be a reaction to limited instances in specific areas of the state, and would inappropriately punish those RWBs that have been acting as good stewards.

Broward County expressed its opposition to the bill, as did several other counties, but the bill passed unanimously, with Sen. Ring voting in the affirmative.

## Online Travel Companies

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The House Finance and Tax Committee agreed to temporarily postpone HB 1393, after the bill's sponsor, Rep. Brodeur, suggested that both the bill's fiscal note and intent needed attention before the legislation would be in a proper posture for consideration.

## Financial Emergencies

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HB 7031, by Rep. Hukill, makes several changes in section 218, F.S., which partly controls the determination and treatment of financial emergencies in local governments and district school boards. The bill further amends 218.503(3), F.S., regarding measures to resolve financial emergencies. Specifically, the section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of administrative direction and support services. Finally, the bill creates 218.503(6), F.S., clarifying the constitutional ability of the Governor to suspend and recommend the removal of members of governing bodies for failure to resolve a state financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

Several members of the committee asked probing questions about the extension of control that could be exercised by the Executive branch with respect to fiscally ailing local governments. After significant debate, the committee passed the bill out on a party-line vote.

## Local Business Tax Repeal

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HB 1063, by Rep. O'Toole was slated for hearing in the House Finance and Tax Committee, Thursday afternoon. Along with a vast array of opponents including cities, other counties, and business groups like the Broward Alliance, Commissioner LaMarca testified in opposition to repealing the local business tax (LBT). The tax, which was previously referred to as an occupational license fee, is used by Broward County to retain and attract businesses, and contributed to the retention or creation of almost 14,000 jobs over the last four years. In Broward, the average LBT cost to a business is \$45, which is reinvested directly into economic

development tools, incentives and incubator programs designed to create the most vibrant possible business community.

After almost an hour of public testimony, exclusively in opposition to the bill, the committee voted to extend and then took a brief break. It was clear that many heated conversations were taking place during the hiatus, and upon reconvening, Rep. O'Toole was asked to close on her bill. After expressing her displeasure with the tax, in light of her commitment to constituents and residents of Florida to reduce taxes and impediments to businesses, she requested that the bill be temporarily postponed. While she assured those listening that the bill would be back, and perhaps in even stronger form, it is understood that the bill will not be resurrected this session.

The Senate companion, SB 760 by Sen. Hays, was also heard this week in the Senate Community Affairs Committee. Following the sponsor's introductory remarks, the Committee's Chair, Sen. Bennett, noted there were a large amount of speakers in opposition to the bill and the bill was temporarily postponed. However, the bill has been scheduled for a hearing again on January 30<sup>th</sup>. An amendment filed by Sen. Richter would phase-out the local business tax over a six-year period, requiring an annual  $\frac{1}{6}$  reduction in the tax rate beginning on October 1, 2013. If the Legislature passes the proposed phase-out approach, cities and counties would no longer be able to levy a local business tax on or after October 1, 2019, unless the local business tax revenues had been pledged to repay bond obligations issued prior to March 9, 2012.

## Public Contracting Bill Passes First Committee

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Senate Community Affairs approved SB 794, by Sen. Hays, prohibiting governmental units from entering into a contract or expending funds on a contract to construct, remodel, repair or demolish a facility if the contract:

- Contains a term that requires, prohibits, encourages, or discourages a bidder, contractor or subcontractor from entering into or adhering to *agreements with a collective bargaining organization* relating to the construction project or other related construction projects.
- Contains a term that discriminates against a bidder, contractor or subcontractor based on its status as a party or nonparty to, or its willingness or refusal to enter into, an agreement with a *collective bargaining organization* relating to the construction project or other related construction projects.

The bill broadly defines the term "facility" to mean physical improvements to real property owned or leased by a government unit, including improvements to buildings, structures, bridges, runways, rails, and roads. A "governmental unit" includes the state, counties, municipalities, school districts, public colleges and universities, and other state agencies and instrumentalities. A governmental unit may not award any grant, tax abatement, or tax credit where the award is conditioned on a requirement that the awardee accept a contractual term described above. The bill also prohibits a governmental unit, a construction manager or other contracting entity acting on behalf of the governmental unit, from placing a term as described above into bid specifications, project agreements, or other documents concerning the construction project. The bill does not: 1) apply to contracts executed prior to the effective date of the bill; 2) prohibit contracts or other activity protected under the National Labor Relations Act (NLRA); or 3) interfere with labor relations of parties subject to the NLRA. Lastly, SB 794 increases the time period for protesting state agency contracts solicitations and contract awards from 72 hours to 7 days following the agency decision or solicitation is posted. SB 794 was approved on a 7-1 vote. The bill now goes to the Senate Governmental Oversight and Accountability Committee, chaired by Sen. Ring.

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## Bill to Assess Availability of Accessible Taxicabs for Disabled

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As amended by the Senate Transportation Committee on Thursday, SB 1392, by Sen. Benacquisto, directs the Legislature's Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a study of the availability of accessible taxicabs operating within the state's metropolitan and tourist destination areas. The designated study areas include Broward, Duval, Escambia, Hillsborough, Miami-Dade, Orange, Palm Beach and Volusia Counties. Interestingly, Pinellas County, one of the state's major population centers, is not designated for study.

The OPPAGA study will: 1) provide information regarding the percentage of accessible taxicabs in comparison to the fleet of available taxicabs within these counties; 2) determine the availability of taxicabs at the counties' airports and seaports, and the average wait times for disabled passengers seeking accessible cabs; 3) obtain statements from "persons who work with disabled and senior communities" concerning the availability of accessible taxicabs for use in everyday life activities and travel around the state; 4) compare major Florida cities in the study counties to New York City, Washington, D.C., Chicago, Philadelphia, and Atlanta, in terms of the operation and regulation of accessible and available taxicabs; and 5) determine the extent of existing cooperative agreements between large and small taxi vendors to fulfill the demand for accessible transportation.

The bill requires OPPAGA to issue a final report, with recommendations for planning and funding the provision of accessible taxicabs. The report must be provided to the Legislature's presiding officers no later than February 1, 2013. SB 1392 now awaits a hearing in the Senate Budget Committee. HB 1201, by Rep. Nuñez, similar to SB 1392 as originally filed, has yet to be heard in the House Transportation and Highway Safety Subcommittee.

## AHCA Medicaid Billing Proposal

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Late Thursday night, language began being disseminated in advance of a Friday Revenue Estimating Conference committee hearing, that lays out a devastating proposal for counties. Broward Intergovernmental Affairs staff, the Florida Association of Counties and members of Broward's Human Services Department and Office of Management and Budget participated in a conference call to discuss the proposal and appropriate Broward County strategy.

As drafted, the unnumbered bill seeks to amend section 409.915, F.S., relating to county contributions to Medicaid. The purpose of the bill is to generate significant revenue for the state, and the members of the REC determined that the language would result in a \$299 million positive fiscal impact for the state in the next fiscal year. The bill assumes that the first six months of the fiscal impact will relate to recapturing past-due balances and amounts owed on outstanding billings to counties. The entire system of billing, as we currently understand it, will change.

Of note is the four-pronged approach to Medicaid billing:

- Counties will be responsible for three additional in-patient hospitalization days. Current law requires counties to pay for eligible Medicaid recipients' hospitalization costs between days 10-45, but the bill's language strikes "10" and makes counties responsible for three additional days: 8-10. Broward County estimates that the cost of this provision alone will be \$6.8 million in the next fiscal year, including the hospital districts' responsibilities.
- Counties will be responsible for paying eligible care costs for any Medicaid recipient who is

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a resident of the county, even if the services are rendered out-of-state. Current law limits responsibility to services rendered within the state; the fiscal impact of this change, especially to urban counties with a large population of mobile and transient Medicaid recipients, is uncertain.

- The state no longer is required to work in consultation with counties with respect to billing. Specifically, counties will lose the opportunity to identify billing deficiencies or errors.
- Counties with billings in arrears will be required to pay approximately 75 percent of their outstanding balances (newer than four years). If, in the future, a county becomes delinquent over six months, the state may withhold its revenue sharing.

Once the bill is filed, and the county has offered specific fiscal impacts, additional information will be supplied.

## **Ocean Outfall**

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The Senate Community Affairs Committee heard and swiftly approved Sen. Diaz de la Portilla's ocean outfall bill, SB 724, by an 8-0 margin. SB 724 is the companion to HB 989, which is already on the House calendar awaiting floor action. SB 724 now moves to the Budget Subcommittee on General Government Appropriations.

## **Commercial Fertilizer Application**

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After being temporarily postponed by the House Community and Military Affairs Subcommittee last week, HB 421 by Rep. Smith passed the subcommittee this week by a 9 to 6 vote. As originally written, the bill would have exempted all individuals who had obtained the limited certification for urban landscape commercial fertilizer application from local government ordinances regulating urban fertilizer application; however, the subcommittee last week adopted an amendment to instead only exempt certified commercial applicators from outright seasonal application bans. While the amendment does restore to counties and cities some authority to regulate commercial fertilizer application, several opponents voiced concern that the bill still significantly degrades the ability of local governments to adequately protect water quality and prevent excessive amounts of nutrients from entering water bodies. HB 421 is now in the State Affairs Committee, its last committee of reference. The Senate companion, SB 604 by Sen. Dean, will be considered by the Environmental Preservation and Conservation Committee on Monday afternoon. As was done for HB 421, Sen. Dean filed an amendment to his bill on Friday to change the total exemption for certified commercial applicators to only an exemption from seasonal application bans.

## **Broward SOLAR Amendment**

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SB 600 by Sen. Bennett passed the Regulated Industries Committee this week with an amendment, offered by Sen. Rich, to waive the personal appearance requirement for non-licensed property owners installing solar panels on certain structures. As amended, owners may use an electronic signature when electronically submitting the permit application for a solar project. Sen. Bennett spoke in support of the amendment, adopted unanimously, which has been a major goal of the Broward SOLAR grant team. The County continues to work with Sen. Bennett to amend the language onto SB 704, a similar bill related to building construction and inspection, as well as to add the language to HB 387 by Rep. Ahern. SB 600 now heads to the floor. SB 704 will be considered by the Budget Subcommittee on General Government Appropriations next week. HB 387 is on second reading in the House.

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## Statewide Environmental Permitting

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SB 1354, by Sen. Detert, unanimously passed in the Environmental Preservation and Conservation Committee last week. SB 1354 would direct the Department of Environmental Protection (DEP), in coordination with the water management districts, to adopt statewide environmental resource permitting (ERP) rules for activities relating to storm water management. Specifically, the rules would provide for statewide consistency in terms of types of permits, review procedures, exemptions, fee categories, and forms. Counties with ERP delegation, like Broward County, would be required to amend their local ordinances to conform to the statewide ERP rules.

Although the DEP has consistently stated that their proposal is not intended to fully preempt counties with ERP delegation, Broward and other stakeholders are working to amend the bill to clarify that counties with local programs may adopt stricter standards in addition to the baseline established by the statewide ERP rules. Prior to the bill's consideration in the Environmental Preservation and Conservation Committee, Sen. Detert agreed to and filed an amendment restating this local authority; however, she withdrew the amendment during committee before consideration. Broward County continues to work on the language, and the bill sponsor and others have stated their willingness to support the amendment at a later committee. SB 1354 is now in the Budget Subcommittee on General Government Appropriations. The House companion, HB 7003, is in the State Affairs Committee.

## Beach Management Legislation

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SB 758 by Sen. Jones and HB 691 by Rep. Frishe unanimously passed in their committees this week. The bills, which have received widespread support from the Florida Shore and Beach Preservation Association, local governments, and environmental groups, would streamline the joint coastal and coastal construction permitting processes for beach renourishment projects. If passed, these bills should increase efficiency and deliver both time and cost savings in permitting for renourishment and inlet management. SB 758 is now in the Senate Budget Committee, its final committee of reference; HB 691 will be considered Tuesday morning in the Agriculture & Natural Resources Appropriations Subcommittee.

## Coming Up Next Week

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### Cap and Trade Repeal

SB 648 by Sen. Hays, which would repeal a law pushed by former Governor Crist in 2008, authorizing a cap-and-trade regulatory program for limiting greenhouse gas emissions from electric utilities, comes before Senate Communications, Energy and Public Utilities Committee on Monday morning. The law was originally passed largely in anticipation of a federal cap-and-trade program, yet to materialize, and the state has not actually utilized it to develop a system for regulating emissions; nevertheless, opponents view the bill as a step back in the development of environmentally sound energy policy.

### Energy Legislation

The Communications, Energy and Public Utilities Committee takes up a proposed bill, SB 7202, that would add renewable energy factors into what must be considered by utility regulators when reviewing 10-year site plans. In addition, the bill proposes renewing a sales tax exemption on renewable fuel materials, as well as renewable energy tax credits.

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## Term Limits

On Monday in Community Affairs, SJR 1070, which seeks to create term limits for local county commissioners and constitutional officers, will be considered. As written, the bill would create twelve-year maximum terms, notwithstanding current term limits; thus allowing an additional twelve years for elected officials being termed-out.

## FAC Legislative Day

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Broward County Commissioners' advocacy in Tallahassee continues next week for the Florida Association of Counties (FAC) Legislative Day. Specifically, Commissioners Lieberman, Ritter, Sharief, Wexler, and Vice Mayor Jacobs will travel to Tallahassee between January 31<sup>st</sup> and February 2<sup>nd</sup> to continue promoting County goals in the state capitol.

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