



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Legislative Analysis**

**Board of County Commissioners**

April 20, 2010

9:30 AM

Commission Chamber

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**Miami-Dade County Board of County Commissioners  
Office of the Commission Auditor**

**Board of County Commissioners  
Meeting Agenda**

**Legislative Analysis**

**April 20, 2010**

**Items**

4(A)
4(B)
4(C)
4(D)
4(E)
8(O)1(A)
8(O)1(A) Supp.

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Esq., Chief Legislative Analyst, at (305) 375-5469.

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Elizabeth Owens, Legislative Analyst

MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
OFFICE OF THE COMMISSION AUDITOR



Legislative Notes

**Agenda Items:** 4(A), 4(B), 4(C), 4(D) and 4(E)

**File Number:** 100960, 100933, 100664, 100888 and 100678

**Committee(s) of Reference:** Board of County Commissioners

**Date of Analysis:** April 19, 2010

**Type of Item:** Public Health Trust

**Sponsors:** County Commission – Item No 4(A)  
Commissioner Carlos A. Gimenez – Item No. 4(B)  
Commissioner Barbara J. Jordan – Item No. 4(C)  
Commissioner Joe A. Martinez – Item No. 4(D)  
Commissioner Natacha Seijas – Item No. 4(E)

**Co-Sponsor:** Commissioner Rebeca Sosa – Item No. 4(B)

**Summary**

These ordinances amend Chapter 25A, Public Health Trust (PHT), of the Code of Miami-Dade County (Code), detailing actions to be taken if specified conditions pertaining to the financial status of the PHT have occurred or will likely occur.

**Item No. 4A** authorizes the County Commission to take assistive measures enumerated in Item Nos. 4B, 4C, 4D, and 4E. These measures include imposing a Management Watch requiring a recovery plan, exercising veto authority over actions taken by the PHT, authorizing an audit, providing technical assistance, and the formation of an oversight board.

*At the April 6, 2010 Board of County Commissioners (BCC) meeting, the County Commission requested that this ordinance be prepared and placed on the April 20, 2010, BCC agenda. This ordinance is a compilation of the four (4) other ordinances, and although it is a first reading item, the County Commission will need to determine among other things, the specifics of the ordinance as it relates to the assistive measures and the power and authority of the oversight board.*

**Item No. 4B** authorizes the County Commission to take action, including the formation of a financial oversight board with specified power to act as the governing body of the PHT for up to 24 months unless shortened or lengthened by resolution of the County Commission.

*At the April 6, 2010 BCC meeting, this item was amended to add Management Watch as an Assistive Measure; allow the Financial Oversight Board to make recommendations to the Commission rather than being empowered to act independently; provide options for the Commission's appointments of the 7-member Financial Oversight Board.*

**Item No. 4C** authorizes the County Commission to take action, including assignment of technical experts and formation of an oversight board with specified powers to oversee the PHT for up to 24 months unless shortened or lengthened by resolution of the County Commission.

**Item No. 4D** authorizes the County Commission to exercise veto authority over subsequent actions taken by the PHT for such period of time as the County commission deems necessary to resolve the financial conditions.

**Item No. 4E** authorizes the Mayor to take action, including formation of a transition board with specified power to act as the governing body of the PHT for up to 2 years unless shortened or lengthened by resolution of the County Commission.

All five (5) items waive the procedures for creation and review of County boards of Article 1B of the Code for any oversight board established under authority of this ordinance.

### **Background and Relevant Legislation**

On March 18, 2010, BCC adopted Resolution No. 323-10, placing the PHT on management watch.

### **Policy Change and Implication**

The following is a breakdown comparison of the similarities and differences between the five (5) proposed ordinances and how each ordinance treats specific areas indicated below:

#### Governing Board for Two Years (unless modified by the BCC)

Three ordinances establish an additional board to function as either the governing board or as an advisory board to the PHT for two (2) years.

- **Item Nos. 4B and 4E** are similar in that both establish a governing board for the PHT establish a board to service as the governing board of the PHT for a 2 year term.
  - Under **Item No. 4B**, the Oversight Board is comprised of 7 voting members.
  - Under **Item No. 4E**, the Transition Board is comprised of 9 voting members.
- **Item No. 4C** establishes an Oversight Board comprised of 7 voting members to advise the PHT.

On the other hand, **Item No. 4C** establishes an Oversight Board to oversee the activities of the currently sitting Board of Trustees, which continues to serve at the governing board with exceptions.

- This Oversight Board is comprised of 7 voting members.

**Item No. 4D** does not create an oversight board; instead, it grants oversight authority to the Commission by exercising veto power over actions of the Trust.

#### Events Triggering Option to Change PHT Governance

All five proposed ordinances state the notice that any one or more of the five (5) emergency financial conditions under Chapter 218 Fla. Stats. Which trigger the potential for gubernatorial oversight of local governmental entities has or will occur, e.g. failure to pay uncontested claims within 90 days after presentation.

- In addition, **Item Nos. 4A, 4B, and 4C** add any advancement of County funds to the PHT to support operational needs and expenses as a 6<sup>th</sup> triggering event.
- **Item No. 4B** specifies that upon receipt of such written notice, the Chairperson of the BCC will place the item on the agenda at the next regularly scheduled Bcc meeting, or a special meeting may be called to address the item.

#### Currently Sitting Board of Trustee Members

All three proposed ordinances treat the currently sitting Board of Trustee members differently.

- **Item No. 4A** emphasizes that the Commission needs to determine the status of the currently sitting Board of Trustees in relation to any proposed Oversight Board.
- **Item No. 4B** dissolves the currently sitting Board of Trustee members, who will no longer serve as governing body of the Trust;
- **Item No. 4E** dissolves the Board of Trustee; however, at least three (3) of the initial members of the Transition Board will be current members of the Board of Trustee. Within 120 days prior to the end of the Transition Board's tenure, the PHT nominating council as specified in 25A of the Code will convene to select voting members of the PHT.

#### Change Agent and Implementation of Assertive Measures

**Item Nos. 4B and 4C** identify the County Commission as the agent to determine whether to change the PHT governance after receipt of written notice that a triggering event has occurred. **Item No. 4E** assigns the Mayor to implement measures to assist the Trust after receipt of written notice that a triggering event has occurred. The Mayor nominates each member of the Transition Board and the BCC accents or rejects such nominees.

The assertive measures may or may not include technical assistance, audits, and/or recovery plan depending on the proposal:

- Both **Item Nos. 4B and 4E** lists technical assistance, audits, and recovery plan as optional assistance measures.
- In addition, **Item No. 4B** allows the Trust to be placed on Management Watch as an assertive measure and grants the Commission veto authority over any action taken by the Financial Oversight Board.

- **Item 4C** requires technical assistance to support the PHT and the Oversight Board. Audits and a recovery plan are not applicable.

#### Appointment Process

**Item Nos. 4C and 4E** appoint the members similarly in that the BCC appoint members nominated by the Mayor. However, there are noted differences among the proposals in the guidelines for appointment:

- **Item No. 4C** allows the 7 members of the Oversight Board to be appointed by the BCC from a list of persons nominated by the Mayor; and
- **Item No. 4E** allows each of the 9 members of the Transition Board is nominated by the Mayor and the BCC accepts or rejects those nominations. The nominations are made up of the following:
  - 3 current members of the Board of Trustees; and
  - 1 or more may be County commissioners.
- **Item No. 4B** provides for the 7 members for the Oversight Board to be appointed in the following manner:
  - 1 appointed by the President of the South Florida AFL-CIO;
  - 3 appointed by resolution of the County Commission from list of persons nominated by each Commission member;
  - from current members of the Board of Trustees;
  - 4 appointed by BCC resolution from a list of persons nominated by each commissioner;
  - 1 appointed by the Mayor;
  - 1 appointed by the Chair of the Dade Delegation; and
  - 1 appointed by the Governor.

#### Appointment of Chairperson and Vice Chairperson

**Item Nos. 4C and 4E** allows the Mayor to nominate one member of the Oversight/Transition Board to serve as chairperson and another as vice-chairperson. Then the Oversight/Transition Board, by majority vote following nomination elects its chairperson and vice-chairperson.

**Item No. 4B** allows the Financial Oversight Board, by majority vote following nomination to elect its chairperson and vice-chairperson.

#### \$100,000 Bond Requirement

For **all three proposals**, prior to entering upon the duties of office, each appointee to the Oversight/Transition Board is to provide a \$100,000 bond. In addition, only **Item No. 4B** requires a \$100,000 bond for currently sitting Board of Trustee members.

#### Waiver of Residency Requirement

**Three proposals** require that the voting member be a permanent resident and duly qualified elector of Miami-Dade County.

- In **Item No. 4B**, the Commission can waive the residency requirement by a 2/3rds vote of its membership;

- In **Item No. 4C**, the Commission can waive the residency requirement but it does not specify whether this is by majority or by 2/3rds vote; and
- In **Item No. 4E**, the Mayor can waive the residency requirement at his discretion.

Only **Item No. 4B** mentions that the voting member is to have experience in hospital operations, management, finance, business or other experience relevant to the Financial Oversight Board's duties and responsibilities.

#### Appointment of Trust CEO

For **four proposed ordinances**, the established Transition/Oversight Board may, in its sole discretion, evaluate, compensate, appoint and remove the Trust CEO.

#### Vacancies

Currently, Trustees may be removed for cause by majority vote of the BCC. Vacancies in voting membership are appointed by the BCC from a list of nominees submitted by the nominating council.

- Under **Item No. 4B**, members of the Financial Oversight Board may be removed for cause by majority vote of the BCC. Vacancies are filled by the appointing authority.
- Under **Item No. 4C**, the BCC may remove a member of the Oversight Board for cause and will have the power to fill any vacancy.
- Under **Item No. 4E**, the Mayor with the concurrence of the BCC may remove any member of the Transition Board for cause. Vacancies are filled by nomination of the Mayor and acceptance or rejection of the BCC.

#### Health Care Delivery Policies

Currently the Board of Trustees cannot enter into any contract that substantially changes health care delivery policies established by the BCC. **Item Nos. 4B and 4C** allow the Financial Oversight/Oversight Board to recommend health care policies for BCC approval relevant to short and long term financial sustainability of the Trust.

**Item No. 4E** allows the Transition Board to recommend health care delivery policies for BCC approval. The Transition Board may not enter into contracts that change health care delivery policies.

#### Contracting Authority

**Item Nos. 4B and 4C** utilize the current Chapter 25A guidelines, which have contractual power limitations which include limitations on excess expenditure of funds, labor contracts, changing health care delivery policies, and County and University of Miami relationship.

**Item No. 4E** states that the current contracting authority does not apply to the Transitional Board. Limits on contracts changing health care delivery policies and labor contracts do apply.

#### Personnel Policies

**Items Nos. 4B and 4E**, allow the created board to appoint, remove, suspend employees and agendas, fix their compensation, and adopt personnel and management policies, subject to BCC approval or disapproval. **Item No. 4B** also allows the Oversight Board to recommend labor negotiation policies.

**Item No. 4C** maintains the current Board of Trustees power to appoint remove, suspend employees and agents, fix their compensation, and adopt personnel and management policies. Changes to personnel and management policies are subject to Commission approval or disapproval. However, the Oversight Board has veto power of Board of Trustees actions.

#### Issuance of Bonds and Ability to Borrow Money

**All of the proposals** allow the created board to request the BCC to issue bonds. BCC approval is not required to borrow money.

#### Trust / UM Annual Operating Agreement (Agreement)

**All of the proposals** state that the CEO and the Financial Oversight/Transition Board's chair negotiate the Agreement.

**Item 4C** also provides for the CEO and the Oversight Board chair but also includes the PHT chair as the three entities with the authority to negotiate the agreement. Furthermore, the Agreement has to be submitted to the Oversight Board for approval.

#### Reporting

Currently, there is an annual joint meeting of the Board of Trustees and BCC. Under **three of the proposals**, this is eliminated; however, each provides provide different guidelines for reporting to the BCC.

- **Item No. 4B** requires to Financial Oversight Board to report to the BCC at each regularly scheduled meeting;
- **Item No. 4C** requires the Oversight Board to report to the BCC at least monthly;
- **Item No. 4E** provides for the Transition Board to make an initial report to the BCC within six (6) months and thereafter, at least on a quarterly basis.

#### Reviews and Consultants

**Item No. 4C** states that the Oversight Board may review records, reports, assets, technological systems, accountability and billing practices, management, efficiency, productivity and financing functions and operations of the Trust and the Designated Facilities. Furthermore, the Oversight Board is allowed to contract with private consultants as needed.

**Prepared by:** Elizabeth N. Owens

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Legislative Notes

**Agenda Item:** 8(O)1(A) and Supplement  
**File Number:** 100849 and 100850  
**Committee(s) of Reference:** Board of County Commissioners  
**Date of Analysis:** April 16, 2010  
**Type of Item:** Contract for Food Catering Services

**Summary**

This resolution approves award of Contract No. 0688-3/14, Food Catering Services (Head Start Program), to Classic Caterers Inc., as primary, and Greater Miami Caterers, Inc., as secondary in the amount of \$5,105,000 for a two (2) year term with three (3) one-year options to renew (OTR).

The supplement advises the Board of County Commissioners (BCC) that RBNW Enterprises Inc. *d/b/a* Jazz Café and Grille (RBNW) filed a bid protest February 1, 2010, in objection to the County Attorney's Office (CAO) deeming them non-responsive for failure to sign the bid submittal form. A hearing was conducted on February 12, 2010, and the Hearing Examiner concluded that the County Manager's recommendation should be upheld; therefore, the bid protest was denied.

**Background and Relevant Legislation**

The previous contract was approved under Resolution No. 1261-04 and awarded to Greater Miami Caterers, Inc. in the amount of \$1.9 million for one (1) year with four (4) one-year OTRs. Greater Miami Caterers, Inc. is the secondary under the proposed contract.

In addition, the Department of Procurement Management (DPM) modified the previous contract on November 20, 2009, to provide additional spending authority in the amount of \$139,887, for three (3) additional months, extending the contract to March 31, 2010.

In regards to the bid protest, according to the County Attorney's memo, RBNW proposal did not include a cover letter and a bid bond was not required by the solicitation; therefore, there is no evidence that RBNW intended to be bound to the proposal.<sup>1</sup>

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<sup>1</sup> An unsigned proposal may be considered responsive if it, "is accompanied by the other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid guarantee or a letter signed by the bidder, with the bid referring to and clearly identifying the bid itself." 48 C.F.R. 14.405(c)(1).

**Budgetary Impact / Comments**

The funding sources for this contract are federal and general funds.

- ***What is the amount in federal funds and general funds for this contract?***

The cumulative value of the previous contract including the subsequent OTRs and the modification was \$9,639,887. The proposed contract cumulative value, including the subsequent OTRs is \$12,762,500, which is a **24% increase in the total value. According to Administration, the proposed contract increase is due in part to the change in the technical specifications requiring the utilization of biodegradable paper products.**

- ***How much of this increase is due to the new requirement to utilize biodegradable paper products?***

Below is a side by side comparison of the yearly amounts of the proposed contract and the previous contract without the 3 month modification. **This proposal is \$652,500 more per year than the previous contract.**

Item No.	Contract Term & Amount	Amount per year	Previous Contract Term & Amount	Previous Contract Amount per year
1.1	\$5,105,000 for 2 years with 3 one-year OTR	\$2,552,500	\$1,900,000 for 1 year with 4 one-year OTR.	\$1,900,000

According to the Invitation to Bid (ITB) for the previous and the proposed contracts, the proposed contract is to serve approximately 569 more individuals than the previous contract (previous contract = 2456; proposed contract = 3025).

Furthermore, the service sites between the previous and the proposed contracts are different. Several of the centers that were under the previous contract are no longer in the proposed contract; however, there are only seven (7) additional center locations in the proposed contract (see below).

Previous Center Locations that are also in the Proposed Contract and the # of Individuals <sup>2</sup> Served	Previous Center Locations that are <u>not</u> in the Proposed Contract and the # of Individuals <sup>3</sup> Served	Proposed Center Locations that are <u>not</u> in the Previous Contract and the # of Individuals <sup>4</sup> Served
<ul style="list-style-type: none"> <li>• Arthur Mays (45)</li> <li>• Biscayne Elementary (45)</li> <li>• Bethune (501)</li> <li>• Carrie P. Meek (94)</li> <li>• Colonel Zubkoff (188)</li> <li>• CPHI – South (110)</li> <li>• CPHI – North (47)</li> </ul>	<ul style="list-style-type: none"> <li>• Blue Lake Pointe (26)</li> <li>• Early Intervention Center (23)</li> <li>• English Center (25)</li> <li>• Florida City (112)</li> <li>• Florida Memorial (88)</li> <li>• Greater Bethel (48)</li> <li>• Holy Redeemer (69)</li> </ul>	<ul style="list-style-type: none"> <li>• Bunche Park Elem. (20)</li> <li>• Caleb Center (177)</li> <li>• Carol City Elementary (66)</li> <li>• Charles Drew Elem. (44)</li> <li>• Douglass Elementary (44)</li> <li>• Dupuis Elementary (66)</li> <li>• Jackson Dade (133)</li> </ul>

<sup>2</sup> The number of individuals is comprised of the approximate number of children and staff served on a daily basis.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<ul style="list-style-type: none"> <li>• Culmer PL/Nghbrhood Ctr. (23)</li> <li>• Feinberg Fisher (46) (44)<sup>5</sup></li> <li>• Issac A. Withers (180)(176)<sup>6</sup></li> <li>• JFK (70)</li> <li>• Leisure City (121)</li> <li>• Modello (40)(35)<sup>7</sup></li> <li>• Oak Grove Elementary (23)</li> <li>• Opa Locka (67)(33)<sup>8</sup></li> <li>• Perrine (88)</li> <li>• South Miami (48) (55)<sup>9</sup></li> <li>• S. Pointe Elem. (23)(22)<sup>10</sup></li> <li>• Sweetwater (37)</li> <li>• Victory Homes (47)(45)<sup>11</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Miami Beach Senior High (18)</li> <li>• Mount Zion (74)</li> <li>• Natural Bridge (23)</li> <li>• New Haven (23)</li> <li>• The Village (23)</li> <li>• Westview Baptist (61)</li> </ul>	<ul style="list-style-type: none"> <li>• Liberty Square (89)</li> <li>• Miami Park Elementary (22)</li> <li>• Naranja Elementary (22)</li> <li>• Nathan B. Young Elem. (44)</li> <li>• North County (35)</li> <li>• Olina Elementary (44)</li> <li>• Ophelia E. Brown-Lawson (133)</li> <li>• Orchard Villa Elementary (44)</li> <li>• Phyllis Miller (88)</li> <li>• Poinciana Elementary (44)</li> <li>• South Hialeah Elementary (40)</li> <li>• Treasure Island (44)</li> <li>• Whigham Elementary (22)</li> </ul>
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**Prepared by:** Elizabeth N. Owens

<sup>5</sup> In the previous contract, Feinberg Fisher served 46 individuals. In the proposed contract, that amount decreases to 44 individuals – with two (2) less children served.

<sup>6</sup> In the previous contract, Issac A. Withers served 180 individuals. In the proposed contract, that amount decreases to 176 individuals – with four (4) less staff served.

<sup>7</sup> In the previous contract, Modello served 40 individuals. In the proposed contract, that amount decreases to 35 individuals – with five (5) less children served.

<sup>8</sup> In the previous contract, Opa Locka served 67 individuals. In the proposed contract, that amount decreases to 33 individuals – with 36 less children and two (2) additional staff served.

<sup>9</sup> In the previous contract, South Miami served 48 individuals. In the proposed contract, that amount increases to 52 individuals – with five (5) more children and two (2) additional staff served.

<sup>10</sup> In the previous contract, South Pointe Elementary served 23 individuals. In the proposed contract, that amount decreases to 22 individuals – with one (1) less staff served.

<sup>11</sup> In the previous contract, Victory Homes served 47 individuals. In the proposed contract, that amount decreases to 45 individuals – with two (2) less staff served.