# MEMORANDUM

Agenda Item No. 13(F)

**TO:** Honorable Chairperson Barbara Carey-Shuler, Ed. D. and Members, Board of County Commissioners

**DATE:** May 25, 2004

**FROM:** George M. Burgess
County Manager

**SUBJECT:** Ordinance to Substituting Collateral for Special Obligation Courthouse Bonds

## RECOMMENDATION

It is recommended that the Board of County Commissioners (the "Board") enact the accompanying Ordinance authorizing the substitution of a pledge of the fifteen dollar surcharge imposed by Section 11-8 of the Code of Miami-Dade County, Florida for each non-criminal traffic infraction listed in Section 318. Florida Statues and for each criminal violation listed in Section 318.17, Florida Statutes (the "Traffic Surcharge") for a pledge of court filing and service charges and fines and forfeitures which secure the following special obligation bonds: (i) Dade County, Florida Special Obligation Bonds (Courthouse Project) Series 1995, (ii) Miami-Dade County, Florida Special Obligation Bonds (Courthouse Center Project) Series 1998A, (iii) Miami-Dade County, Florida Special Obligation Refunding Bonds (Courthouse Center Project) Series 1998B; (iv) Miami-Dade County, Florida Fixed Rate Special Obligation Bonds, Series 2003A (Juvenile Courthouse Project), (v) and Miami-Dade County, Florida Auction Rate Special Obligation Bonds, Series 2003B (Juvenile Courthouse Project), ("collectively, the Bonds").

## BACKGROUND

The State Legislature at its 2003 general session enacted legislation transferring substantial portions of the cost of the state court system from the counties to the State. Effective July 1, 2004, this legislation repealed portions of Section 28.2401, 28.241, 34.041 and 34.191 Florida Statutes, which granted authority to the counties to impose and pledge by ordinance incremental filing and service charges and to pledge fines and forfeitures for the payment of bonds, thereby removing all security pledged for the payment of the principal and interest on the Bonds.

The State Legislature at its 2004 general session enacted legislation curing certain items contained in the 2003 Legislation including enacting a provision permitting counties to impose by ordinance a $15.00 surcharge on certain non-criminal traffic law infractions and certain criminal violations described in Sections 318and 318.17, Florida Statutes, respectively, to fund courthouse facilities, including paying debt service on the Bonds in substitution for the authority granted in the repealed legislation to pledge certain court filing fees and charges and fines and forfeitures ("Prior Pledge"). A separate ordinance imposing

the Traffic Surcharge is on the same agenda as the accompanying ordinance. The $15.00 surcharge may not be waived by the Courts.

This Ordinance authorizes the substitution of the Traffic Surcharge for the Prior Pledge and further provides for a secondary pledge of a budget and appropriate in the event the Traffic Surcharge does not provide the necessary funding to pay the principal and interest on the outstanding Bonds. The Ordinance creates a first lien on the Traffic Surcharge in favor to the holders of the Bonds.

The following Ordinances which previously authorized Pledge the issuance of Bonds secured by the Prior Pledge are amended to provide for the substitute pledge referenced above.

- Ordinance No. 94-98 enacted by the Board on May 17, 1994, (the "1994 Ordinance"). Ordinance No. 93-55 ("Pledged Filing and Service Charge Revenues").

- Ordinance No. 95-49 enacted by the Board on April 4, 1995, (the "1995 Ordinance") and together with the 1994 Ordinance, the "Prior Ordinance") which amended and supplemented the 1994 Ordinance to facilitate the issuance of additional Courthouse Center Bonds by increasing the amount of the Pledged Filing and Service Charge Revenues available for debt service.

- Ordinance No. 00-173 enacted by the Board on December 7, 2000, authorizing increases to certain circuit and county court filing fees (the "Incremental Pledged Filing and Service Charge Revenues") for court-related case management and technology improvements and to help fund the Juvenile Courthouse Project.

Assistant County Manager

# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

**DATE:** May 25, 2004

**FROM:** Robert A. Ginsburg
County Attorney

**SUBJECT:** Agenda Item No. 13(F)

**Please note any items checked.**

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(F)
5-25-04

ORDINANCE NO. _____

ORDINANCE SUBSTITUTING PLEDGE OF SURCHARGE ON EACH NONCRIMINAL TRAFFIC INFRACTION AND EACH CRIMINAL TRAFFIC VIOLATION IMPOSED PURSUANT TO SECTION 11-12 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA FOR PLEDGE OF COURT FILING FEES AND CHARGES AND FINES AND FORFEITURES WITH RESPECT TO CERTAIN OUTSTANDING SPECIAL OBLIGATION BONDS RELATED TO COURTHOUSE CENTER PROJECT AND JUVENILE COURTHOUSE; APPROVING COVENANT TO BUDGET AND APPROPRIATE AS ADDITIONAL SECURITY FOR SUCH SPECIAL OBLIGATION COURTHOUSE BONDS; AMENDING CERTAIN DEFINITIONS IN ORDINANCE AND RESOLUTION SECURING SUCH BONDS; PROVIDING SEVERABILITYAND EFFECTIVE DATE

**WHEREAS**, Miami-Dade County, Florida (the "County") has previously issued and there are currently outstanding Dade County, Florida Special Obligation Bonds (Courthouse Center Project) Series 1995, Miami-Dade County, Florida Special Obligation Bonds (Courthouse Center Project) Series 1998A, Miami-Dade County, Florida Special Obligation Refunding Bonds (Courthouse Center Project) Series 1998B (collectively the "Senior Bonds"), Miami-Dade County, Florida Fixed Rate Special Obligation Bonds, Series 2003A (Juvenile Courthouse Project) and Miami-Dade County Auction Rate Special Obligation Bonds, Series 2003B (Juvenile Courthouse Project) (collectively the "Junior Bonds" and together with the Senior Bonds, the "Bonds"); and

**WHEREAS**, the Bonds are secured by a pledge of the Pledged Filing and Service Charge Revenues pursuant to Ordinance No. 94-98, enacted by this Board on May 17, 1994 as supplemented by Ordinance No. 95-49, enacted by this Board on April 4, 1995 (collectively, the

"1994 Ordinance") in the manner set forth in Resolution No. R-144-03 adopted by this Board on February 2, 2003 (the "2003 Resolution") authorizing the Junior Bonds; and

**WHEREAS**, the Junior Bonds are secured by the Second Incremental Filing and Service Charges imposed by Ordinance No. 00-173 enacted by this Board on December 7, 2000 and the Available Filing and Service Charge Revenues in the manner provided in the 2003 Resolution; and

**WHEREAS**, the State Legislature at its 2003 general session enacted legislation (the "2003 Legislation") transferring substantial portions of the cost of the state court system from the counties to the State, which legislation repealed, effective July 1, 2004, those portions of Sections 28.2401, 28.241, 34.041 and 34.191, Florida Statutes (the "Repealed Legislation") which granted authority to the counties to impose and pledge by ordinance incremental filing and service charges ("Filing Fees") and to pledge fines and forfeitures ("Fines and Forfeitures," which together with the Filing Fees constitute the "Prior Pledged Revenues") for the payment of the Bonds, thereof removing all security pledged for the payment of the principal of and the interest on the Bonds; and

**WHEREAS**, the State Legislature at its 2004 general session enacted legislation (the "2004 Legislation") curing certain items contained in the 2003 Legislation including enacting a provision permitting counties to impose by ordinance a $15.00 surcharge on non-criminal traffic infractions pursuant to Chapter 318, Florida Statutes and all criminal violations listed in Section 318.17, Florida Statutes (the "Traffic Surcharge"); and

**WHEREAS**, the County has amended Section 11-12 of the Code of Miami-Dade County, Florida ("Code") to impose the Traffic Surcharge for the purpose of funding courthouse facilities, including the payment of debt service on the Bonds; and

**WHEREAS**, the County Finance Department has calculated the projected annual amounts to be received by the County from the $15.00 Traffic Surcharge and has concluded that the Traffic Surcharge will likely be sufficient to pay the principal of and interest on the Bonds on a current basis but as a contingent backup pledge to insure that there will always be adequate moneys to meet the obligations associated with the Bonds, this Board has determined to add a covenant to budget and appropriate provision to the pledge of the Traffic Surcharge; and

**WHEREAS**, in order to substitute the Traffic Surcharge for the filing and service charges and fines and forfeitures eliminated by the Repealed Legislation, the Board wishes to amend certain definitions contained in the 1994 Ordinance and 2003 Resolution to effect such substitution,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA that:**

Section 1. The preamble to this Ordinance is approved and incorporated by reference in this Ordinance.

Section 2. The Traffic Surcharge is substituted for the Prior Pledged Revenues for the purpose of paying the principal of and the interest on the Bonds before funding any court facilities. The County further covenants that the County will not abolish the Traffic Surcharge until the Bonds have been fully paid and retired.

Section 3. The revenues realized from the imposition of the Traffic Surcharge ("Surcharge Revenues") shall be deposited as received in the Dade County Special Obligation Bonds (Court and Judicial Facilities) Revenue Fund (the "1994 Revenue Fund") created by Section 501 of the 1994 Ordinance authorizing and securing the Senior Bonds and applied in accordance with Article V of the 1994 Ordinance. For all purposes of the 1994 Ordinance, the

defined terms "Filing and Service Charges" shall mean the Traffic Surcharge, "Pledged Filing and Service Charge Revenues" shall mean the Surcharge Revenues, "Pledged Filing and Service Charges" shall mean the Traffic Surcharge and "Pledged Revenues" shall mean the Surcharge Revenues. The term "Non-pledged Filing and Service Charges" in the 1994 Ordinances is hereby deleted. Following the monthly deposits required by clauses (a), (b), (c) and (d) of Section 503 of the 1994 Ordinance, any balance remaining in the Revenue Fund (the "Excess Traffic Surcharge" or the "Excess Traffic Surcharge Revenues") shall be transferred by the Finance Director to the credit of the Miami-Dade County Special Obligation Bonds, Series 2003 (Juvenile Courthouse Project) Revenue Fund (the "2003 Revenue Fund") created by Section 501 of the 2003 Resolution authorizing and securing the Junior Bonds and applied in accordance with the Article V of the 2003 Resolution. For all purposes of the 2003 Resolution, the defined term "Filing and Service Charges" shall mean the Excess Traffic Surcharge, "Prior Pledged Filing and Service Charge Revenues" shall mean the Excess Traffic Surcharge Revenues, "Prior Pledged Filing and Service Charges" shall mean the Traffic Surcharge, "Pledged Revenues" shall mean the Excess Traffic Surcharge Revenues, "Available Filing and Service Charge Revenues" and "Incremental Filing and Service Charge Revenues" shall mean collectively, the Excess Traffic Surcharge Revenues and "Incremental Filing and Service Charges" shall mean the Excess Traffic Surcharge. The term "Non-pledged Filing and Service Charges in the 2003 Resolution is hereby deleted. Apart from the definitional amendments listed above, all other provisions of the 1994 Ordinance and the 2003 Resolution shall remain in full force and effect until the payment and retirement of the Bonds.

Anytime the terms contained in the definitions in the 1994 Ordinance and the 2003 Resolution are used in the context of the 1994 Ordinance and the 2003 Resolution the

replacement terms set forth above shall be substituted for such terms.

Section 4. The County covenants and agrees, to the extent permitted by and in accordance with applicable law and budgetary processes, to prepare, approve and appropriate in its Annual Budget for each Fiscal Year, by amendment if necessary, Legally Available Non-Ad Valorem Revenues of the County in an amount (the "Appropriated Amount") which, together with the projected Traffic Surcharge Revenues for said Fiscal Year, are equal to an amount necessary to make the projected total of Traffic Surcharge Revenues and the Appropriated Amount equal to the Principal and Interest Requirements (as defined in the 1994 Ordinance and the 2003 Resolution) on the Bonds for such Fiscal Year, plus an amount sufficient to satisfy all other payment obligations of the County under the 1994 Ordinance and the 2003 Resolution for such Fiscal Year, including, without limitation, the obligations of the County to fund and cure deficiencies in the funds and accounts created in Article V of the 1994 Ordinance and the 2003 Resolution, as and when the same become due by depositing such Appropriated Amount in the Revenue Fund created by the 1994 Ordinance. The covenant and agreement on the part of the County to budget and appropriate sufficient amounts of Legally Available Non-Ad Valorem Revenues shall be cumulative, and shall continue until such Legally Available Non-Ad Valorem Revenues in amounts, together with any other legally available revenues budgeted and appropriated for such purposes, sufficient to make all required payments hereunder as and when due, including any delinquent payments, shall have been budgeted, appropriated and actually paid into the 1994 Revenue Fund.

Nothing contained herein shall preclude the County from pledging any of its Legally Available Non-Ad Valorem Revenues or other revenues to other obligations, nor shall it give the holders of the Bonds a prior claim on the Legally Available Non-Ad Valorem Revenues until

they are actually deposited in the 1994 Revenue Fund. The County may not expend moneys not appropriated or in excess of its current budgeted revenues. The obligation of the County to budget, appropriate and make payments hereunder from its Legally Available Non-Ad Valorem Revenues is subject to the availability of Legally Available Non-Ad Valorem Revenues of the County after satisfying funding requirements for obligations having an express lien on or pledge of such revenues and after satisfying funding requirements for essential governmental services of the County.

"Legally Available Non Ad Valorem Revenues" means all available revenues and taxes of the County derived from any source whatsoever other than ad valorem taxation on real and personal property but including "operating transfers in" and appropriable fund balances within all Funds of the County over which the Board has full and complete discretion to appropriate the resources therein. As used above, "Funds" means all governmental, proprietary and fiduciary funds and accounts of the County as defined by generally accepted accounting principles.

Section 5. Anything herein to the contrary notwithstanding, all obligations of the County set forth in Section 4 above shall be secured only by the Legally Available Non-Ad Valorem Revenues and other legally available revenues actually budgeted and appropriated and deposited into the 1994 Revenue Fund. Nothing herein shall be deemed to create a pledge of or lien, legal or equitable, on the Legally Available Non-Ad Valorem Revenues, the ad valorem tax revenues, or any other revenues of the County, or to permit or constitute a mortgage or lien upon any assets owned by the County. No Bondholder shall ever have the right to compel any exercise of the ad valorem taxing power of the County for any purpose, including, without limitation, to pay the principal of or interest or premium, if any, on the Bonds or to make any other payment required hereunder or to maintain or continue any of the activities of the County

which generate user service charges, regulatory fees or any other Legally Available Non-Ad Valorem Revenues.

Section 6. If any one or more of the provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provisions shall be null and void and shall be deemed separate from the remaining provisions of this Ordinance.

Section 7. The provisions of this Ordinance shall become effective ten (10) days after the date of its enactment unless vetoed by the Mayor, and if vetoed, shall become effective upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RAG

Prepared by:

GTH

Gerald T. Heffernan

Sponsored by Commissioner Sally A. Heyman