

MEMORANDUM

Agenda Item No. 7(D)

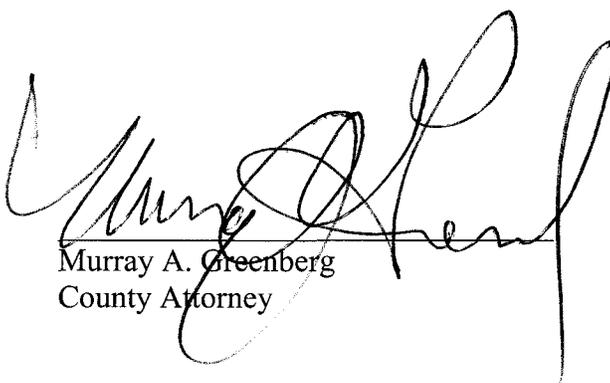
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: (Second Reading 12-6-05)
October 18, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance relating to
Election Campaign
Financing Trust Fund

The accompanying ordinance was placed on the agenda by the Community Outreach, Safety and Healthcare Administration Committee.



Murray A. Greenberg
County Attorney

MAG/bw

Memorandum



Date: December 6, 2005

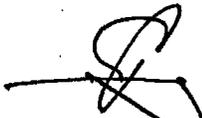
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Ordinance relating to Election Campaign Financing Trust Fund

The ordinance once implemented increases the number of contributions within the district which a candidate is seeking to represent in order to be eligible to receive contributions from the Election Campaign Trust Fund (the Fund) of up to \$75,000. In addition, the ordinance requires candidates along with the campaign treasurers to attend a seminar conducted by the Ethics Commissioner regarding state and local campaign financing laws prior to the receipt of contributions from the Fund; the Inspector General to perform an independent investigation to determine whether the candidate has satisfied the eligibility requirements prior to the certification of the candidates eligibility to receive the contributions from the Fund; and imposes stricter accountability guidelines when reporting the uses of the funds. These additional functions are expected to be performed with the resources available within the monitoring departments.

In regards to increasing the number of separate contributions to be eligible for funding from Election Campaign Financing Trust Fund, it is difficult to predict how many candidates would meet the new criteria, and therefore, a fiscal impact cannot be determined at this time.



Deputy County Manager

Fiscal00605



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: December 6, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 7(D)

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. 7(D)
12-6-05

ORDINANCE NO. _____

ORDINANCE RELATING TO ELECTION CAMPAIGN FINANCING TRUST FUND; AMENDING SECTION 12-22 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO DEFINITIONS, ELIGIBILITY REQUIREMENTS, DISTRIBUTION OF FUNDS, TRIGGER REPORTING, USE OF FUNDS, EXPENDITURE CEILINGS, ENFORCEMENT AND PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 12-22 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 12-22. >>Election Campaign Financing Trust Fund.<<

(a) *Definitions.* The following terms, as used in this section, shall mean:

(1) "Contribution" shall have the meaning ascribed to such term in Chapter 106, Florida Statutes, as amended and supplemented.

(2) "Expenditure" shall have the meaning ascribed to such term in Chapter 106, Florida Statutes, as amended and supplemented.

>>(3) "Unincorporated association" means a partnership or any other legal entity other than a natural person.<<

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

- (b) *Election Campaign Financing Trust Fund.* There is established the Election Campaign Financing Trust Fund to be utilized by the Miami-Dade County Department of Elections as provided in this section. If necessary, each year in which a general election is to be held for the election of the Mayor or any County Commissioner, additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenues in an amount sufficient to fund qualifying candidates pursuant to this section.
- (c) *Election campaign financing; eligibility.* Each candidate for the Office of Mayor of Miami-Dade County or the Board of County Commissioners of Miami-Dade County who desires to receive contributions from the Election Campaign Financing Trust Fund (the "Fund") shall file ~~[[a]]~~ >> an irrevocable declaration of intent to seek public financing no later than ninety (90) days after opening a campaign account, or thirty (30) days before the first day of qualifying, whichever shall come first. Each candidate for the Office of Mayor of Miami-Dade County or the Board of County Commissioners of Miami-Dade County who has filed a declaration of intent and has satisfied the eligibility requirements shall file an application<< ~~[[request]]~~ by the filing deadline for such contributions with the filing officer on forms provided by the Miami-Dade County Supervisor of Elections. As used in this subsection, "filing deadline" shall ~~[[mean the last day upon which]]~~ >>be twenty (20) business days prior to the first day<< a candidate may qualify for the elective office sought. >>Each application for contributions from the Fund shall be signed by both the candidate and campaign treasurer under oath.<< If a candidate requesting contributions from the Fund desires to have such funds distributed by electronic fund transfers, the request shall include information necessary to implement that procedure. To be eligible to receive contributions from the Fund, a candidate shall not be an unopposed candidate and shall:
- (1) Sign a statement of understanding wherein the candidate states that he or she has read, understands and agrees to abide by Section 12-22 of the Code and the applicable Administrative Order regarding the Election Campaign Financing Trust Fund.

- (2) Qualify as a candidate pursuant to Chapter 99, Florida Statutes and section 2.04 of the Home Rule Charter;
- (3) Limit loans or contributions from the candidate's personal funds to twenty-five thousand dollars (\$25,000.00), which loans or contributions shall not qualify for meeting the threshold amounts in subsection (c)(5);
- (4) Submit to audits of the campaign account by the Commission on Ethics and Public Trust as provided in subsection (f)(3); and
- (5) Raise contributions as follows:
 - a. Candidates for Board of County Commissioners. Each candidate for the Board of County Commissioners shall have received by the filing deadline at least ~~[[two]]~~ >>three<< hundred ~~[[200]]~~ >>300<< separate contributions between ~~[[fifteen]]~~ >>one hundred<< dollars (~~[[15]]~~ >>100<<.00) and ~~[[two hundred and fifty]]~~ >>five hundred<< dollars (~~[[250]]~~ >>500<<.00) from ~~[[two]]~~ >>three<< hundred ~~[[200]]~~ >>300<< different >>qualifying contributors<< ~~[[registered voters residing in Miami Dade County]]~~ totaling at least >>thirty thousand dollars (\$30,000)<< ~~[[fifteen thousand dollars (\$15,000)]]~~. >>As used in this subsection, a “qualifying contributor” means a Miami-Dade County registered voter residing in the Commission district which the candidate is seeking to represent or a bank, corporation or unincorporated association with a place of business in the Commission district which the candidate is seeking to represent. As used herein, a “place of business” means a physical location in the applicable commission district where business is conducted as evidenced by an occupational license, a permit or license issued by a

governmental entity, or income or property tax returns or notices. A post office box shall not constitute a place of business.<< Any candidate who satisfies the requirements stated in the preceding sentence shall be eligible for a contribution of fifty thousand dollars (\$50,000) as provided in subsection (f)(3). Each candidate for the Board of County Commissioners who receives by the filing deadline an additional ~~[[ten]]~~ >>twenty<< thousand dollars (~~[[1]]~~)>>2<<0,000) in contributions between ~~[[fifteen]]~~ >>one hundred<< dollars (~~[[15]]~~)>>100<<.00) and ~~[[two hundred and fifty]]~~ >>five hundred<< dollars (~~[[250]]~~) >>500<<.00) for a total of >>fifty thousand dollars (\$50,000)<< ~~[[twenty five thousand dollars (\$25,000)]]~~ shall be eligible for a contribution of an additional twenty-five thousand dollars (\$25,000) as provided in subsection (f)(3). These contributions must be in the form of:

1. A personal check >> drawn on a personal bank account <<;
2. ~~[[Money order that includes the contributor's name and address]]~~ >> A business check drawn on a corporate or other business bank account <<;
3. Traveler's check that includes the contributor's >> full << name and address; or
4. Electronic transfer of funds where the >> full << name of the contributor is clearly stated.

b. Candidates for Mayor. Each candidate for Mayor of Miami-Dade County shall have received at least one thousand >>five hundred<< (~~[[1,000]]~~) >>1,500<< (~~[[1,000]]~~) contributions between ~~[[fifteen]]~~ >>one hundred<< dollars (~~[[15]]~~)>>100<<.00) and

~~[[two hundred fifty]]~~ >> five hundred<< dollars (\$~~[[250]]~~>> 500<<.00) from one thousand >> five hundred<< (>> 1,500<< ~~[[1,000]]~~) different ~~[[registered voters residing in Miami-Dade County]]~~ >> qualified contributors. As used in this subsection, a “qualifying contributor” means a Miami-Dade County registered voter residing in Miami-Dade County or a bank, corporation or unincorporated association (hereinafter “corporate contributor”) with a place of business in Miami-Dade County. As used herein, a “place of business” means a physical location in Miami-Dade County where business is conducted as evidenced by an occupational license, a permit or license issued by a governmental entity, or income or property tax returns or notices. A post office box shall not constitute a place of business.<< These contributions must be in the form of:

1. A personal check >> drawn on a personal bank account<<;
2. ~~[[Money order that includes the contributor's name and address]]~~>> A business check drawn on a corporate or other business bank account<<;
3. Traveler's check that includes the contributor's >> full<< name and address; or
4. Electronic transfer of funds where the >> full<< name of the contributor is clearly stated.

>>c. Each individual contributor shall sign a contributor’s statement on forms provided by the Supervisor of Elections that contains the full name, date of birth and voter registration number of the contributor. Each corporate contributor shall sign a contributor’s statement on forms provided by the Supervisor of

Elections that contains the full name of the business entity, the place of business of the entity and the full name and title of the person executing the business check.

d. The maximum number of qualifying contributions that a candidate for the Board of County Commissioners may submit is three hundred and sixty (360). The maximum number of qualifying contributions that a candidate for the Office of Mayor may submit is one thousand eight hundred (1,800). All qualifying contributions shall be submitted at the time the candidate submits his or her application for funds. Each application for funds shall include, among other things, a hard copy of all contributions submitted in support of the application. Each application shall also be submitted on diskettes, CD-ROMs or other approved electronic means utilizing forms prescribed by the Department of Elections and shall include a detailed schedule of all contributions submitted in support of the application including, but not limited to, the name of the contributor, voter registration number if applicable, date of birth if applicable, address of the person or entity making the contribution, amount of contribution and nature of the contribution; and

(6) Attend a seminar, along with the campaign treasurer, conducted by the Ethics Commission regarding state and local campaign financing laws which shall be completed prior to the receipt of contributions from the Fund.<<

(d) *Election campaign financing; participation in run-off; eligibility.* Each candidate for the Office of Mayor of Miami-Dade County or the Board of County Commissioners of Miami-Dade County who is in a run-off election and did not participate in the Election Campaign Financing Trust Fund prior to the initial election as provided in subsection (c), and desires to receive contributions from the Election Campaign Financing Trust Fund during the run-off election shall file a request by the filing deadline for such contributions with the filing officer

on forms provided by the Miami-Dade County Supervisor of Elections. As used in this subsection (d), "filing deadline" shall mean the third business day after the certification of the results of the initial election. If a candidate requesting contributions from the fund desires to have such funds distributed by electronic fund transfers, the request shall include information necessary to implement that procedure. To be eligible to receive contributions from the Fund during the run-off election, a candidate shall not be an unopposed candidate and shall:

- (1) Sign a statement of understanding wherein the candidate states that he or she has read, understands and agrees to abide by Section 12-22 of the Code and the applicable Administrative Order regarding the Election Campaign Financing Trust Fund.
- (2) Sign an affidavit stating that the candidate did not exceed the expenditure limits provided in section (e)(1) during the initial election;
- (3) Limit loans or contributions from the candidate's personal funds to twenty-five thousand dollars (\$25,000); and
- (4) Submit to audits of the campaign account by the Commission on Ethics and Public Trust as provided in subsection (f)(3).
- >>(5) Attend a seminar, along with the campaign treasurer, conducted by the Ethics Commission regarding state and local campaign financing laws which shall be completed prior to the receipt of contributions from the Fund.<<

* * *

(f) *Distribution of funds.*

- (1) The Supervisor of Elections shall review each request for contributions from the Election Campaign Financing Trust Fund and certify whether the candidate is eligible for such contributions. Notice of the certification decision

shall be provided to the candidate.

* * *

(3) a. Each candidate who has been certified to receive contributions from the Election Campaign Financing Trust Fund shall be entitled to distribution of funds as provided as follows:

1. Each candidate for the Board of County Commissioners who has satisfied the requirements of subsection (c) shall be entitled to a maximum contribution of seventy-five thousand dollars (\$75,000.00) from the Election Campaign Trust Fund. Any candidate who has raised between ~~[[fifteen]]~~>>thirty<< thousand dollars (\$~~[[15]]~~>>30<<,000) and ~~[[twenty-four]]~~>>forty-nine<< thousand nine hundred and ninety nine dollars (\$~~[[24]]~~>>49<<,999) and has complied with all of the requirements of subsection (c) shall be entitled to a contribution of fifty thousand dollars (\$50,000). Any candidate who has raised ~~[[twenty-five]]~~>>fifty<< thousand dollars (\$~~[[25]]~~>>50<<,000) or more and has complied with all of the requirements of subsection (c) shall be entitled to a contribution of seventy-five thousand dollars (\$75,000), which sum shall be disbursed in two (2) installments. The first installment shall be fifty thousand dollars (\$50,000) and shall be disbursed within seven (7) days after the Supervisor of Elections has certified that the candidate is eligible for such contribution. The second installment shall be disbursed within seven (7) days after the candidate has

submitted his or her 32nd day report, as required by section 106.07, Florida Statutes, and the Supervisor of Elections has determined that the candidate has submitted an additional report which contains sufficient information to allow for the audit of campaign contributions and expenditures ("Campaign Financing Report"). Both the candidate and the candidate's treasurer shall sign each Campaign Financing Report. If a run-off election occurs, a candidate who has satisfied the requirements of subsections (c) or (d) and subsection (e) and has submitted a Campaign Financing Report which contains sufficient information to allow for the audit of campaign contributions and expenditures shall be entitled to fifty thousand dollars (\$50,000.00). Distribution of funds during a run-off election shall be made within seven (7) days after the Supervisor of Elections has certified that the candidate is eligible for such contribution. >>Notwithstanding the foregoing, a candidate shall not be entitled to a distribution from the fund which, when combined with the funds raised by the candidate, would exceed the applicable expenditure limit. Under such circumstances, the candidate shall only be eligible for an amount which, when combined with the funds raised by the candidate, equals the applicable expenditure limit.<< Both the candidate and the candidate's treasurer shall sign each Campaign Financing Report. Each candidate receiving contributions from the Fund shall submit to a post-election audit of his or her campaign account,

and shall within ninety (90) days after the election provide the Commission on Ethics and Public Trust with detailed information to substantiate all campaign contributions and expenditures, which have not been previously substantiated, including, but not limited to, all original cancelled checks, invoices, bank statements, receipts that include the name and business address of the person or entity providing the receipt >>copies of contracts for consulting services, a breakdown of dates and hours of work provided by campaign staff, copies of 1099s<< and any other information required by the Commission on Ethics and Public Trust.

2. Each candidate for the Office of Mayor who has satisfied the requirements of subsection (c) shall be entitled to a contribution of three hundred thousand dollars (\$300,000.00) from the Election Campaign Trust Fund. If a run-off election occurs, a candidate who has satisfied the requirements of subsections (c) or (d) and section (e) shall be entitled to two hundred thousand dollars (\$200,000.00). >>Notwithstanding the foregoing, a candidate shall not be entitled to a distribution from the fund which, when combined with the funds raised by the candidate, would exceed the applicable expenditure limit. Under such circumstances, the candidate shall only be eligible for an amount which, when combined with the funds raised by the candidate, equals the applicable expenditure limit.<< Distribution of funds shall be made

within seven (7) days after the >>Supervisor of Elections has certified that the candidate is eligible for such contributions<< ~~[[close of qualifying]]~~. For run-off elections, distribution of funds shall be within seven (7) days from the date of the initial election. Each candidate receiving contributions from the Fund shall submit to a post-election audit of his or her campaign account, and shall within ninety (90) days after the election provide the Commission on Ethics and Public Trust with detailed information to substantiate all campaign contributions and expenditures, which have not been previously substantiated, including, but not limited to, all original cancelled checks, invoices, bank statements, receipts that include the name and business address of the person or entity providing the receipt >>copies of contracts for consulting services, a breakdown of dates and hours of work provided by campaign staff, copies of 1099s<<and any other information required by the Commission on Ethics and Public Trust.

- (4) a. Certification and distribution of funds shall be based upon the eligibility criteria provided in >>this section<< ~~[[subsections (e) and (d)]]~~. >>Prior to certifying whether a candidate is eligible for contributions from the Fund, the Inspector General shall perform an independent investigation to determine whether the candidate has satisfied the eligibility requirements of this section. Upon completion of the investigation, the Inspector General shall submit to the Supervisor of Elections a report detailing his or her findings.<< The

Supervisor of Elections shall review each report prior to authorizing the release of funds. The Supervisor of Elections may prescribe separate reporting forms for candidates for Mayor and the Board of County Commissioners.

* * *

>>c. All funds received by a candidate from the Fund shall be deposited in a sub-account, with separate checks, in the candidate's primary campaign depository as defined in section 106.021, Florida Statutes. All expenditures from the sub-account shall be subject to the expenditure requirements and limitations on the use of funds as provided in this section.<<

- (i) *Trigger Reporting.* Whenever a candidate for Mayor or the Board of County Commissioners who has elected to participate in election campaign financing under the provisions of this section receives contributions or makes expenditures that exceed >>100<< [[75]] percent of the applicable expenditure ceiling provided in subsection (e), the candidate shall, within 24 hours of reaching that level, file a report with the Supervisor of Elections, on forms to be provided by the Supervisor of Elections, stating that fact and any additional information required by the Supervisor of Elections. ~~[[Thereafter, the candidate shall file a supplemental report with the Supervisor of Elections within 24 hours of receiving contributions or making expenditures that exceed 100 percent of the applicable expenditure ceiling.]]~~ All reports required by subsection (i) shall be filed on diskettes>>_<< [[øf]] CD-ROMs >>or other approved electronic means<< simultaneously with and in addition to an original signed report as required by section 12.17 of the Code. The Supervisor of Elections shall electronically post the reports required by subsection (i) as provided in section 12.18 of the Code. ~~[[*(j) Expenditure Ceilings Lifted.* Whenever a candidate for Mayor or the Board of County Commissioners who has elected to participate or not to participate in election campaign financing under the provisions of this section receives~~

~~contributions or makes expenditures that exceed one hundred (100) percent of the applicable expenditure limit provided in subsection (e), all opposing candidates are, notwithstanding the provisions of subsections (c), (d), (e) or (g) or any other provision requiring adherence to such limit, released from such expenditure limit.]]~~ For the purposes of this section, a contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and it is returned to the donor within seventy-two (72) hours of receipt.

[[[k]]>>j<<) *Enforcement and Penalties.*

- (1) *Enforcement by the Ethics Commission.* The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce section 12-22 of the Code. In addition to any other penalties which may be applicable, a finding by the Ethics Commission that a person has violated subsections (c), (d), (e), (f), (g) or (i) shall subject said person to an admonition or public reprimand and/or a fine of two hundred fifty dollars (\$250.00) for the first such violation and five hundred dollars (\$500.00) for each subsequent violation. The Ethics Commission may also order a person to pay restitution when the person or a third party has received a pecuniary benefit as a result of the person's violation. The procedure for determining restitution shall be governed by an administrative order adopted by the County Commission and rules of procedure promulgated by the Ethics Commission.
- (2) *Prosecution by the State Attorney in State Court.* In addition to any other penalties which may be applicable, any individual who violates subsections (c), (d), (e), >>(f), (g)<< or [[(h)]] >>i<< shall be subject to a fine up to five thousand dollars (\$5,000.00) or imprisonment not to exceed three hundred sixty-four (364) days, or both.
- (3) >>Action for injunctive and other appropriate relief. In the event that contributions from the Fund have been improperly distributed to a candidate, the State Attorney or Inspector General shall be

empowered to seek appropriate relief including, but not limited to, injunctive relief, costs and restitution in a court of competent jurisdiction.

(4)<<Any person who has pled guilty, pled nolo contendere, been found guilty or been convicted of a violation of subsections (e), (f), >>(g) or (i)<< [[(h) — or — (j)]] as provided in subsections ([[k]])>>j<<(1) or ([[k]])>>j<<(2) >>or of any offense arising out of or relating to the distribution of funds to a candidate<< shall be barred from receiving funds from the Fund for a period of eight (8) years. >>A candidate shall also be barred from receiving contributions from the Fund for a period of eight (8) years if a volunteer, agent or employee over whom the candidate has control has pled guilty, pled nolo contendere, been found guilty or been convicted of a violation of subsections (e), (f), (g) or (i) as provided in subsections (j)(1) or (j)(2) or of any offense arising out of or relating to the distribution of funds to a candidate. The term “control” as used in the preceding sentence shall mean the power to prevent a violation from occurring.<<

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Gerald K. Sanchez

Sponsored by the Community Outreach, Safety and Healthcare Administration Committee