

MEMORANDUM

Agenda Item No. 4(F)

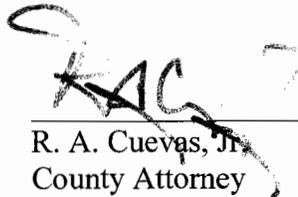
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 19, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance relating to the
Citizens' Independent
Transportation Trust (Trust)
and the People's Transportation
Plan; establishing greater
independence for the Trust

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



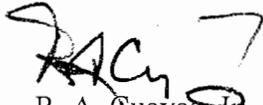
R. A. Cuevas, Jr.
County Attorney

RAC/jls

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss DATE: May 19, 2009
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SUBJECT: Agenda Item No. 4(F)

Please note any items checked.

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

**6 weeks required between first reading and second reading
(per Ordinance Nos. 02-116 and 02-117)**

**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 Mayor'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

2

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(F)
5-19-09

ORDINANCE NO. _____

ORDINANCE AMENDING CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (TRUST) AND THE PEOPLE'S TRANSPORTATION PLAN; ESTABLISHING GREATER INDEPENDENCE FOR THE TRUST CONSISTENT WITH THE COMMITMENT TO THE VOTERS; REQUIRING THE ESTABLISHMENT OF A FOUR YEAR WORK PLAN TAKING INTO CONSIDERATION THE COMMITMENTS MADE TO THE VOTERS; ESTABLISHING PROCEDURES FOR MODIFICATIONS TO THE FOUR YEAR WORK PLAN; AUTHORIZING THE TRUST TO AWARD CONTRACTS NOT EXCEEDING TWO MILLION DOLLARS SUBJECT TO COUNTY COMMISSION RATIFICATION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, on July 9, 2002, the Board of County Commissioners adopted Ordinance 02-116, approving, subject to voters' approval, the levying of a one half percent surtax for the development and construction of new transit and transportation projects throughout Miami-Dade County; and

WHEREAS, Exhibit One, which was attached to and incorporated into Ordinance 02-116, listed specific transportation and transit projects to be paid for in whole or in part with the half percent surtax funds; and

WHEREAS, on July 9, 2002, the Board of County Commissioners adopted Ordinance 02-117, creating the Citizens' Independent Transportation Trust to "monitor, oversee, review, audit, and investigate implementation of the transportation and transit projects funded in whole or in part with surtax proceeds"; and

WHEREAS, on November 5, 2002, the voters of Miami-Dade County agreed to tax themselves in order to implement the projects outlined in Exhibit One to Ordinance 02-116; and

WHEREAS, a more autonomous Citizens' Independent Transportation Trust charged with overseeing the implementation of the projects funded in whole or in part with the half percent surtax funds is in keeping with the commitment made to the voters,

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

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

ARTICLE XCVII.

CITIZENS' INDEPENDENT TRANSPORTATION TRUST

Sec. 2-1421. Citizens' Independent Transportation Trust created; powers over expenditure and use of proceeds of proposed Charter County Transit System Surtax.

* * *

(g) *Powers and duties.* The Trust shall have the following duties, functions, powers, responsibilities and jurisdiction with regard to use and expenditure of proceeds of any Charter County Transit System Surtax that is levied by the County under authority of Section 212.055(1), Florida Statutes:

- (1) To monitor, oversee, review, audit, and investigate implementation of the transportation and transit projects listed in any levy of the surtax, and all other projects funded in whole or in part with surtax proceeds;

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.

- (2) To assure compliance with any limitations imposed in the levy on the expenditure of surtax proceeds, including but not limited to:
- (a) Any limitation that surtax proceeds only be expended for the transportation and transit purposes specified in Section 212.055(1)(d)1--3, Florida Statutes (2001);
 - (b) Any limitation that no more than five (5) percent of surtax proceeds be expended on administrative costs, exclusive of project management and oversight for projects funded by the surtax;
 - (c) The limitation that the County Commission may not delete or materially change any County project listed ~~>>in the approved Four Year Work Plan<< [[on Exhibit 1 attached to the ordinance levying the surtax]]~~ >>in the approved Four Year Work Plan<< nor add any project thereto except as provided in this subsection (c). A proposed deletion, material change or addition of such a County project shall be initially reviewed by the Citizens' Independent Transportation Trust ("Trust"), which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the Trust's recommendation. ~~[[If the County Commission rejects the recommendation, the matter shall be referred back to the Trust for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the Trust's reconsidered recommendation. A two-thirds (2/3) vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the Trust.]]~~ << [[Exhibit 1]] >>Four Year Work Plan<< may be changed as a result of the MPO process as mandated by federal and state law; and

- (d) Any requirement with regard to maintenance of effort of general fund support for MDTA.
- (3) To assure compliance with federal and state requirements applicable thereto;
- (4) To require monthly reports from the Manager, County agencies and instrumentalities regarding the implementation of the projects funded by surtax proceeds (which reports shall be posted on-line, i.e., made publicly accessible on the Internet);
- (5) To file a report, including any recommendations, with the Mayor and the County Commission on a quarterly basis regarding the implementation of the projects funded by surtax proceeds; ~~[[and]]~~
- (6) To monitor, oversee and periodically report to the County Commission on the level of participation by CSBEs and CBEs in contracts funded in whole or in part with surtax proceeds, and to recommend ways to increase such participation~~[[.]]>>; and<<~~
- >>(7) To award contracts funded in whole or in part with surtax proceeds which do not exceed \$2 million without County Commission approval, subject to subsequent County Commission ratification. Any extension, renewal, or amendment to a contract funded in whole or in part with surtax funds resulting in the overall contract value exceeding \$2 million must be approved by the County Commission in accordance with Section 29-124(e).<<
- ~~[[(7)]]~~>>(8)<<Notwithstanding any provision to the contrary, to retain the services of consultants the Trust deems necessary to assist in its monitoring functions without the need for action by the County Commission, so long as the retaining of such consultants does not result in the budget for the Trust exceeding the amount approved by the County Commission during the annual budget approval process.
- (h) *Staff support.* The County Attorney shall serve as legal counsel to the Trust. The Trust may by a majority vote of

its membership hire an Executive Director. The Executive Director shall provide to the Trust adequate staff and support services to enable the Trust to carry out its duties and responsibilities. The Executive Director is authorized to hire and/or remove staff in order to provide adequate support for the Trust. The Executive Director may be removed by a two-thirds (2/3) vote of the Trust members present.

- (i) *Trust subject to Florida Open Government law, the Conflict of Interest and Code of Ethics Ordinance and the investigatory powers of the Inspector General.* The Trust shall at all times operate under the Florida Open Government Laws, including the "Sunshine" and Public Records laws, and shall be governed by the Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1 of this Code providing, among other things, a proscription on transacting business with the County and on oral communications with bidders or their representatives during the bid process, and a requirement for financial disclosure. The Trust and its actions shall be subject to the investigatory powers of the Inspector General provided in Section 2-1076 of this Code. >>The Inspector General shall submit to the County Commission and the County Mayor an annual report detailing its conclusions and recommendations related to projects and contracts funded in whole or in part with surtax funds. A representative from the Office of the Inspector General shall attend all meetings of the Trust. An independent audit shall be performed every three years. A copy of the audit report shall be filed with the County Commission and the County Mayor and shall outline the use of surtax funds and the progress of projects in the Four Year Work Plan.<< Additionally, Trust members shall not lobby, directly or indirectly, the Mayor, any member of the County Commission or any member of County staff regarding a project funded in whole or in part by surtax proceeds, or regarding any person or business bidding for or under contract for a project funded in whole or in part with surtax proceeds. Trust members shall not have ~~[[from]]~~ any interest, direct or indirect, in any contract with the County or in any corporation, partnership or other entity that has a contract with the County.
- (j) *Removal of Trust members.* A finding by the Ethics Commission that a person serving as a member of the Trust has in the course of his or her service willfully violated any

provision of Section 2-11.1 of this Code (the Conflict of Interest and Code of Ethics Ordinance) shall constitute malfeasance in office and shall effect an automatic forfeiture of such person's position as a member of the Trust.

Section 2. Section 29-124 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 29-124. Special fund created; uses of surtax proceeds; and role of Citizens' Independent Transportation Trust.

The surtax proceeds collected by the State and distributed hereunder shall be deposited in a special fund set aside from other County funds in the custody of the Finance Director of the County. Moneys in the special fund shall be expended for the transportation and transit projects (including operation and maintenance thereof) set forth in ~~[[Exhibit 1 to this article (including those projects referenced in the ballot question presented to the electors to approve this levy)]]~~ >>the adopted Four Year Work Plan<<, subject to any amendments thereto made in accordance with the MPO process or made in accordance with the procedures specified in subsection (d) of this Section.

Expenditure of surtax proceeds shall be subject to the following limitations:

- (a) Surtax proceeds shall be applied to expand the Golden Passport Program to all persons (regardless of income level who are over the age of 65 or are drawing Social Security benefits, and to provide fare-free public transportation service on Metromover, including extensions.
- (b) Surtax proceeds may only be expended for the transportation and transit purposes specified in Section 212.055(1)(d)1--3 Fla. Stats. (2001).
- (c) The County shall not expend more than five percent of the County's share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax.

- (d) ~~[[The County Commission shall not delete or materially change any County project contained in the list attached as Exhibit 1 to this article nor add any project to the list except in accordance with the procedures set forth in this subsection (d). A proposed deletion, material change or addition of a County project shall be initially reviewed by the Citizens' Independent Transportation Trust ("Trust"), which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the Trust's recommendation. If the County Commission rejects the recommendation, the matter shall be referred back to the Trust for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the Trust's reconsidered recommendation. A two-thirds vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the Trust.]] >>By October 1, 2009 and every four years thereafter, the Trust shall in consultation with the County Mayor and taking into consideration the commitments made to the voters submit to the County Commission a recommended Four Year Work Plan. The Four Year Work Plan shall include only those projects listed in Exhibit One attached to Ordinance 02-116, with the exception of those projects which have been both added to Exhibit One and are the subject of ongoing contractual obligations. Said Work Plan when approved by the County Commission shall supersede and replace the original Exhibit One to the People's Transportation Plan, all subsequent amendments to Exhibit One, and all previous Work Plans. Said Work Plan shall include a listing of all projects to be funded in whole or in part with surtax funds, along with the estimated cost and date of completion of said projects. The approved Work Plan may be modified following a recommendation by the Trust and subsequent public hearing and County Commission approval of the Trust's recommendation. The County Commission may modify the approved Work Plan without a Trust recommendation only upon a 2/3 vote of the~~

Commission membership and a written recommendation by the County Mayor indicating that an emergency involving public safety or security exists or that the failure to take action is likely to result in the loss of critical funding.<< The foregoing notwithstanding, the list of County projects contained in ~~[[Exhibit 1]]~~ >>the Work Plan<< may be changed as a result of the MPO process as mandated by federal and state law.

- (e) No surtax proceeds may be used to pay the costs of a contract >>in excess of \$2 million<< awarded by action of the County Commission until such action has become final (either by expiration of ten days after such action without veto by the Mayor, or by Commission override of a veto) and either: i) the Trust has approved same; or, ii) in response to the Trust's disapproval, the County Commission re-affirms its award by two thirds (2/3) vote of the Commission's membership. The bid documents for all County contracts >>anticipated to exceed \$2 million which are to be<<funded in whole or in part with surtax proceeds shall provide that no award shall be effective and no contractual relationship shall arise with the County unless and until approved by the Trust or re-affirmed by the County Commission as provided in this subsection. >>Those contracts funded in whole or in part with surtax proceeds which do not exceed \$2 million may be awarded by the Trust without County Commission approval, subject to subsequent County Commission ratification.<< The foregoing notwithstanding, awards of contracts for services in support of the administration of the Trust or in support of the Trust's oversight function shall not require County Commission or Trust approval, so long as the individual contract amount does not exceed one thousand dollars (\$1,000).
- (f) On a quarterly basis, the Executive Director of the CITT shall submit a written report to the Commission, the Mayor and the Manager of all expenditures made pursuant to Section 29-124 herein.

(g) >>Every three years the Trust shall submit a report to the County Commission and the County Mayor detailing the progress of each project in the Work Plan. Said Report shall include for each project in the Work Plan the percentage of work completed, the anticipated completion date, the expenditures incurred, and the expected cost of completion.<<

[[~~(g)~~]]>>(h)<<Twenty percent of surtax proceeds shall be distributed annually to those cities existing as of November 5, 2002 that meet the following conditions:

(i) That continue to provide the same level of general fund support for transportation that is in their FY 2001-2002 budget in subsequent Fiscal Years. Any surtax proceeds received shall be applied to supplement, not replace a city's general fund support for transportation;

(ii) That apply 20 percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related infrastructure. Any city that cannot apply the 20 percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that city and immediately adjacent areas. If the city cannot expend such proceeds in accordance with either of the preceding sentences, then such proceeds shall carry over and be added to the overall portion of surtax proceeds to be distributed to the cities in the ensuing year and shall be utilized solely for the transit uses enumerated in this subsection (ii); and

(iii) Surtax proceeds distributed amongst the existing cities shall be distributed on a pro rata basis based on the ratio such city's population bears to the total population in all such cities (as adjusted annually in

accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) annually to those cities that continue to meet the foregoing conditions. For purposes of the foregoing, whenever an annexation occurs in an existing city, the number of persons residing in such annexed area at the time it is annexed shall be excluded from all calculations. Increases in population in areas annexed over and above the population in such area at the time of annexation which occur after annexation shall be included in subsequent years' calculations.

- (iv) that do not expend more than 5% of its municipal share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax. Administrative costs shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by transit surtax funds.

[[~~(h)~~]]>>(i)<< Newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax, taking into consideration the neighborhood and municipal projects identified in Exhibit 1, as amended, within the boundaries of the new municipalities. The preceding sentence shall not affect the twenty (20) percent share provided herein for municipalities existing on November 5, 2002.

Section 3. 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 4. 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 5. 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:

Handwritten signature of the County Attorney, appearing to be "KAC", written over a horizontal line.

Prepared by:

Bruce Libhaber

Prime Sponsor: Commissioner Rebeca Sosa