MEMORANDUM

Agenda Item No. 4(A)

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

DATE: April 6, 2010

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

SUBJECT: Ordinance amending Chapter 25A of the Code; authorizing Commission actions if specified conditions pertaining to the financial status of the Public Health Trust have occurred or will likely occur, including formation of a Financial Oversight Board with specified powers to act as the governing body of the Public Health Trust

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Carlos A. Gimenez and Co-Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

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MEMORANDUM

(Revised)

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

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Please note any items checked.

_____ "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

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

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 4(A)

4-6-10

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 25A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AUTHORIZING COMMISSION ACTIONS IF SPECIFIED CONDITIONS PERTAINING TO THE FINANCIAL STATUS OF THE PUBLIC HEALTH TRUST HAVE OCCURRED OR WILL LIKELY OCCUR, INCLUDING FORMATION OF A FINANCIAL OVERSIGHT BOARD WITH SPECIFIED POWERS TO ACT AS THE GOVERNING BODY OF THE PUBLIC HEALTH TRUST FOR UP TO TWENTY FOUR MONTHS UNLESS SHORTENED OR LENGTHENED BY RESOLUTION OF THE COUNTY COMMISSION; WAIVING THE PROCEDURES FOR CREATION AND REVIEW OF COUNTY BOARDS OF ARTICLE IB OF THE CODE FOR ANY OVERSIGHT BOARD ESTABLISHED UNDER AUTHORITY OF THIS ORDINANCE; 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. Chapter 25A of the Code of Miami-Dade County, Florida, is hereby amended by adding Section 25A-9 to read as follows:[1]

* * *

>>Sec. 25A-9. **Financial Sustainability.**

It is the intent of the Commission to promote, protect, maintain, and improve the health and safety of all residents and visitors of Miami-Dade County through a fully functioning and sustainable public health trust.

(a) *Conditions.* The Commission finds that it is in the best interest of the public it serves to take action to preserve the Trust and to ensure its financial sustainability by requiring the Trust to notify the Commission, the Mayor and the Commission Auditor when any one of the following conditions occurs:

[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.

(1) Trust failure to, within the same fiscal year in which due, timely make any applicable debt payments as a result of a lack of funds.

(2) Trust failure to pay uncontested claims from creditors within ninety (90) days after the claim is presented, as a result of a lack of funds.

(3) Trust failure to transfer at the appropriate time, due to a lack of funds:

(i) taxes withheld on the income of employees; or

(ii) employer and employee contributions for either federal social security or any pension, retirement, or benefit plan of an employee.

(4) Trust failure to pay for one pay period, due to a lack of funds:

(i) Wages and salaries owed to employees; or

(ii) Retirement benefits owed to former employees.

(5) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the Trust, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of the Trust to carry out its functions, are not considered resources available to cover reported deficits.

(b) *Notice*. When one or more of the conditions specified in Subsection (a) have occurred, or likely will occur within one hundred twenty (120) days, the Trust shall submit written notice to the Mayor, Chairperson and members of the Commission, and the Commission Auditor. Upon receipt of such notice, the Chairperson of the Commission shall place the item on the agenda for consideration at the next regularly scheduled Commission

meeting, or a special meeting may be called in accordance with Commission rules in order to address the item.

(c) *Assistive Measures.* Upon notification by the Trust or another party that one or more of the conditions in Subsection (a) have occurred or likely will occur, the Commission shall determine whether the Trust needs assistance to resolve or prevent the condition. If assistance is needed, the Commission may implement measures to assist the Trust in resolving the condition. Such assistive measures may include, but are not limited to formation of a financial oversight board, directing an audit, providing technical assistance, and/or requiring a recovery plan as detailed below:

(1) *Financial Oversight Board.* The Commission may establish a specially empowered financial oversight Board of Trustees ("Oversight Board") that shall oversee the operation, maintenance and governance of the Trust during its tenure. Notwithstanding any provision of the Code to the contrary, the Oversight Board shall be authorized and empowered to serve as the governing body of the Trust effective upon appointment of all members of the Oversight Board.

(i) Oversight Board Authority. During its tenure, the Oversight Board shall be responsible for the operation, maintenance and governance of Trust designated facilities, as that term is defined and used in Section 25A-2(a), [Designated Facilities] herein. During the tenure of the Oversight Board, the governance powers of the currently sitting Trust Board of Trustees shall suspend, and that Board of Trustees shall not serve as governing body of the Trust. The Mayor and the County Attorney shall provide appropriate support to the Oversight Board.

The currently sitting Board of Trustees shall serve as an advisory board committee to the Oversight Board. Upon termination of the Oversight Board, the Board of Trustees shall resume governance powers of the Trust and designated facilities. The terms of all currently sitting voting members of the Board of Trustees and ex-officio members shall continue through expiration as provided for in Section 25A-3(e), [Tenure of Trustees] herein, and in accord with their original appointment to the Board of Trustees. During the tenure of the Oversight Board, the provisions of Sections 25A-3(d), [Appointment and

removal of Trustees], and 25A-3(e), [Tenure of Trustees] herein, shall apply solely to the currently sitting Board of Trustees serving as an advisory board committee to the Oversight Board. A currently sitting Trustee may be removed by a majority vote of the Board of County Commissioners for cause.

(ii) *Oversight Board Term.* The Oversight Board shall serve for no longer than twenty four (24) months, or such shorter or longer period of time as determined by resolution of the Commission. The Oversight Board may recommend shortening or lengthening its tenure by submitting to the Commission a duly enacted resolution of the Oversight Board. The Commission shall consider any such resolution, however, the Commission shall be under no obligation to take affirmative action upon the recommendation. The Commission may consider, among other factors, whether the conditions specified in Subsection (a) have resolved, or are likely to resolve promptly, when determining whether to shorten or lengthen the Oversight Board's term.

(iii) *Composition and Organization.* The Oversight Board shall be composed of seven (7) voting members, none of whom shall be an employee of the Trust. Four (4) of the seven (7) members of the Oversight Board shall be appointed by resolution of the Commission. Those Oversight Board members shall be appointed by resolution of the Commission after having been selected from a list of persons nominated by each Commission member.

One (1) member of the Oversight Board shall be appointed by the Mayor in writing, and a copy thereof shall be filed with the Clerk of the Commission. One (1) member of the Oversight Board shall be appointed by the Chairperson of the Miami-Dade County Legislative Delegation in writing, and a copy thereof shall be filed with the Clerk of the Commission. One (1) member of the Oversight Board shall be appointed by the Governor in writing, and a copy thereof shall be filed with the Clerk of the Commission.

Upon any vacancy occurring on the Oversight Board, the Oversight Board shall notify the Chairperson of the Commission and shall request that the vacancy be

filled by appointment by the Commission, Mayor, Chairperson of the Miami-Dade County Legislative Delegation, or Governor as appropriate.

Each member of the Oversight Board shall be of an outstanding reputation of integrity, responsibility, and commitment to serving the community. Each member shall have experience in hospital operations, management, finance, business or other experience relevant to the Oversight Board's duties and responsibilities. No member of the Oversight Board shall be an employee of the Trust or County or an elected official. No member of the Oversight Board shall have any conflict of interest, as defined in the Conflict of Interest Ordinance, with the Trust or its Designated Facilities. Each member of the Oversight Board shall be a United States citizen and a permanent resident and duly qualified elector of Miami-Dade County, unless the Commission waives the residency requirement by a two-thirds vote of its membership. A member of the Oversight Board may be removed for cause by a majority vote of the Board of County Commissioners.

Upon receipt of any initial or vacancy appointment filing by the Mayor, Governor or the Chairperson of the Miami-Dade County Legislative Delegation, the Clerk of the Commission shall serve copies on each member of the Commission. Any Commissioner may request that the appointments be presented at the next regularly scheduled Commission meeting for review. Such request shall not be subject to the four-day rule. Absent any such action at the next regularly scheduled Commission meeting, the appointments shall be deemed ratified.

Before entering upon the duties of office, each appointee to the Oversight Board shall give bond in the amount of one hundred thousand dollars ($100,000.00) to the Clerk of the Commission for the faithful performance of the duties of office and shall take the prescribed oath of office. This bond also is required of currently sitting Trustees. Oversight Board Trustees shall serve without compensation but shall be entitled to reimbursement for necessary expenses, including the expense of performance bonds, incurred in the discharge of their duties.

The Oversight Board, by majority vote following nomination, shall elect its Chairperson and Vice-Chairperson. The Oversight Board may, at its sole discretion, adopt, modify and amend the existing bylaws and rules and regulations of the Public Health Trust for the Oversight Board's governance and for the operation, governance, and maintenance of designated facilities. Such bylaws and amendments shall not be inconsistent with the ordinances of the County. The Oversight Board shall form subcommittees to assist in its work. The subcommittee membership shall not be limited to members of the Oversight Board.

The Oversight Board shall hold regular meetings and record such meetings in accordance with the requirements for the Board of Trustees as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein. Except as specifically provided in Section 25A-9(c), [Assistive Measures], herein, during its tenure, the Oversight Board shall have all of the powers, duties and responsibilities customarily vested in the Board of Trustees of the Trust and as provided for in Chapter 25A.

(iv) *Power and duties.* As governing body of the Trust, the Oversight Board shall exercise supervisory control over the operation, maintenance, and governance of all designated facilities and of all functions and activities taking place in connection with the operation of designated facilities and shall be authorized to exercise such powers as provided for in Section 25A-4, [Powers and duties of the Trust], herein, except as modified hereinafter:

(A) *Appointment and Evaluation of the Chief Executive Officer.* The Oversight Board, in its sole discretion, shall be empowered to evaluate, compensate, appoint, and remove a Chief Executive Officer of the Trust. The Oversight Board shall evaluate the Chief Executive Officer's performance and compensation periodically, at its discretion, but no less than annually. During the tenure of the Oversight Board, the Trust Compensation and Evaluation

Committee as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein, shall cease to meet and make recommendations regarding compensation for the Trust Chief Executive Officer and any other Trust personnel.

(B) *Health care delivery policies*. The Oversight Board shall develop policies, procedures and practices to promote successful operation of the Trust and its designated facilities and to ensure financial sustainability of the Trust. The Oversight Board shall recommend health care policies to be approved by the Commission relevant to the short and long term financial sustainability of the Trust and the designated facilities.

(C) *Contracts*. For purposes of compliance with the formal bid requirements of Section 5.03(D) of the Charter of Miami-Dade County, Florida, the term "Board" as used in Section 5.03(D) shall be construed to be "Oversight Board."

(D) *Personnel*. Any personnel actions and policies taken by the Oversight Board shall not be inconsistent with any applicable collective bargaining agreements, as amended. The Oversight Board shall recommend to the Commission policies for labor management and the negotiations of labor agreements with organizations representing Trust employees. Such recommendations may include, but are not limited to, recommendations regarding compensation policies, performance analyses and evaluation, pension liabilities and Trust pension obligations during a prospective fifteen (15) year period.

(E) *Approval of medical staff bylaws*. The medical staff of the designated facilities shall submit any recommended amendments to the bylaws, rules and regulations of the medical staff to the Oversight Board for approval. Any

amendments shall be in accordance with the standards of all relevant accrediting organizations and all applicable laws.

(F) *Intergovernmental Cooperation.* The proposed annual operating agreement between the Trust and Miami-Dade County, as described in Section 25A-4(i), [Intergovernmental cooperation], herein shall be approved by the Oversight Board and then submitted to the Board of County Commissioners for approval in September of the applicable year. During the tenure of the Oversight Board, the Trust/County Committee, as described in Section 25A-4(i), herein, shall cease to meet, review, approve, and make recommendations regarding the Annual Operating Agreement.

(v) Financial support for the Public Health Trust. The Oversight Board shall be empowered to enact resolutions requesting that the County Commission effectuate the issuance of bonds. The Oversight Board shall be empowered to enact resolutions authorizing the Trust to borrow money.

(vi) Trust/University of Miami Annual Operating Agreement. During the tenure of the Oversight Board, the membership of the Trust/UM Committee as described in Section 25A-3(f), [Organization, powers and duties of the Board of Trustees], herein, shall consist solely of the Trust Chief Executive Officer and the Chairperson of the Oversight Board, or his or her designee. The Trust/UM Committee shall have responsibility to negotiate the Annual Operating Agreement with the University of Miami and shall submit their recommendations regarding the Annual Operating Agreement to the Oversight Board for its review and approval.

(vii) Reporting. Upon appointment, the Oversight Board shall report to the Commission at each regularly scheduled Board of County Commissioners meeting, and at any special meeting, scheduled during the Oversight Board's tenure, unless otherwise required by the Commission. Such reporting shall replace the annual, joint meeting and reporting provided for in Section 25A-4(b)(3), [Submittal of planning recommendations for designated facilities], herein.

(2) *Audit*. The Commission may direct the Commission Auditor, or the external auditor of the County to audit any or all records of the Trust in accordance with Section 25A-5(c), [General financial provisions], herein. The Commission Auditor or the County's external auditor shall consult with the Trust to identify any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with applicable law. The Commission Auditor or the County's external auditor shall report its preliminary findings to the Commission within sixty (60) days of audit commencement. The Trust and its internal and external auditors shall cooperate fully with the Commission Auditor, or the County's external auditor.

(3) *Technical Assistance*. The Commission may provide technical assistance to the Trust.

(4) *Recovery Plan*. The Commission may require and approve a plan, to be prepared by the Trust in consultation with the Mayor, or his or her designee, and the Board of County Commissioners prescribing actions that will cause the Trust to no longer be subject to this section. However, if the Commission establishes an Oversight Board and requires preparation of a recovery plan, the Trust may prepare the recovery plan in consultation with the Oversight Board as well as the Mayor, his or her designee, or the Commission.

The plan shall be submitted to the Commission within sixty (60) days of the Commission's action requiring the plan, or such longer period of time as determined by the Commission. The Trust shall submit copies of the plan to the members of the Commission concurrently with submission to the Mayor. The plan must include but need not be limited to:

(i) Provision for payment in full of obligations outlined in Subsection (a), designated as priority items, that are currently due or will come due.

(ii) Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

(iii) The prohibition of a level of operations which can

be sustained only with nonrecurring revenues.<<

Section 2. The standards and procedures for creation and review of County Boards provided in Article IB, Sections. 2-11.36 through 2-11.40, shall not apply to any Transition Board established under authority of this ordinance.

Section 3. This ordinance shall supersede those provisions of any existing ordinance, resolution or policy in conflict herewith.

Section 4. 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 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance 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 6. 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:

Eugene Shy, Jr.
Valda Clark Christian

Prime Sponsor: Commissioner Carlos A. Gimenez
Co-Sponsor: Commissioner Rebeca Sosa