

MEMORANDUM

Agenda Item No. 11(A)(8)

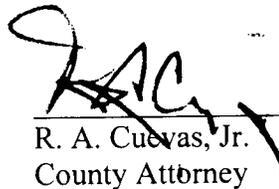
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 3, 2010

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

SUBJECT: Resolution requesting that the Commission on Ethics and Public Trust conduct conflict of interest checks related to contract lobbyists and provide to the Board a report and recommendation on any County contract lobbyist conflict of interest

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Katy Sorenson, and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM

(Revised)

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

DATE: June 3, 2010

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County Attorney

SUBJECT: Agenda Item No. 11(A)(8)

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. 11(A)(8)
6-3-10

RESOLUTION NO. _____

RESOLUTION REQUESTING THAT THE COMMISSION ON ETHICS AND PUBLIC TRUST CONDUCT CONFLICT OF INTEREST CHECKS RELATED TO COUNTY CONTRACT LOBBYISTS AND PROVIDE TO THE BOARD A REPORT AND RECOMMENDATION ON ANY COUNTY CONTRACT LOBBYIST CONFLICT OF INTEREST

WHEREAS, on November 11, 1999, the Board approved Resolution No. 1236-99, which provided that no County contract lobbyist or subconsultant shall represent any client and/or issue that may be adverse to the County without first requesting and obtaining permission from the County; and

WHEREAS, on May 9, 2000, the Board passed Ordinance No. 00-64, which provided that no person or entity that received compensation from the County for lobbying on behalf of the county or any of its agencies or instrumentalities at either the state, national or municipal level shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board grants a specific waiver for a specific lobbying activity; and

WHEREAS, the failure of any county contract lobbyist to comply with the provisions of Ordinance No. 00-64 shall result in either or both of the following:

- (1) That lobbyist's contract with the county being voidable by the county; and
- (2) A prohibition, for a period of up to three years, as determined by the Board of County Commissioners, on the lobbyist's entering into a lobbying contract with the county; and

WHEREAS, on November 3, 2009, the Board approved Ordinance No. 09-98, which provided that all contract lobbyist conflict waiver requests are exempt from committee review and would be heard directly by the full board; and

WHEREAS, on January 21, 2010, the Board approved Resolution No. 56-10, which required all county contract lobbyists to obtain a conflict waiver from the Board of County Commissioners prior to representing any client in any forum that is adverse to county's interests, whether or not such county interest is expressly set forth in the county's legislative package; and

WHEREAS, Resolution No. 56-10 also requires all conflict of interest waiver requests to be submitted directly to the Chairman of the Board of County Commissioners, who shall place the conflict waiver request on the next available Board of County Commissioners agenda; and

WHEREAS, Resolution No. 56-10 further required all County contract lobbyists to obtain a waiver from the Board for any actual or perceived conflicts of interest or provide a statement that the contract lobbyist has no conflicts prior to award or renewal of a contract, subcontract or work order, and placed all County contract lobbyists under a continuing, affirmative duty during the term of the lobbying contract and any renewal terms to promptly seek in writing and obtain a waiver from the Board for any conflict of interest prior to representing any entity in any forum; and

WHEREAS, on January 24, 2006, the Board approved Resolution No. 133-06, which authorized the County Manager to execute one-year agreements that included three one-year renewal options in the County's sole discretion with Greenberg Traurig, P.A., Alcalde & Fay, and Tew Cardenas LLP for governmental representation before the U.S. Congress and the federal executive branch as prime consultants, along with various subconsultants; and

WHEREAS, on September 26, 2006, the Board approved Resolution No. 1070-06, which authorized the County Manager to execute one-year agreements that included three one-year renewal options in the County's sole discretion with Ronald L. Book, P.A. and Rutledge, Ecenia, Purnell, & Hoffman, P.A. for governmental representation before the Florida

Legislature and the State of Florida executive branch as prime consultants, along with various subconsultants; and

WHEREAS, the federal and state agreements require all County contract lobbyists including both the prime consultants and subconsultants to comply with the provisions of Resolution No. 1236-99 and Ordinance No. 00-64, as well as the County's general Conflict of Interest Ordinance, Ordinance No. 72-82, as amended; and

WHEREAS, the federal and state agreements also place all County contract lobbyists including both the prime consultants and subconsultants under an obligation to disclose all clients to the County and to advise the County immediately when any actual, possible or perceived conflict may arise; and

WHEREAS, the federal and state agreements impose these obligations on County contract lobbyists on a continuing basis throughout the term of the contract and any extensions or renewal terms; and

WHEREAS, the federal and state agreements provide that the Board may take, in its sole discretion, any action regarding a conflict waiver request, including but not limited to the following:

(1) Grant a waiver and allow the lobbying firm to continue to represent both the County and the other client on all issues, including the issue on which a conflict or potential conflict exists;

(2) Refuse to grant a waiver and require the lobbying firm to choose between representing either the County or the other party, requiring the lobbying firm to entirely give up its representation either of the County or the other party;

(3) Refuse to grant a waiver and void the County's contract with the lobbying firm;

(4) Grant a limited waiver and allow the lobbying firm to continue to represent both the County and the other party under whatever limitations or restrictions the County, in its sole discretion, determines to be appropriate; and

WHEREAS, the Commission on Ethics and Public Trust can play an important role in ensuring that County contract lobbyists do not work in conflict to the interests of the County by:

(1) Conducting a conflicts check of all clients that County contract lobbyists represent;

(2) Reviewing all conflict waiver requests submitted to the County by County contract lobbyists, and providing the Board a report and recommendation on such conflict waiver requests; and

(3) Providing the Board a report and recommendation on whether a conflict is presented in any situation in which it comes to the attention of the County that a conflict of interest may have arisen,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board requests that the Commission on Ethics and Public Trust:

Section 1. Conduct conflict checks related to County contract lobbyists within 45 days of the effective date of this resolution and annually thereafter, along with checks of any new clients or issues that may arise.

Section 2. Review all conflict waiver requests submitted to the County by County contract lobbyists, and provide the Board a report and recommendation on whether a conflict is presented related to such requests.

Section 3. Provide the Board a report and recommendation on whether a conflict is presented in any situation in which it comes to the attention of the County that a conflict of interest may have arisen.

Section 4. The Mayor or Designee is directed to include language reflecting the policies set forth in this resolution in all future federal and state lobbying requests for qualifications, other procurement documents as applicable, contracts and contract renewals.

The Prime Sponsor of the foregoing resolution is Commissioner Katy Sorenson and the Co-Sponsors are Commissioner Sally A. Heyman and Commissioner Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

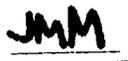
The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of June, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Jess M. McCarty



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



Legislative Notes

Agenda Item: 11(A)8

File Number: 100870

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

Date of Analysis: May 10, 2010

Type of Item: Resolution

Prime Sponsor: Commissioner Katy Sorenson

Co-Sponsors: Commissioner Sally A. Heyman, and Commissioner Rebeca Sosa

Summary

This item will require the Commission on Ethics and Public Trust to do the following:

- Conduct conflict of interest checks related to contract lobbyists within 45 days of the effective date of the proposed resolution, and annually thereafter;
- Review all conflict waiver requests submitted to the County by County contract lobbyists, and provide the BCC with a report and recommendation on whether a conflict is a present;
- Provide the BCC with a report and recommendation on whether a conflict of interest is presented in any situation which comes to the attention of the County;

Background and Relevant Legislation

Numerous resolutions have been passed by the BCC regarding the County's contract lobbyists and subconsultants and their representation of interests adverse to the County's:

Legislative History	
Resolution or Ordinance No.	Description
Ordinance No. 72-82	Establishes the County's general Conflict of Interest Ordinance
R-1236-99 Nov. 11, 1999	Provides that no County contract lobbyist or subconsultant shall represent any client and/or issue that may be adverse to the County without first requesting and obtaining permission from the County
Ordinance No. 00-64 May 9, 2000	No person or entity that received compensation from the County for lobbying on behalf of the county shall represent any entity in any forum to support a position in opposition to the that of the County unless the Board of County Commissioners grants specific waiver for the lobbying activity
Ordinance No. 09-98	All conflict waiver requests are exempt from committee review and will be heard directly by the full BCC.
Ordinance No. 56-10	Requires all County contract lobbyists to obtain a conflict waiver from

	<p>the BCCC prior to representing any client in any forum that is adverse to the County's interests, whether or not such interest is expressly stated in the County's legislative package.</p> <p>Requires all County contract lobbyists to obtain a waiver from the BCC for any actual or perceived conflicts of interest or provide a statement that the lobbyist has no conflicts prior to award or renewal of a contract.</p> <p>Placed all County contract lobbyists under a continuing, affirmative duty during the term of the contract to seek in writing and obtain a waiver from the BCC for any conflict of interest prior to representing any entity in any forum.</p>
Legislative History of Lobbyist Contracts	
R-133-06	Authorized the County Manager to execute 1-year agreements with 3 1-year renewal options with Greenberg Traurig, P.A., Alcade & Fay, and Tew Cardenas LLP for representation before the U.S. Congress and the federal executive branch.
R-1070-06	Authorized the County Manager to execute a 1-year agreement with 3 1-year options-to-renew with Ronald L. Book, P.A. and Rutledge, Ecenia, Purnell, & Hoffman, P.A. for representation before the Florida Legislature and the State of Florida executive branch

According to the federal and state contract lobbyist agreements, the BCC may take, in its sole discretion, any action regarding a conflict waiver request, including but limited to:

- 1) Grant waiver and allow the lobbying firm to continue to represent both the County and the other client on all issues;
- 2) Refuse to grant a waiver and require the lobbying firm to choose between representing the County or the other party
- 3) Refuse to grant a waiver and void the County's contract with the lobbying firm;
- 4) Grant a limited waiver and allow the lobbying firm to continue to represent both the County and the other party under whatever restrictions the County deems appropriate.

Previous Waivers of Conflict of Interest

- On April 21 ,2009, the BCC approved a conflict waiver request by Greenberg Traurig, P.A. in its role as bond counsel to the County related to DERM enforcement litigation actions in which Greenberg Traurig, P.A. represented a number of defendants.
- On June 2, 2009, the BCC approved a conflict waiver request by Greenberg Traurig, P.A. pursuant to its federal lobbying contract.

The Commission on Ethics and Public Trust

In 1996, the citizens of Miami-Dade County voted to amend the Home Rule Charter to create an Ethics Commission. Subsequently, the Board of County Commissioners, through Ordinance 97-105, established the Commission on Ethics and Public Trust, an independent agency with advice-giving and quasi-judicial powers. The Ethics Commission is composed of five volunteer members who serve staggered terms of four years each.

The Commission staff currently reviews complaints submitted to it and conducts a preliminary analysis to ensure the complaint is legally sufficient. If the complaint is deemed legally sufficient, the Ethics Commission will make a probable cause determination. At this stage, if the Commission finds no probable cause, the complaint will be dismissed. If the Commission finds there is probable cause, the matter can be set for a public hearing and such proceedings must comply with the Sunshine Law. Upon the conclusion of the hearing, the Commission shall make a finding and issue a report as to whether any provision within its jurisdiction has been violated. If the Commission declares a violation has been committed, they shall issue an order imposing the appropriate penalty, which may include fines, letters of instructions or other penalties which may be imposed by law.

Prepared by: Jason T. Smith