MEMORANDUM

Agenda Item No. 7(H)

(Second Reading 11-4-10)

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

DATE: July 20, 2010

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

SUBJECT: Ordinance amending County Code to include new article entitled "Voluntary Energy Efficiency and Renewable Energy Program"

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

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: November 4, 2010

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

From: George M. Burgess
County Manager

Subject: Fiscal impact of ordinance amending County Code to include new article entitled "Voluntary Energy Efficiency and Renewable Energy Program"

The ordinance amending the County Code to include a new article entitled "Voluntary Energy Efficiency and Renewable Energy Program" may have a fiscal impact to Miami-Dade County. There are a variety of factors, such as the funding mechanism utilized and program administration expenses. In addition, actions taken by the Federal Housing Agency and other entities could reshape the existing financing models that include public and private funding or a combination of both. Therefore, any additional costs stemming from these latter actions are also difficult to determine at this point in time. It is anticipated that these costs can be passed along to program participants, depending on the financial model that is selected by the County.

Susanne M. Torriente,
Sustainability Director

fis7410

MEMORANDUM

(Revised)

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

DATE: November 4, 2010

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

SUBJECT: Agenda Item No. 7(H)

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. 7(H)
11-4-10

ORDINANCE NO. _____

ORDINANCE AMENDING COUNTY CODE TO INCLUDE NEW ARTICLE ENTITLED "VOLUNTARY ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAM" TO PROVIDE ASSISTANCE FOR VOLUNTARY FINANCING OF SPECIFIED ENERGY EFFICIENT AND RENEWABLE ENERGY IMPROVEMENTS FOR RESIDENTIAL AND COMMERCIAL PROPERTY; AND PROVIDING FOR DEFINITIONS, ENERGY AUDITS, AGREEMENTS, PROGRAM ADMINISTRATION, COLLECTION OF NON-ADVALOREM ASSESSMENTS PURSUANT TO SECTION 197, FLORIDA STATUTES, SEVERABILITY AND EFFECTIVE DATE

WHEREAS, Miami-Dade County, Florida (the "County") is a charter county and political subdivision of the State of Florida ("State"), duly organized and operating under the Constitution, the laws of the State, its Home Rule Charter and Amendments (the "Home Rule Charter") and its Code of Ordinances (the "Code"); and

WHEREAS, pursuant to Resolution No. R-1431-08, the County has committed to participate in the U.S. Cool Counties Program and has agreed to pursue the region-wide goal of reducing greenhouse gas emissions to 80% of 2010 level emissions by 2050; and

WHEREAS, this Board adopted R-124-09 supporting the Governor and Public Service Commission's goal of achieving 20% of Florida's energy from renewable sources by 2020; and

WHEREAS, this Board adopted Resolution No. R-143-10 on February 2, 2010 in which it expressed an intent to establish a voluntary energy efficiency and renewable energy program

and directed the administration to present a report outlining the elements of such a program which report was presented to the Board on May 17, 2010; and

WHEREAS, the State of Florida has declared it the public policy of the State to develop energy management programs aimed at promoting energy conservation; and

WHEREAS, the Florida legislature recently enacted Section 163.08, Florida Statutes ("Section 163.08") which among other provisions, authorizes counties and cities to establish voluntary energy efficiency and renewable energy programs for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment, a municipal or county lien, or through any other lawful method; and

WHEREAS, when enacting Section 163.08, the Florida Legislature determined in its findings that there is a compelling state interest in enabling property owners to voluntarily finance energy efficient and renewable energy improvements with local government assistance; and

WHEREAS, the Board finds that the installation of energy efficient improvements and renewable energy improvements by its citizens on a voluntary basis with the assistance of the County is an important strategy to advance the public interest of energy conservation, renewable energy development, and greenhouse gas emissions reduction; and

WHEREAS, the Board acknowledges that there are barriers to its citizens who own property and wish to participate in a voluntary energy efficiency and renewable energy program including the high upfront cost, difficulty in financing the costs using traditional financing

methods and the disincentive to making the upfront capital investment in consideration of the frequency of turnover of properties; and

WHEREAS, local governments throughout the United States are devising creative financing mechanisms to help their citizens overcome barriers to the deployment of energy efficiency and renewable energy in their homes and businesses; and

WHEREAS, this Board wishes to establish a voluntary energy efficiency and renewable energy program pursuant to Section 163.08, Florida Statutes that will assist such citizens by providing options to fund energy efficient and renewable energy improvements through federal or state grant funds, private loans from a financial institution, loans from the County or other private or not-for-profit sources of funds; and

WHEREAS, the expected life of energy efficient and renewable energy projects may require a longer term payback period than offered by traditional equity financing necessitating an alternative financing option to install the improvements, including using non-ad valorem assessments levied on the property as security for any loans as authorized by Section 163.08; and

WHEREAS, the County finds that there is a public purpose and its is in the best interest of its citizens to provide for a voluntary energy efficiency and renewable energy program that will meet the local need to foster energy savings which will reduce harmful emissions into the environment,

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

Section 1. Chapter 2 of the County Code is amended to add a new article to read as follows:

A. **Title.** This article shall be entitled "Voluntary Energy Efficiency and Renewable Energy Program"

B. **Definitions.**

"Administrator" means the County or any qualified firm selected by the County through a competitive process to administer the Energy Savings Program.

"Agreement" means a written agreement between the County and an Eligible Participant setting forth the terms and conditions of the Energy Savings Program.

"Contractor" means a contractor properly certified or registered pursuant to part I or part II of chapter 489, Florida Statutes.

"Eligible Participant" means any residential or commercial Property owner who voluntarily participates in this Energy Savings Program and satisfies the eligibility requirements set forth below.

"Energy Audit" shall mean an energy audit performed by qualified energy auditor or a certified building energy rater approved by the County pursuant to the Section H.

"Energy Savings Program" means the Voluntary Energy Efficiency and Renewable Energy Program authorized by this Article.

"Notice" means the notice that an Eligible Participant is required to provide to a purchaser of the Property prior to its sale.

"Property" means a property, residential or commercial, located within the boundaries of the County which is being improved pursuant to the Energy Savings Program.

"Qualifying Improvement" includes any

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas,

propane or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of window(s); installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment; and

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bio-energy, and wind energy; provided, such energy conservation and efficiency improvement and renewable energy improvement shall be made, and affixed, to an existing residential or commercial Property and not to new construction and shall not include a household appliance such as a washing machine or refrigerator that is not permanently fixed to real property.

C. **Eligible Participants**. In order to be an Eligible Participant, a Property owner (or Property) must meet the following criteria:

1. Be the legal owner of the Property and provide proof of ownership in the application for the Energy Savings Program.

2. Property must be located within Miami-Dade County.

3. All Property taxes and any other assessments levied on the same bill as Property taxes are paid and have not been delinquent for the preceding three (3) years or the Property owner's period of ownership, whichever is less;

4. Property owner must be current on any mortgage.

5. Property owner cannot be in bankruptcy nor can the Property be an asset in any bankruptcy proceeding.

6. Property cannot have any federal income tax lien, judgment lien or similar involuntary lien, including construction liens, encumbering it.

7. No notices of default or other evidence of Property-based debt delinquency have been recorded during the preceding 3 years or the Property owner's period of ownership, whichever is less.

D. **Application**. An Eligible Participant shall submit a complete application to the Administrator for approval. A complete application shall include the following information:

1. Proof of ownership and location of the Property. Organizational documents if the Property owner is not on the title as an individual.

2. Documentation showing the structure or building, subject of the application, is an existing structure or building on the date of application.

3. A cost estimate for the installation of the Qualifying Improvements completed by a Contractor (including the name and license number of the Contractor). This estimate shall include all construction costs, equipment, permitting fees, recording fees for the assessment of liens, energy audit costs, and contingency fees. Estimated costs shall be reasonable for the scope of the proposed project and in relation to the property value.

4. Written documentation indicating that the Property owner meets all of the criteria set forth in Section C 3-7 above.

5. Statement that the Eligible Participant will agree to a non-ad valorem assessment being collected pursuant to Section 197.3632, Florida Statutes to secure any loans entered into by the Eligible Participant related to the Energy Savings Program.

6. Proof that notice was provided to any lender of the Eligible Participant's intent to enter into written agreement with the County with respect to the Energy Savings

Program and in the event of a loan, the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount.

E. **Agreement Terms**. The County shall enter into a voluntary written agreement with each Eligible Participant. The written agreement shall provide, among other matters, for the following:

1. All work requiring a license under any applicable law to make a qualifying improvement shall be performed by a Contractor.

2. The source and amount of funding to be provided to the Eligible Participant.

3. The maximum limit of the financing for the Energy Savings Program shall not exceed 10 percent of the just value of the Property as determined by the County's Property Appraiser on the latest available tax roll unless:

- a higher financing amount is consented to by the mortgage holder on the Property, if one exists; or
- the Energy Audit demonstrates that the annual energy savings from the Qualified Improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

4. Express voluntary consent by the Eligible Participant to accept the non-ad valorem assessment collection process pursuant to Section 197.3632, Florida Statutes.

5. The length of time for the Eligible Participant to repay the non-ad valorem assessment, provided, that it shall not exceed 20 years.

6. The Eligible Participant shall be responsible for assuring the Qualifying Improvements are completed as reflected in the approved application documents. The Eligible

Participant also consents to providing access to the Property to the County to verify that the Qualifying Improvements have been completed as proposed in the application.

At the time of a transfer of Property ownership except a transfer resulting from foreclosure, the past due balances of any non-ad valorem assessment under this Subsection shall be due for payment, but future payments shall continue as a lien on the property. At or before the execution of a contract for the sale and purchase of any property for which a non-ad valorem assessment for the Energy Savings Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser a Notice.

7. The risks associated with participating in the Energy Savings Program shall be disclosed in the written Agreement, including risks related to the failure of the Eligible Participant to make payments and the risk of issuance of a tax certificate and loss of the property pursuant to Chapter 197, Florida Statutes.

8. The cost of an energy savings audit or the cost to complete an estimate of information on energy saving measures, estimated energy savings for each measure, estimated greenhouse gas reductions and estimated cost savings from the projects will be subject to reimbursement upon execution of the written agreement to accept the non-ad valorem assessment.

9. Description of the Qualifying Improvements, their cost, estimated completion date and estimated savings.

10. A copy of the Energy Audit shall be included as an Exhibit.

11. The Eligible Participant shall agree to apply any rebates provided by an entity other than the County, received for the Qualifying Improvements, towards the repayment of any non-ad valorem assessment.

12. The Eligible Participant shall provide all copies of final permits and inspections to the County upon completion of the Qualifying Improvements.

F. **Administration**. The Energy Savings Program may be administered by the County Mayor or County Mayor's designee or by a qualified energy firm selected by the County through a competitive selection process. The Energy Savings Program shall be administered in accordance with this Article and any additional regulations and orders adopted by the Board of Miami-Dade County Commission from time to time.

G. **Funding**. The County may issue bonds or notes secured solely from non-ad valorem special assessments collected pursuant to Chapter 197, Florida Statutes and is authorized by this Article to provide funds to Eligible Participants to make Qualifying Improvements. The County may also make available to the Energy Savings Program, federal or state grant funds, private loans from a financial institution or not-for-profit sources of funds.

H. **Energy Audit**. At a minimum, an Energy Audit for the Energy Savings Program shall include the following information:

1. Recommendations for energy savings measures;
2. Estimated energy savings and a priority ranking for each measure;
3. Estimated renewable energy to be produced;
4. Estimated greenhouse gas reductions; and
5. Estimated cost savings resulting from the implementation of the recommendations and use of funds made available by the County.

I. **Non-Ad Valorem Assessments**. The County is authorized to impose non-ad valorem assessments on Property to secure the repayment of any loan by an Eligible Participant to pay for Qualified Improvement(s). The non-ad valorem assessments shall be collected

pursuant to Section 197.3632, Florida Statutes or any successor Section and, notwithstanding Section 197.3632(8)(a), shall not be subject to discount for early payment. The notice and adoption requirements of Section 197.3632(4), Florida Statutes are not applicable if the non-ad valorem assessments are collected pursuant to and in compliance with Section 163.08, Florida Statutes and this Article. The intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by §197.3632(3)(a), Florida Statutes may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this Article, if the property appraiser, tax collector, and local government agree.

Pursuant to Chapter 197, Florida Statutes, non-ad valorem assessments levied pursuant to this Article shall remain liens, coequal with the lien of all state, County, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid.

J. **Recordation**. The Agreement shall be recorded in the public records of the County within five (5) days after execution of the Agreement. The recorded Agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to County taxes and assessments from the date of recordation. Failure to record the Agreement within such five (5) day period shall not invalidate the terms of the Agreement.

K. **Mortgagees**. A provision in any agreement between a mortgagee or other lien holder and an Eligible Participant, or otherwise now or hereafter binding upon the Property or the Eligible Participant, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a Agreement as provided for in the Energy Savings Program regarding the collection of non ad valorem assessments is not enforceable. This subsection does not limit the authority of the holder or loan servicer to

increase the required monthly escrow by an amount necessary to annually pay the Qualifying Improvement non-ad valorem special assessment.

L. **Notice to Purchaser**. At or before the execution of a contract for the sale and purchase of any property for which a non-ad valorem assessment for the Energy Savings Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser the following notice in writing:

> "The property being purchased is located within the jurisdiction of Miami-Dade County that has placed an assessment on the property pursuant to Section 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law."

M. **Limitations**. A provision in any agreement between the County and a public or private power or energy provider or other utility provider is not enforceable if it limits or prohibits the County from exercising its authority under this Article. A provision in any agreement between a mortgagee or other lienholder and an Eligible Participant, or otherwise now or hereafter binding upon an Eligible Participant, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into an Agreement as provided in this Article is not enforceable.

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 T. Heffernan

Prime Sponsor: Commissioner Katy Sorenson