MEMORANDUM Agenda Item No. 11(A)(31)

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

DATE: September 1, 2011

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

SUBJECT: Resolution urging the Florida Legislature to pass legislation imposing enhanced penalties for assault and battery of airline pilots and crew and vessel captains and crew

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

R. A. Cuevas, Jr.
County Attorney

RAC/up

MEMORANDUM

(Revised)

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

DATE: September 1, 2011

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

SUBJECT: Agenda Item No. 11(A)(31)

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)(31)
9-1-11

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO PASS LEGISLATION IMPOSING ENHANCED PENALTIES FOR ASSAULT AND BATTERY OF AIRLINE PILOTS AND CREW AND VESSEL CAPTAINS AND CREW

WHEREAS, on July 27, 2011, two brothers, Luis and Jonathan Baez from Puerto Rico, allegedly attacked an American Airlines pilot and flight attendant after being removed from a flight at Miami International Airport; and

WHEREAS, the brothers were aboard a flight from Miami to San Francisco when the flight attendant noticed that Jonathan did not have his seat belt buckled; and

WHEREAS, Jonathan was unresponsive and apparently asleep, and the pilot turned the plane around and returned to the gate; and

WHEREAS, at the gate, Jonathan was asked to leave the plane and his brother Luis accompanied him; and

WHEREAS, according to the arrest affidavit, while leaving the plane Luis threatened the pilot, saying "if you fly to San Juan, I will have you killed"; and

WHEREAS, shortly after leaving the plane, the arrest affidavit indicates that Jonathan reentered the plane and punched the pilot in the face and struck a flight attendant in the shoulder; and

WHEREAS, thereafter, the arrest affidavit indicates that as the two brothers walked up the jet bridge, the brothers both jumped the pilot and started punching him, eventually chasing the pilot into the Terminal where they continued to strike him; and

WHEREAS, according to the arrest affidavit, both brothers eventually were detained by crew members and nearby travelers until police arrived; and

WHEREAS, Luis Baez was charged with aggravated battery and aggravated assault, while Jonathan Baez was charged with aggravated battery and simple battery, all under Florida law; and

WHEREAS, aggravated battery is a second degree felony under Florida law carrying a maximum prison term of 15 years and a maximum fine of $10,000, while aggravated assault is a third degree felony under Florida law carrying a maximum prison term of 5 years and a maximum fine of $5,000; and

WHEREAS, simple battery is a first degree misdemeanor under Florida law carrying a maximum prison term of one year and a maximum fine of $1,000; and

WHEREAS, criminal offenses committed on board an aircraft are subject to federal jurisdiction pursuant to special federal aircraft jurisdiction found in Title 49 United States Code, Chapter 465; and

WHEREAS, Chapter 465 provides that any person who interferes with a member of a flight crew on an aircraft is subject to up to 20 years federal imprisonment plus fines; and

WHEREAS, Chapter 465 also makes crimes that are usually state crimes, such as assault, robbery or murder, federal crimes when committed on an aircraft, and makes it a federal crime to assault or interfere with a federal, airport or airline employee who has security duties within a U.S. airport; and

WHEREAS, except for airport security personnel, however, federal law does not govern situations where, as here, a pilot and flight attendant are allegedly attacked on the jet bridge and in an airport, and not on the aircraft; and

WHEREAS, except for airport security personnel, state law generally governs crimes that occur in an airport; and

WHEREAS, 784.07, Florida Statutes, reclassifies and increases by one level assault and battery offenses committed against law enforcement, security and other high risk employees, including public transit employees or agents, while they are engaged in the lawful performance of their duties, including the following:

- Law enforcement officers,
- Firefighters,
- Emergency medical care providers,
- Traffic accident investigation officers as described in s. 316.640,
- Non sworn law enforcement agency employees who are certified as agency inspectors, blood alcohol analysts, or breath test operators while such employees are in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI,
- Law enforcement explorers,
- Traffic infraction enforcement officers as described in s. 316.640,
- Parking enforcement specialists as defined in s. 316.640,
- Persons licensed as security officers as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer,
- Security officers employed by the board of trustees of a community college, or
- Public transit employees or agents; and

WHEREAS, the reclassifications found in section 784.07 have the effect of increasing the maximum sentence and fine that can be imposed, which is generally based on the degree of the felony or misdemeanor; and

WHEREAS, under the enhanced criminal penalties of section 784.07:

- aggravated battery increases from being a second degree felony to a first degree felony, with the maximum prison term increasing from 15 years to 30 years, with the maximum fine remaining at $10,000;
- aggravated assault increases from being a third degree felony to a second degree felony, with the maximum prison term increasing from 5 years to 15 years, and the maximum fine increasing from $5,000 to $10,000;
- simple battery increases from being a first degree misdemeanor to a third degree felony, with the maximum prison term increasing from one year to 5 years, and the maximum fine increasing from $1,000 to $5,000; and

WHEREAS, section 784.07 does not however include airline pilots, flight attendants and other airline flight crew members, nor does it include vessel captains and crew, and as such increased maximum sentences and fines do not apply to assault and battery against these persons; and

WHEREAS, especially in light of the September 11, 2001 terrorist attacks, pilots, flight attendants and other flight crew members serve a vital role in national security, as do vessel captains and crew; and

WHEREAS, Florida law should recognize airline pilots and crew and vessel captains and crew in section 784.07 in the same way that section 784.07 recognizes public transit employee or agent, law enforcement officers, firefighters, emergency medical care providers and security officers; and

WHEREAS, the Florida Legislature should amend section 784.07 to reclassify and impose increased prison sentences and fines related to crimes against airline pilots, flight attendants and other flight crew members, as well as vessel captains and crew,

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

Section 1. Urges the Florida Legislature to pass legislation imposing enhanced penalties for assault and battery of airline pilots and crew and vessel captains and crew.

Section 2. Directs the Clerk of the Board to transmit certified copies of the resolution to the Governor, Senate President, House Speaker and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate for the issue identified in Section 1 above, and directs the Office of Intergovernmental Affairs to include this item in the 2012 state legislative package.

The Prime Sponsor of the foregoing resolution is 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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of September, 2011. 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. JMM

Jess M. McCarty