

MEMORANDUM

Agenda Item No. 11(A)(26)


TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 4, 2014

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

SUBJECT: Resolution supporting SB 224,
HB 153, HB 169 or similar
legislation that would prohibit (I)
the sale of electronic cigarettes
and other nicotine dispensing
devices to persons under the age
of 18 and (II) the possession or
use of such devices by minors

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



R. A. Cuevas, Jr.
County Attorney

RAC/cp



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(Revised)

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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 Mayor'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) (26)
3-4-14

RESOLUTION NO. _____

RESOLUTION SUPPORTING SB 224, HB 153, HB 169 OR SIMILAR LEGISLATION THAT WOULD PROHIBIT (I) THE SALE OF ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 AND (II) THE POSSESSION OR USE OF SUCH DEVICES BY MINORS

WHEREAS, electronic cigarettes, also known as e-cigarettes, are electronic products that permit users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash or carbon dioxide; and

WHEREAS, most electronic cigarettes are manufactured to resemble cigarettes, cigars or pipes, but some are manufactured to resemble pens and Universal Serial Bus (USB) memory sticks; and

WHEREAS, sales of electronic cigarettes have grown rapidly in the United States, and after doubling every year since 2008, sales in 2013 are now accelerating even faster and projected to reach \$1.7 billion this year; and

WHEREAS, consumers are led to believe that electronic cigarettes are a safe alternative to traditional cigarettes, despite the fact that electronic cigarettes have the potential to be addictive; and

WHEREAS, there is no federal regulatory oversight ensuring the safety of the ingredients in electronic cigarettes; and

WHEREAS, the cost of electronic cigarettes has fallen substantially, making them more affordable to and more accessible by minors; and

WHEREAS, data from the 2011 and 2012 National Youth Tobacco Surveys conducted by the Centers for Disease Control and Prevention show that electronic cigarette use among minors doubled in the last year; and

WHEREAS, specifically, one in 10 high school students reported that they had tried an electronic cigarette in the last year, which is up from one in 20 in 2011, and 1.8 million middle and high school students said they had tried electronic cigarettes in 2012; and

WHEREAS, unlike traditional tobacco products, there are no federal age restrictions that would prevent minors from obtaining electronic cigarettes, nor are there any advertising restrictions; and

WHEREAS, the National Association of Attorneys General issued a letter to the United States Food & Drug Administration (FDA) Commissioner urging the FDA to immediately regulate the sale and advertising of electronic cigarettes as “tobacco products”; and

WHEREAS, the letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi; and

WHEREAS, according to the National Conference of State Legislatures, there are currently 27 states that have banned the sale of electronic cigarettes to minors; and

WHEREAS, Florida law currently prohibits the sale or delivery of tobacco products to persons under the age of 18, as well as the possession of tobacco products by persons under the age of 18, but Florida law is not clear whether these existing tobacco prohibitions for minors include electronic cigarettes; and

WHEREAS, in an attempt to restrict minors’ access to electronic cigarettes, the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverage and Tobacco, advises tobacco retailers on its website that electronic cigarettes containing nicotine

from tobacco leaves are considered tobacco products regulated in the state, and that it is unlawful to sell tobacco products to persons under 18 years of age; and

WHEREAS, electronic cigarettes that do not contain nicotine from tobacco leaves are not considered tobacco products and are therefore not regulated in Florida; and

WHEREAS, the Division of Alcoholic Beverage and Tobacco has indicated that Florida law should be amended to clarify the legal status of all electronic cigarettes, whether or not they contain nicotine from tobacco leaves; and

WHEREAS, Senator Lizbeth Benacquisto (R – Fort Myers) has filed SB 224, Representative Ronald “Doc” Renuart (R – Ponte Vedra Beach) has filed HB 153 and Representative Frank Artiles (R - Miami) has filed HB 169 for consideration during the Florida Legislature’s 2014 session; and

WHEREAS, these bills would prohibit the sale of electronic cigarettes and other nicotine dispensing devices to persons under the age of 18 in Florida, as well as prohibit the possession or use of electronic cigarettes and other nicotine dispensing devices by minors in Florida; and

WHEREAS, on January 29, 2002, this Board adopted Ordinance No. 02-20, which prohibited the placement of tobacco products in open self-service displays accessible to minors; and

WHEREAS, on September 14, 2012, this Board adopted Ordinance No. 13-07, which prohibited retailers from placing flavored tobacco products, including but not limited to flavored tobacco products that resemble candy, such as pellets, film strips and twisted sticks, in open self-service displays that are accessible to minors; and

WHEREAS, this Board supports the enactment of SB 224, HB 153, HB 169 or similar legislation that would prohibit the sale, possession or use of electronic cigarettes and other nicotine dispensing devices to persons under the age of 18,

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

Section 1. Supports the enactment of SB 224, HB 153, HB 169 or similar legislation that would prohibit:

- A. The sale of electronic cigarettes and other nicotine dispensing devices to persons under the age of 18; and
- B. The possession or use of electronic cigarettes and other nicotine dispensing devices by persons under the age of 18.

Section 2. Urges the Florida Legislature to enact SB 224, HB 153, HB 169 or similar legislation.

Section 3. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, Senate President, House Speaker, Senator Lizbeth Benacquisto, Representative Frank Artiles, Representative Ronald "Doc" Renuart and the Chair and Remaining Members of the Miami-Dade County State Legislative Delegation.

Section 4. Directs the County's state lobbyists to advocate the passage of the legislation identified in Sections 1 and 2 above, and directs the Office of Intergovernmental Affairs to include this item in the 2014 State Legislative Package when it is presented to the Board.

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The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. 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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of March, 2014. 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.

MSM for

Jess M. McCarty