

MEMORANDUM

Agenda Item No. 11(A)(24)

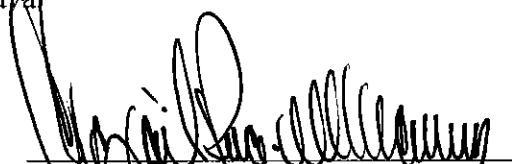
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: January 20, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution opposing SB 118,
HB 9, or similar legislation that
would make it a crime under
Florida law to reenter the state
after being denied admission
or removed from the United
States or after departing the
United States while an order
of removal is outstanding

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Carafioti



Abigail Price-Williams
County Attorney

APW/jls

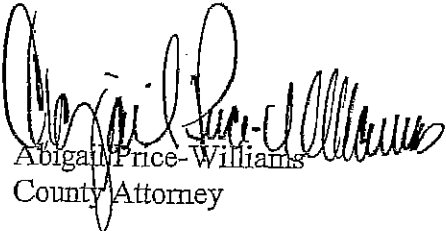


MEMORANDUM

(Revised)

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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
- Statement of social equity 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)(24)
1-20-16

RESOLUTION NO. _____

RESOLUTION OPPOSING SB 118, HB 9, OR SIMILAR LEGISLATION THAT WOULD MAKE IT A CRIME UNDER FLORIDA LAW TO REENTER THE STATE AFTER BEING DENIED ADMISSION OR REMOVED FROM THE UNITED STATES OR AFTER DEPARTING THE UNITED STATES WHILE AN ORDER OF REMOVAL IS OUTSTANDING

WHEREAS, Article I, Section 8, Clause 4 of the United States Constitution grants the federal government the power to establish a uniform Rule of Naturalization; and

WHEREAS, in furtherance of that authority, the federal government has enacted an extensive and comprehensive framework of immigration laws including, but not limited to, criminal penalties for individuals who reenter the United States after (1) being denied admission, excluded, deported, or removed or (2) departing the United States while an order of deportation is outstanding absent certain limited circumstances, such as attaining consent from the United States Attorney General; and

WHEREAS, Senate Bill (SB) 118 and House Bill (HB) 9 have been filed for consideration during the 2016 session of the Florida Legislature by Senator Travis Hutson (R – Palm Coast) and Representative Carlos Trujillo (R - Doral), respectively; and

WHEREAS, the current version of these bills would make it a third degree felony under Florida law for any individual to reenter or be found in the state if he or she has been denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, unless he or she has attained consent from the United State Attorney General to reapply for admission or has established that he or she was not required to obtain advance consent under federal law; and

WHEREAS, this proposed legislation would create a nearly identical prohibition under state law to a prohibition that already exists under federal law, 8 U.S.C. § 1326, and impose a maximum sentence (five years) that is greater than the maximum sentence under federal law (two years); and

WHEREAS, similar efforts by other states have been struck down by the United States Supreme Court as being preempted by federal law; and

WHEREAS, for example, the Supreme Court in *Arizona v. United States*, 132 S.Ct. 2492 (2012), struck down an Arizona statute that, among other things, added a state-law penalty for conduct already prohibited by federal immigration law, and held that the statute was preempted by federal law because “permitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted”; and

WHEREAS, SB 118 and HB 9 would also unnecessarily devote local resources towards enforcement of matters that are the responsibility of the federal government; and

WHEREAS, the Supreme Court found in *Arizona*, 132 S.Ct. at 2498, that “it is fundamental that foreign countries [and family members] concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate states”; and

WHEREAS, the proposed legislation would enable the state to bring criminal charges against individuals for purportedly violating federal law even when the federal officials charged with enforcing those laws determined that prosecution would frustrate the federal government’s comprehensive immigration policy,

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

Section 1. Opposes SB 118, HB 9, or similar legislation that would make it a crime under Florida law to reenter the state after being denied admission or removed from the United States or after departing the United States while an order of removal is outstanding.

Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, Senator Travis Hutson, Representative Carlos Trujillo and the Chair and remaining Members of the Miami-Dade County State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate against the legislation set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2016 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Daniella Levine Cava. 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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

MBV

Michael B. Valdes