

MEMORANDUM

Agenda Item No. 11(A)(4)

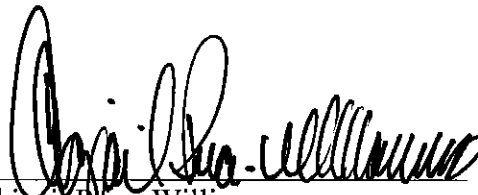
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 4, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution directing the County Attorney to (i) evaluate the viability of legal claims against manufacturers of perfluoroalkyl and polyfluoroalkyl substances and assess whether Miami-Dade County should engage in litigation against the manufacturers of such substances and other possible parties to recover costs and other damages associated with such substances; (ii) consider and, if advisable, identify law firms that could serve as outside counsel, under the direction of the County Attorney, on a contingency fee basis; and (iii) report back to the Board with recommendations regarding potential claims, whether to join existing litigation, and, if litigation is advisable, up to three proposals to be considered for outside counsel

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


Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 4, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(4)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 11(A)(4)

Veto _____

2-4-20

Override _____

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY ATTORNEY TO (I) EVALUATE THE VIABILITY OF LEGAL CLAIMS AGAINST MANUFACTURERS OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES AND ASSESS WHETHER MIAMI-DADE COUNTY SHOULD ENGAGE IN LITIGATION AGAINST THE MANUFACTURERS OF SUCH SUBSTANCES AND OTHER POSSIBLE PARTIES TO RECOVER COSTS AND OTHER DAMAGES ASSOCIATED WITH SUCH SUBSTANCES; (II) CONSIDER AND, IF ADVISABLE, IDENTIFY LAW FIRMS THAT COULD SERVE AS OUTSIDE COUNSEL, UNDER THE DIRECTION OF THE COUNTY ATTORNEY, ON A CONTINGENCY FEE BASIS; AND (III) REPORT BACK TO THE BOARD WITH RECOMMENDATIONS REGARDING POTENTIAL CLAIMS, WHETHER TO JOIN EXISTING LITIGATION, AND, IF LITIGATION IS ADVISABLE, UP TO THREE PROPOSALS TO BE CONSIDERED FOR OUTSIDE COUNSEL

WHEREAS, perfluoroalkyl and polyfluoroalkyl substances (“PFAS”) are a group of man-made chemicals that were used for decades in industrial and household products, such as stain and water-repellant apparel and fabrics, food packaging, cleaning products, non-stick cookware, and aqueous film forming foam (“AFFF”) used to extinguish fires; and

WHEREAS, PFAS chemicals were produced and utilized in products by at least eight major United States companies but have been largely phased out over time; and

WHEREAS, PFAS chemicals accumulate over time, do not break down easily, and remain in and move through the environment for decades, including within groundwater; and

WHEREAS, exposure to PFAS chemicals in humans has been linked to health impacts, such as certain forms of cancer and defects in infants and fetuses; and

WHEREAS, the United States Environmental Protection Agency (“EPA”) currently recommends a health advisory level of 70 parts per trillion (“ppt”) of PFAS in drinking water as a guidance figure but has not yet established a maximum contaminant level or any regulations with regard to these substances; and

WHEREAS, the EPA is currently working on a PFAS action plan; and

WHEREAS, the Florida Department of Environmental Protection (“FDEP”) has not established a maximum contaminant level or any regulations with regard to PFAS chemicals at the state level and recommends abiding by the EPA health advisory level of 70 ppt of PFAS in drinking water; and

WHEREAS, FDEP is currently conducting investigations into the prevalence of, and consequences from, exposure to PFAS chemicals within Florida, and more particularly, at fire training facilities throughout the state; and

WHEREAS, PFAS chemicals have been detected throughout the United States, including Miami-Dade County; and

WHEREAS, the Miami-Dade Water and Sewer Department has formulated and is preparing to implement an action plan should levels of PFAS chemicals discovered in the water supply exceed the EPA health advisory level; and

WHEREAS, throughout 2019, the Miami-Dade Water and Sewer Department and the Miami-Dade Department of Regulatory and Economic Resources investigated the levels of PFAS chemicals within the County by performing testing of the water in certain locations throughout the County; and

WHEREAS, the County’s testing is still ongoing; and

WHEREAS, in states, such as Michigan, New Jersey, Ohio, Pennsylvania, and Vermont, litigation has already been initiated against various manufacturers of PFAS chemicals on behalf of, among others, groups of firefighters who were exposed to PFAS through AAAF, water utilities that have found PFAS in their drinking water, and, through the attorney general of several states, the general population of their communities; and

WHEREAS, recognizing that this type of litigation has proven to be considerably expensive and that a favorable outcome for the governmental entities is not assured, a number of outside law firms engaged in this specialized practice area have agreed to represent governmental entities on a contingency fee basis; and

WHEREAS, hiring outside counsel on a contingency fee basis to represent the County initially would shift the funding of litigation costs from the County to outside counsel; and

WHEREAS, as this area of the law is an evolving one with unknown outcomes, the County can mitigate its risk exposure by engaging law firms to consolidate resources and incur the financial burden and all upfront costs without risk of payment if such litigation is unsuccessful; and

WHEREAS, any engagement of outside counsel must include a provision that costs associated with the litigation would be borne by outside counsel and only recoverable if the County prevails in said litigation within certain limits imposed by the County; and

WHEREAS, hiring outside counsel may allow the County to pursue this litigation in conjunction with other counties and cities in Florida, or throughout the United States, and present a stronger affirmative case against potential defendants; and

WHEREAS, in light of the possible risks to human health and the environment that exposure to PFAS chemicals could cause and the high costs for remediation efforts and water treatment that would be necessary if it is discovered that the County has a problem with PFAS chemicals that needs to be addressed, litigation against the manufacturers of PFAS may be appropriate,

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

Section 1. Directs the County Attorney to: (i) evaluate the viability of legal claims against manufacturers of PFAS chemicals and other actors or culpable parties as well as possible defenses by the County and (ii) assess whether Miami-Dade County should engage in litigation to recover costs and damages associated with PFAS chemicals.

Section 2. Directs the County Attorney to consider and, if advisable, identify law firms that could serve as outside counsel, under the direction of the County Attorney, for possible litigation related to recovering costs and other damages associated with PFAS chemicals on a contingency fee basis and, if the County does not prevail, at no cost to the County.

Section 3. Directs the County Attorney to report back to the Board, within 90 days of the effective date of this resolution, with recommendations regarding: (i) potential claims, (ii) whether the County should seek to join other ongoing litigation or proceed on its own with a separate lawsuit, and (iii) in the event the recommendation is to proceed with litigation, up to three proposals from which the Board could select outside counsel to proceed with litigation, as may be deemed appropriate.

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:

- | | |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman | |
| Rebeca Sosa, Vice Chairwoman | |
| Esteban L. Bovo, Jr. | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Eileen Higgins | Barbara J. Jordan |
| Joe A. Martinez | Jean Monestime |
| Dennis C. Moss | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared this resolution duly passed and adopted this 4th day of February, 2020. 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. SED

Sarah E. Davis