

MEMORANDUM

Agenda Item No. 11(A)(3)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: February 2, 2021

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Resolution urging the Florida Legislature to: (1) repeal the preemption of local governments from regulating excavating contractors or alternatively, provide local governments the ability to increase penalties and impose fees for monitoring excavating contractors, and (2) amend the definition of "high priority subsurface installation" within section 556.102, Florida Statutes, to include certain critical water and sewer facilities

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Geri Bonzon-Keenan
Successor County Attorney


GBK/smm



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

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Successor County Attorney

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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 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
Veto _____
Override _____

Agenda Item No. 11(A)(3)

2-2-21

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO:
(1) REPEAL THE PREEMPTION OF LOCAL GOVERNMENTS FROM REGULATING EXCAVATING CONTRACTORS OR ALTERNATIVELY, PROVIDE LOCAL GOVERNMENTS THE ABILITY TO INCREASE PENALTIES AND IMPOSE FEES FOR MONITORING EXCAVATING CONTRACTORS, AND (2) AMEND THE DEFINITION OF “HIGH PRIORITY SUBSURFACE INSTALLATION” WITHIN SECTION 556.102, FLORIDA STATUTES, TO INCLUDE CERTAIN CRITICAL WATER AND SEWER FACILITIES

WHEREAS, chapter 556, Florida Statutes, is the Underground Facility Damage Prevention and Safety Act (the “Act”); and

WHEREAS, the Act preempts local governments from regulating any subject matter addressed in the Act, which includes excavating contractors; and

WHEREAS, the Act also specifically prohibits local governments from adopting or enforcing ordinances or rules that conflict with the Act; and

WHEREAS, there are over 14,000 miles of underground water and sewer pipes throughout Miami-Dade County; and

WHEREAS, the Act establishes a notification system that provides any member operator, as defined in the Act (“operator”), an opportunity to identify and locate their underground facilities, and further provides access to excavating contractors and the public to provide notice of their intent to engage in excavation or demolition activities; and

WHEREAS, in Miami-Dade County, an excavating contractor is required to obtain a permit from the owner of the right of way in which the excavation will occur; and

WHEREAS, the Act authorizes local governments to issue a citation with a \$500.00 civil penalty plus court costs when an excavator commits a noncriminal infraction listed in section 556.107, Florida Statutes; and

WHEREAS, the Act also authorizes a court, following a hearing, to impose a civil penalty not to exceed \$5,000.00 plus court costs for such non-criminal infractions; and

WHEREAS, the County's water and sewer pipes were broken or damaged by excavating contractors approximately 500 times in each of the past two years, which caused environmental, social and economic harm to the County; and

WHEREAS, although the County is often able to recoup its costs to repair and restore service from the excavators or their insurance carriers, such costs do not compensate for environmental, social and economic damage caused by such breaks which may include the closure of roads, beaches and recreational areas; and

WHEREAS, under the Act, if an operator timely notifies the excavator of a high-priority subsurface installation that includes a facility deemed to be critical by the operator, the excavator must notify the operator of the planned excavation start date and time before beginning excavation which enables the operator to be present during the excavation; and

WHEREAS, in section 556.102 of the Florida Statutes, the Act defines "high priority subsurface installation" as "an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate"; and

WHEREAS, this definition does not include large diameter underground water and sewer facilities that are critical and of high priority to the operations of the County's Water and Sewer Department and the community as a whole; and

WHEREAS, the definition of "high priority subsurface installation" in the Act should be amended to mean "an underground *water and sewer facility 30 inches or greater in diameter*, or an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid..."; and

WHEREAS, the Act does not provide for the excavator to pay for the operator's costs of monitoring the excavator's activities; and

WHEREAS, this Board desires the ability to regulate excavating contractors to further protect the public's health, safety and welfare and ensure that the County's critical underground water and sewer pipes are protected and to impose fees for monitoring the excavating contractors,

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 repeal the preemption of local governments from regulating excavating contractors or alternatively, provide local governments the ability to increase penalties and impose fees for monitoring excavation contractors.

Section 2. Urges the Florida Legislature to amend the definition of "high priority subsurface installation" within section 556.102, Florida Statutes, to include water and sewer facilities that are 30 inches or greater in diameter to help prevent further damage caused by excavators.

Section 3. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, Senate President, House Speaker, and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 4. Directs the County's state lobbyists to advocate for the actions described in sections 1 and 2 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2021 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. 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:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of February, 2021. 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.

NLC

Nykeah L. Cohen