

MEMORANDUM

Agenda Item No. 11(A)(14)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: February 17, 2009

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

SUBJECT: Resolution urging the Florida
Legislature to define in statute
the terms "Impoundment" and
and "Immobilization"

Resolution No. R-129-09

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



R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** February 17, 2009
and Members, Board of County Commissioners

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

SUBJECT: Agenda Item No. 11(A)(14)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Mayor's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11 (A) (14)
2-17-09

RESOLUTION NO. R-129-09

RESOLUTION URGING THE FLORIDA LEGISLATURE TO DEFINE IN STATUTE THE TERMS "IMPOUNDMENT" AND "IMMOBILIZATION"; SET IN STATUTE A FEE SCHEDULE FOR VEHICLE IMPOUNDMENT AND IMMOBILIZATION; AND PROVIDE IN STATUTE REQUIREMENTS AND STANDARDS FOR PRIVATE COMPANIES AND PERSONS ENGAGED IN THE BUSINESS OF PROVIDING IMMOBILIZATION SERVICES

WHEREAS, section 316.193, Florida Statutes, provides that in the event of a conviction for driving under the influence, the court shall, as a condition of probation and in addition to other penalties, order the impoundment or immobilization of the defendant's vehicle; and

WHEREAS, section 316.193 provides that all costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, with certain exceptions; and

WHEREAS, section 316.193 provides that in the event of a conviction for driving under the influence, the court shall order the impoundment or immobilization of the defendant's vehicle for a period of:

- a. 10 days on the first conviction,
- b. 30 days on the second conviction, and
- c. 90 days on the third conviction; and

WHEREAS, section 316.193 currently does not set a fee schedule for vehicle impoundment and/or immobilization of 10, 30 or 90 days; and

WHEREAS, section 316.193 also does not define the term “impoundment” or “immobilization”; and

WHEREAS, section 316.193 does not set requirements or standards for private companies and/or persons engaged in the business of impounding or immobilizing vehicles;

WHEREAS, Chapter 316 provides that the provisions of the chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized; and

WHEREAS, the courts do not believe that they have been expressly authorized under chapter 316, Florida Statutes, to define the terms impoundment or immobilization; set the fees for vehicle impoundments and immobilizations; or set requirements and standards for private companies and/or persons engaged in the business of impounding immobilizing vehicles; and

WHEREAS, counties no longer have a role in setting fees after the passage and implementation of revisions to Article V of the Florida Constitution; and

WHEREAS, section 316.193 should be amended to define the terms “impoundment” and “immobilization”; set a fee schedule for vehicle impoundments and immobilizations, and set requirements and standards for private companies and/or persons engaged in the business of impounding immobilizing vehicles,

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 define the terms “impoundment” and “immobilization”; set a fee schedule for vehicle impoundment and immobilization; and set requirements and standards for private companies and/or persons engaged in the business of impounding immobilizing vehicles.

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

Section 3. Directs the County's state lobbyists to advocate for the legislation set forth in Section 1 above, and authorizes and directs that the 2009 State Legislative Package be amended to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Bruno A. Barreiro. It was offered by Commissioner Jose “Pepe” Diaz, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

	Dennis C. Moss, Chairman	aye	
	Jose "Pepe" Diaz, Vice-Chairman	aye	
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrian D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of February, 2009. 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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

JMM

Jess M. McCarty