

MEMORANDUM

Agenda Item No. 11(A)(4)

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

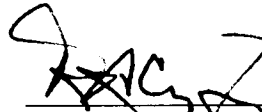
DATE: March 16, 2010

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

SUBJECT: Resolution urging the Florida
Legislature to enact legislation
requiring the State to reimburse
legal fees and costs of individuals
pursuing compensation under
the "Victims of Wrongly
Incarceration Act"

Resolution No. R-303-10

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney

RAC/up



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
- Ordinance creating a new board requires detailed County Manager'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)(4)
3-16-10

RESOLUTION NO. R-303-10

RESOLUTION URGING THE FLORIDA LEGISLATURE TO ENACT LEGISLATION REQUIRING THE STATE TO REIMBURSE LEGAL FEES AND COSTS OF INDIVIDUALS PURSUING COMPENSATION UNDER THE “VICTIMS OF WRONGFUL INCARCERATION ACT,” IF SUCH INDIVIDUALS ARE ULTIMATELY FOUND WRONGFULLY CONVICTED OF A CRIME AND ELIGIBLE FOR COMPENSATION

WHEREAS, it is reported that between 1989 and 2003, there were approximately 340 confirmed DNA exonerations in the United States; and

WHEREAS, it is also reported that the number of exonerations based on DNA evidence continues to consistently rise; and

WHEREAS, in 2008, the Florida Legislature passed Senate Bill 756, the “Victims of Wrongful Incarceration Compensation Act” (the “Act”); and

WHEREAS, the Act created a program to compensate persons who were wrongfully convicted and incarcerated for a felony offense; and

WHEREAS, the Act provides a process whereby a person may petition the original sentencing court for an order finding him or her to be a “wrongfully incarcerated person” and eligible for compensation; and

WHEREAS, upon approval of a wrongfully incarcerated person’s status and eligibility, such person may apply for compensation with the Florida Attorney General’s Office; and

WHEREAS, upon review and approval of the application, Florida’s Chief Financial Officer is authorized to pay compensation in the amount of \$50,000 per year of imprisonment,

adjusted for inflation beginning January 1, 2009, up to a \$2 million limit, plus a tuition waiver;
and

WHEREAS, wrongfully incarcerated persons are also entitled to automatic administrative expunction of their criminal record and the amount of any fine, penalty or court costs associated with the wrongful conviction; and

WHEREAS, wrongfully incarcerated persons are further entitled to the amount of any reasonable attorney's fees and expenses incurred and paid by such persons relating to all criminal proceedings and appeals regarding the wrongful conviction; and

WHEREAS, there is currently no provision in the Act, however, allowing for the compensation of wrongfully incarcerated persons for attorney's fees and expenses incurred in connection with the proceedings required under the Act themselves; and

WHEREAS, the inability to afford the costly fees associated with such proceedings is a deterrent to wrongfully convicted persons seeking the compensation to which they are entitled;
and

WHEREAS, for example, it was reported that Leroy McGee, a 42-year-old Broward County man, was wrongfully convicted in 1991 of a robbery and served three years and seven months in prison; and

WHEREAS, the Act required that Mr. McGee go through a complex process, including proving his "actual innocence," in order for the court to determine that he was a wrongfully convicted person and eligible for compensation; and

WHEREAS, it was necessary for Mr. McGee to seek legal representation in order to pursue his claim for compensation and, consequently, Mr. McGee owes his attorney 25 percent

of any payment he receives from the state, thereby depriving him of a significant portion of the funds he was awarded,

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 enact legislation providing that the state shall reimburse the fees, costs and other expenses, including legal fees, associated with an individual's pursuit of compensation under the Act, if such individual is ultimately determined by the court to be a wrongfully incarcerated person and entitled to such compensation.

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

Section 3. Directs the County's state lobbyists to advocate for the issue identified in Section 1 above, and directs the Office of Intergovernmental Affairs to include this item in the 2010 state legislative package.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. 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	absent	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	absent
Dorrin 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 16th day of March, 2010. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "M. Sybblis", written over a horizontal line.

Martin W. Sybblis