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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# MEMORANDUM

Agenda Item No. 11(A)(3)

**TO:** Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

**DATE:** September 18, 2012

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

**SUBJECT:** Resolution urging the Governor and Secretary of State to apply Florida early voting uniformly across the state and return early voting to the full possible 14 days in place before the passage of HB 1355 including the Sunday before election day

Resolution No. R-741-12

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jean Monestime, and Co-Sponsors Vice Chairwoman Audrey M. Edmonson and Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

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# MEMORANDUM
(Revised)

**TO:** Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

**DATE:** September 18, 2012

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

**SUBJECT:** Agenda Item No. 11(A)(3)

**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)(3)
9-18-12

RESOLUTION NO. R-741-12

RESOLUTION URGING THE GOVERNOR AND SECRETARY OF STATE TO APPLY FLORIDA EARLY VOTING UNIFORMLY ACROSS THE STATE AND RETURN EARLY VOTING TO THE FULL POSSIBLE 14 DAYS IN PLACE BEFORE THE PASSAGE OF HB 1355 INCLUDING THE SUNDAY BEFORE ELECTION DAY

**WHEREAS**, during the 2011 regular session, the Florida Legislature enacted HB 1355, Chapter 2011-40, Laws of Florida (hereinafter referred to as HB 1355), which was an omnibus elections bill that made approximately 80 sets of changes to Florida's election procedures; and

**WHEREAS**, one of the changes made in Chapter 2011-40 was to revise early voting and the available days, hours and times that Florida counties could use for early voting; and

**WHEREAS**, before the passage of HB 1355, Florida's early voting law provided early voting for a potential 14-day period, beginning on the 15th day before an election and ending on the 2nd day before the election, and required each county to offer early voting for exactly eight hours per day on weekdays and eight hours in the aggregate each weekend, yielding a total of 96 hours of early voting; and

**WHEREAS**, HB 1355 amended the days, hours and weekend times that early voting may be offered in Florida in four ways:

- The early voting period begins on the 10th day before an election and ends on the 3rd day before the election, for a total of only eight days and eliminating early voting on the Sunday before election day;
- The new law gives local election supervisors the discretion to determine the number of daily hours of early voting in their counties, subject to the constraint that no less than six hours and no more than 12 hours be offered on each of the eight early voting days;

- The new law also removes the requirement that voting take place between 7 a.m. and 7 p.m. each day, and instead, local supervisors of elections have the discretion to determine the specific hours of early voting in their counties, as long as they offer no less than six hours and no more than 12 hours each day;

- The new early voting statute also mandates some additional weekend hours of early voting, with the new early voting period running from the Saturday two weekends before the election to the Saturday immediately before Election Day, meaning that the early voting period under HB 1355 now requires three weekend days of early voting: two Saturdays and one Sunday, but significantly the new law eliminates the potential for early voting on the Sunday before election day; and

**WHEREAS**, section 5 of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973c, prohibits the enforcement of any change in voting practices or procedures in certain states and other covered jurisdictions, unless and until the change is approved by the United States Attorney General or the United States District Court for the District of Columbia; and

**WHEREAS**, there are five counties in Florida, Collier County, Hardee County, Hendry County, Hillsborough County and Monroe County, that are subject to the preclearance requirements of section 5 of the Voting Rights Act of 1965; and

**WHEREAS**, the State of Florida sought and received approval from the Attorney General on 76 of the 80 changes contained in HB 1355; and

**WHEREAS**, the State submitted the remaining four changes to the United States District Court for the District of Columbia, one of which was the revised early voting; and

**WHEREAS**, in an opinion issued August 16, 2012, the United States District Court for the District of Columbia found that minority voters disproportionately used early voting, and that minority voters therefore will be disproportionately affected by the changes in early voting procedures included in HB 1355 if the covered counties offered only the minimum 48 hours of early voting as the new law permits; and

**WHEREAS**, the court found that in the 2008 general election, more than half of African-American voters in Florida cast ballots using early voting, which was twice the rate of white voters, while in the 2010 general election, African-American early voting by African-American voters exceeded early voting by white voters by a factor of about one-third; and

**WHEREAS**, the court also found that African-American voters disproportionately used the first five days of the previous early voting period, all of which were eliminated under HB 1355; and

**WHEREAS**, the court found that this dramatic reduction in a form of voting disproportionately used by African-American voters would be analogous to, although not the same as, closing polling places in disproportionately African-American precincts, stating that although such action would not bar African-Americans from voting, it would impose a sufficiently material burden to cause some reasonable minority voters not to vote; and

**WHEREAS**, the court concluded that Florida had not met its burden of demonstrating that its statewide early voting changes would not have a negative effect in the five covered counties and therefore did not approve the changes for the five counties; and

**WHEREAS**, the court did however conclude that if Florida and the covered counties were to submit a preclearance plan that offered early voting for the maximum number of hours authorized by HB 1355 (96 hours), and did so on a standard 7 a.m. to 7 p.m. schedule, then the Florida would likely satisfy its burden; and

**WHEREAS**, the court decision could result in differing early voting schedules in Florida among the five counties subject to federal preclearance and the remaining 62 counties; and

**WHEREAS**, in fact, the Monroe County Supervisor of Elections has indicated that he will not agree to reduce the total number of days of early voting to eight days; and

**WHEREAS**, section 97.012, Florida Statutes, provides that the Secretary of State, as Florida's chief elections officer, has the responsibility to obtain and maintain uniformity in the interpretation and implementation of the election laws; and

**WHEREAS**, in the past, to ensure statewide uniformity in elections, the Secretary of State typically has not implemented new election laws across the state until the five counties subject to federal preclearance have been precleared; and

**WHEREAS**, the Governor and Secretary of State should apply Florida early voting uniformly across the state and return early voting to the full 14 possible days of early voting in place before the passage of HB 1355, including the Sunday before election day,

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

**Section 1.** Urges the Governor and Secretary of State to apply Florida early voting uniformly across the state, and return early voting to the full 14 possible days of early voting in place before the passage of HB 1355, including the Sunday before election day.

**Section 2.** Directs the Clerk of this Board to send a certified copy of this resolution to the Governor, the Chair and Members of the Miami-Dade State Legislative Delegation, the Florida Secretary of State and the Supervisors of Elections in Florida's 67 counties.

**Section 3.** Directs the County's state lobbyists to advocate for the passage of the legislation and action set forth in section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to include this item in the 2013 State Legislative Package when it is presented to the Board.

The Prime Sponsor of the foregoing resolution is Commissioner Jean Monestime, and the Co-Sponsors are Vice Chairwoman Audrey M. Edmonson and Commissioner Barbara J. Jordan. It was offered by Commissioner **Jean Monestime**, who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

| | | | |
|---|---|---|---|
| Joe A. Martinez, Chairman | | | **nay** |
| Audrey M. Edmonson, Vice Chairwoman | | | **aye** |
| Bruno A. Barreiro | **aye** | Lynda Bell | **absent** |
| Esteban L. Bovo, Jr. | **aye** | Jose "Pepe" Diaz | **aye** |
| Sally A. Heyman | **aye** | Barbara J. Jordan | **aye** |
| Jean Monestime | **aye** | Dennis C. Moss | **aye** |
| Rebeca Sosa | **nay** | Sen. Javier D. Souto | **aye** |
| Xavier L. Suarez | **absent** | | |

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of September, 2012. 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: ***Christopher Agrippa***
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jess M. McCarty