

MEMORANDUM

Agenda Item No. 11(A)(28)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners


DATE: January 20, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution opposing SB 872
and HB 675, or similar
Legislation that would preempt
policies set by this Board related
to immigration detainer requests

Resolution No. R-77-16

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman, and Co-Sponsors Commissioner Daniella Levine Cava and Chairman Jean Monestime.



Abigail Price-Williams
County Attorney

APW/jls

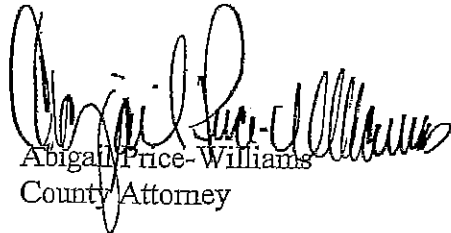


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(Revised)

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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 ____, 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)(28)
1-20-16

RESOLUTION NO. R-77-16

RESOLUTION OPPOSING SB 872 AND HB 675, OR SIMILAR
LEGISLATION THAT WOULD PREEMPT POLICIES SET BY
THIS BOARD RELATED TO IMMIGRATION DETAINER
REQUESTS

WHEREAS, the United States Department of Homeland Security, Immigration and Customs Enforcement (“Immigration and Customs Enforcement”) issues immigration detention requests, known as detainers, to local criminal justice agencies, including the Miami-Dade Corrections and Rehabilitation Department (the “Department”); and

WHEREAS, Immigration and Customs Enforcement issues detainers to the Department requesting that the County hold an inmate until Immigration and Customs Enforcement can assume custody of the inmate, up to 48 hours after the inmate’s local charges have been resolved; and

WHEREAS, in 2011, Immigration and Customs Enforcement issued 3,262 detainers to the Department, 57 percent of which involved inmates not charged with felonies; and

WHEREAS, in 2012, Immigration and Customs Enforcement issued 2,499 detainers to the Department, 61 percent of which involved inmates not charged with felonies; and

WHEREAS, honoring Immigration and Customs Enforcement detainers by holding inmates up to an additional 48 hours cost the taxpayers of Miami-Dade County \$1,002,700 in 2011 and \$667,076 in 2012; and

WHEREAS, on December 3, 2013, this Board adopted Resolution No. R-1008-13 directing the Mayor or designee to implement a policy whereby the Department may, in its discretion, honor detainer requests issued by Immigration and Customs Enforcement only if:

1. the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance with such detainer requests, and either:
2. the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Florida Statute section 776.08, or
3. the inmate that is the subject of such a request has, at the time the Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted; and

WHEREAS, effective January 1, 2014, Miami-Dade County began honoring detainer requests only when the above conditions were met; and

WHEREAS, since the implementation of this policy, the taxpayers of Miami-Dade County have saved hundreds of thousands of dollars in costs that are unreimbursed by the federal government associated with honoring immigration detainer requests; and

WHEREAS, on November 20, 2014, U.S. Secretary of Homeland Security Jeh Charles Johnson issued a memorandum entitled "Secure Communities" to Immigration and Customs Enforcement advising that a number of federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers issued under the Secure Communities program and that governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with detainer requests and many have issued executive orders or signed laws prohibiting cooperation; and

WHEREAS, federal courts have found that local law enforcement agencies that detain individuals on the sole authority of a detainer request violate the Fourth Amendment of the U.S. Constitution, exposing such agencies to legal liability unless there has been an independent finding of probable cause to justify detention; and

WHEREAS, the Secretary of Homeland Security acknowledged that an increasing number of federal court decisions hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment; and

WHEREAS, the Secure Communities memorandum directed Immigration and Customs Enforcement to discontinue the former immigration policy and implement a new program called the Priority Enforcement Program (“PEP”) that focuses on targeting individuals who pose a threat to public safety or individuals convicted of significant criminal offenses and seeks the transfer of individuals in state and local custody in specific limited circumstances; and

WHEREAS, under PEP, Immigration and Customs Enforcement will issue a request that the state or local law enforcement agency notify Immigration and Customs Enforcement at least 48 hours prior to release of a suspected priority removable individual; and

WHEREAS, under PEP, Immigration and Customs Enforcement will also issue a request to the law enforcement agency to detain an individual for up to 48 hours after his or her release, but only when the individual fits within the Department of Homeland Security’s narrower enforcement priorities and Immigration and Customs Enforcement has sufficient probable cause to find that the individual is removable; and

WHEREAS, aliens within the U.S., including aliens who are unlawfully present, enjoy Fourth and Fifth Amendment protections under the U.S. Constitution and shall not be deprived of life, liberty or property without due process of law; and

WHEREAS, while criminal detainees are subject to multiple procedural safeguards, including a requirement of court approval, Immigration and Customs Enforcement detainer requests lack comparable protections and are often issued where there are no immigration proceedings pending; and

WHEREAS, a judge is not required to review or approve an immigration detainer; and

WHEREAS, an immigration detainer may be issued by a single Immigrations and Customs Enforcement officer when there are no immigration proceedings pending; and

WHEREAS, this process does not meet the U.S. Constitution's minimum standard for authorizing detention after an inmate is scheduled to be released; and

WHEREAS, on June 17, 2015, the American Civil Liberties Union (the "ACLU") issued a letter to U.S. Secretary of Homeland Security Jeh Charles Johnson addressing serious legal concerns with the implementation of PEP and advised that the new policy does not cure the legal deficiencies which courts have found to violate the Fourth Amendment and expose local law enforcement agencies to liability; and

WHEREAS, the ACLU reports that Immigration and Customs Enforcement detainers imprison people without due process and, in many cases, without any charges pending or probable cause violations, raising serious constitutional due process concerns; and

WHEREAS, despite the change in policy at the federal level through PEP and concerns regarding the constitutionality of PEP, bills have been filed for consideration during the 2016 session of the Florida Legislature that would prohibit local governments from limiting or restricting the enforcement of federal immigration laws, including complying with immigration detainers, and preempt policies set by this Board requiring the federal government to reimburse county taxpayers for costs relating to compliance with Immigration and Customs Enforcement detainer requests; and

WHEREAS, Senate Bill (SB) 872 and House Bill (HB) 675 have been filed by Senator Aaron Bean (R - Jacksonville) and Representative Larry Metz (R - Groveland), respectively; and

WHEREAS, SB 872 and HB 675 are identical bills that would prohibit local government entities and law enforcement agencies from limiting or restricting the enforcement of federal immigration law, including but not limited to, limiting or restricting compliance with an immigration detainer; and

WHEREAS, SB 872 and HB 675 prohibit “Sanctuary Policies,” defined therein as “a law, policy, practice, procedure, or custom adopted or permitted by a state entity, state official, law enforcement agency, local governmental entity, or local government official ...which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency, or a federal immigration official, with respect to federal immigration enforcement, including, but not limited to, cooperation with immigration detainees”; and

WHEREAS, SB 872 and HB 675 would preempt County policy as it specifies that “a state or local governmental entity or official or a law enforcement agency may not limit or restrict the enforcement of federal immigration law, including, but not limited to, limiting or restricting a state or local governmental entity or official or a law enforcement agency from complying with an immigration detainer”; and

WHEREAS, SB 872 and HB 675 would permit the Florida Attorney General or applicable state attorney to institute proceedings in circuit court to enjoin a law enforcement agency or local government entity found to be in violation and impose fines of at least \$1,000, but not more than \$5,000, for each day that the policy or practice was found to be in effect before the injunction was granted; and

WHEREAS, pursuant to 8 C.F.R. § 287.7(e), Immigration and Customs Enforcement is not responsible for incarceration costs of any individual against whom a detainer is lodged until actual assumption of custody; and

WHEREAS, to the extent a payment authorization is considered by Immigration and Customs Enforcement to a local law enforcement agency, under INA §103(a)(11), it should only be made pursuant to a written agreement because Immigration and Customs Enforcement pays detention costs when aliens are in its custody pursuant to an agreement with a political subdivision of a state; and

WHEREAS, SB 872 and HB 675 could impact the County's policy regarding immigration detainees and could prevent the County from obtaining reimbursement for any and all costs related to honoring immigration detainees; and

WHEREAS, detainer requests are an unfunded federal mandate that impose hefty fiscal burdens and legal liability on local law enforcement agencies; and

WHEREAS, SB 872 and HB 675 could result in the taxpayers of Miami-Dade County and any county in Florida incurring the cost of honoring immigration detainees; and

WHEREAS, SB 872 and HB 675 expose Miami-Dade County and other Florida counties to potential legal liability for holding an inmate pursuant to an immigration detainer, without probable cause, beyond the point at which he or she would otherwise be released; and

WHEREAS, this Board opposes SB 872 and HB 675 because they preempt policies set by this Board related to immigration detainer requests to hold an inmate up to 48 hours that provide that the County will only hold such inmates up to 48 hours if the federal government reimburses county taxpayers for the cost,

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

Section 1. Opposes SB 872 and HB 675, or similar legislation that would preempt policies set by this Board related to immigration detainer requests.

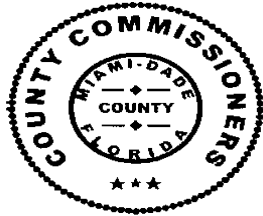
Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, Senator Aaron Bean, Representative Larry Metz and the Chair and Members of the Miami-Dade County State Legislative Delegation.

Section 3. Directs the County's state lobbyists to oppose the passage of the legislation set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2016 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman, and the Co-Sponsors are Commissioner Daniella Levine Cava and Chairman Jean Monestime. It was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

	Jean Monestime, Chairman	aye	
	Esteban L. Bovo, Jr., Vice Chairman	aye	
Bruno A. Barreiro	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Dennis C. Moss	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	absent	Xavier L. Suarez	absent
Juan C. Zapata	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2016. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

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

Suzanne Villano-Charif