

Memorandum



Date: August 21, 2012

To: Honorable Chairman Joe A. Martinez and Members
Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Bond Engineer Opinion Regarding Charter Review Items 10A3 and 10A9

Attached for your review and consideration is a recommendation from the Public Works and Waste Management (PWWM) department's Bond Engineer, Malcolm Pirnie, Inc. regarding the proposed Charter amendments, items 10A(3) and 10A(9), which are scheduled to be heard at the August 23, 2012 Board of County Commission meeting. The recommendation evaluates the potential negative impact to the solid waste system.

If you have any additional questions, please contact PWWM Director Kathleen Woods-Richardson at 305-514-6628, or me directly at 305-375-1880.

Attachments

c: R.A. Cuevas, Jr., County Attorney
Alina T. Hudak, County Manager/Deputy Mayor
Edward Marquez, Deputy Mayor
Kathleen Woods-Richardson, Director, PWWM
Jennifer Moon, Director, Office of Management and Budget

July 25, 2012

Ms. Kathy Woods-Richardson, Director
Miami-Dade Public Works and Waste Management Department
2525 NW 62 Street, 5th Floor
Miami, Florida 33147

**Re: Bond Engineer's Review of July 17, 2012 Board of County Commission Agenda Items
10A(3) and 10A(9)- Proposed Charter Amendments**

Dear Ms. Woods-Richardson:

As the Miami-Dade Solid Waste Bond Engineer, Malcolm Pirnie, Inc, has reviewed information provided by the Public Works and Waste Management Department (PWWM) regarding Board of County Commission July 17, 2012 Agenda items 10A(3) and 10A(9), Proposed Charter Amendments, to determine potential negative impact to the Solid Waste System. We have concluded that each of these two Charter amendments could, and most likely would negatively affect the financial and operational stability of the Miami-Dade Solid Waste System. The sections below summarize the proposed Charter amendments and our evaluation of the potential impact to the Solid Waste System and the County.

July 17, 2012 Agenda Item 10A(3)

This item is a proposition to amend Section 6.5 of the Miami-Dade Home Rule Charter (Charter) to provide an alternate method of municipal incorporation effectively outside the jurisdiction of the Board of County Commissioners (Board). The proposed amendment would strip the Board of the authority to require pre-agreed conditions with prospective municipalities. Pre-agreed conditions with prospective municipalities could mean the continued provision of essential services such as solid waste collection and disposal, or water and wastewater services. Of primary concern to PWWM is the impact of this amendment on the solid waste system.

The County has invested considerable resources in the development, operation and maintenance of the solid waste system, which includes solid waste collection facilities, transfer stations and solid waste disposal facilities. Some of the investment in these resources came from Bond Issues that were backed by covenants to preserve the long-term provision of solid waste services, debt service coverage, acceptable maintenance practices and effective operations. These covenants were included in Ordinances adopted by the Board and are evaluated by bond rating agencies when considering the investment risk of the bond issues.

The proposed amendment in the July 17, 2012 Agenda Item 10A(3) would diminish the authority of the Board to continue to provide solid waste collection services within the proposed limits of prospective municipalities. Adoption of this Charter amendment would be viewed by bond rating agencies as increased investment risk from diminished solid waste flow control resulting in lower bond rating and higher cost of future bond issues. For this reason, the Bond Engineer recommends the Resolution calling a special election for the amendment discussed in the July 17, 2012 Agenda Item 10A(3) either be denied outright, or be amended to specifically recognize the County's continued authority to collect and dispose of household generated waste in municipalities created after 1996.

July 17, 2012 Agenda Item 10A(9)

This item is a proposition to amend Section 6.07 of the Home Rule Charter that would require all franchise fees and all utility tax revenues collected in prospective municipalities be paid to the prospective municipality for various municipal services, except that portion that is currently used to service existing debt.

The Solid Waste System relies on two (2) critical revenue sources that could be affected by this proposed Charter amendment. The Disposal Facility Fee generates approximately \$11 million annually from the unincorporated area of the County and municipalities incorporated after 1996. A portion of the Utility Service Fee generates approximately \$22 million annually for the Solid Waste System. Together, these revenues are used to fund core solid waste services, landfill closures and long-term care, and groundwater remediation and protection projects.

Adoption of the proposed Charter amendment included in the July 17, 2012 Agenda Item 10A(9) could eliminate the funding for many, if not all of these County-wide projects. This Charter amendment may result in a severe reduction of core services and a dramatic increase in user charges throughout the solid waste system. While the potential negative financial impact of this Charter amendment would likely extend throughout County government, the results of this amendment to the Solid Waste System could be devastating. Diversion of these critical revenue streams away from the Solid Waste System to new, prospective municipalities would destabilize the current solid waste balance sheet requiring new revenues to prop-up unfunded landfill closure liability and critical, County-wide groundwater protection projects.

Based on the extreme potential negative financial impact of a Charter amendment based on the July 17, 2012 Agenda Item 10A(9), the Bond Engineer recommends the Resolution calling a special election for the amendment discussed in the July 17, 2012 Agenda Item 10A(9) either be denied outright, or be amended to specifically exempt the Disposal Facility Fee and Utility Service Fee from payment to municipalities.



We are available to discuss these issues with you at your request. Please do not hesitate to contact us if you would like to discuss this matter further.

Very truly yours,

MALCOLM PIRNIE, INC.



Robert H. French, P.E., BCEE
Principal-In-Charge

Cc: Paul Mauriello, AICP, PWWM
Asok Ganguli, PE, PWWM
Chris Rose, PWWM



MEMORANDUM

Agenda Item No. 10(A)(3)

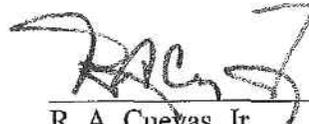
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

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

SUBJECT: Resolution calling a special election for the purpose of submitting to the electors the question of whether to amend the Home Rule Charter provisions pertaining to changes in municipal boundaries & creation of new municipalities

The accompanying resolution was prepared and placed on the agenda by the County Attorney's Office, pursuant to the direction in Resolution No. R-253-12.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

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

DATE: July 17, 2012

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

SUBJECT: Agenda Item No. 10(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. 10(A)(3)
7-17-12

RESOLUTION NO. _____

RESOLUTION CALLING A COUNTYWIDE SPECIAL ELECTION IN MIAMI-DADE COUNTY, FLORIDA, TO BE HELD IN CONJUNCTION WITH A GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 2012, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF MIAMI-DADE COUNTY THE QUESTION OF WHETHER TO AMEND HOME RULE CHARTER PROVISIONS PERTAINING TO CHANGES IN MUNICIPAL BOUNDARIES AND CREATION OF NEW MUNICIPALITIES

WHEREAS, The Board of County Commissioners pursuant to Section 9.07 of the Miami-Dade County Home Rule Charter desires to place the attached Charter amendment before the electors of Miami-Dade County on the November 6, 2012 General Election ballot,

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

Section 1. A countywide special election is hereby called and shall be held in Miami-Dade County, Florida in conjunction with a General Election on Tuesday, November 6, 2012, for the purpose of submitting to the qualified electors of Miami-Dade County the proposal for amendment to the Home Rule Charter in the form attached hereto and made a part hereof.

Section 2. Notice of such election shall be published in accordance with Section 100.342, Florida Statutes.

Section 3. The result of such election shall be determined by a majority of the qualified electors of Miami-Dade County voting upon the proposal. The polls at such election shall be open from 7:00 a.m. until 7:00 p.m. on the day of such election. All qualified electors of Miami-Dade County, Florida shall be entitled to vote at said election. The County registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until

twenty-nine (29) days prior to the date of such election, at which time the registration books will close in accordance with the provisions of general election laws. The question shall appear on the ballot in substantially the following form:

CHARTER AMENDMENT PERTAINING TO
CHANGES IN MUNICIPAL BOUNDARIES AND
CREATION OF NEW MUNICIPALITIES

SHALL THE CHARTER BE AMENDED TO:

- REQUIRE A SUPER MAJORITY, RATHER THAN A MAJORITY VOTE, AS ONE OF THE CONDITIONS FOR COUNTY COMMISSION APPROVAL OF CHANGES IN MUNICIPAL BOUNDARIES,
- ESTABLISH ALTERNATIVE PROCEDURE FOR CREATION OF NEW MUNICIPALITIES IN UNINCORPORATED AREAS OF THE COUNTY BY PETITION WHICH CONSTRAINS OR LIMITS THE COUNTY COMMISSION'S ROLE AND ABILITY TO DISAPPROVE INCORPORATIONS, ELIMINATES PROVISIONS FOR PRE-AGREED CONDITIONS IN MUNICIPAL CHARTERS, AND IMPOSES RESTRICTIONS REGARDING URBAN DEVELOPMENT BOUNDARY?

YES

NO

Section 4. The form of the ballot shall be in accordance with the requirements of general election laws.

Section 5. Early voting shall be conducted in accordance with the requirements of general election laws.

Section 6. Absentee paper ballots may be used by qualified electors of Miami-Dade County for voting on this question. The form of such absentee ballot shall be in accordance with the requirements prescribed by general election laws.

Section 7. A sample ballot showing the manner in which the question or proposal aforesaid will appear at this election shall be published and provided in accordance with the applicable provisions of general election laws.

Section 8. This special election on the proposal aforesaid shall be held and conducted in accordance with applicable provisions of the general laws relating to elections and the provisions of the Miami-Dade County Home Rule Charter. The County Mayor or his or her designee, the Finance Director, and the Clerk of the County Commission are hereby authorized and directed to take all appropriate actions necessary to carry into effect and accomplish the provisions of this resolution. This election shall be a nonpartisan election. Election officials in connection with this election shall be appointed in accordance with the provisions of general election laws.

Section 9. This election shall be canvassed by the County Canvassing Board, in accordance with the provisions of Section 3.07 of the Home Rule Charter.

The foregoing resolution 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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Cynthia Johnson-Stacks

MIAMI-DADE COUNTY HOME RULE CHARTER

ARTICLE - 6¹

MUNICIPALITIES

SECTION 6.01. CONTINUANCE OF MUNICIPALITIES.

The municipalities in the county shall remain in existence so long as their electors desire. No municipality in the county shall be abolished without approval of a majority of its electors voting in an election called for that purpose. Notwithstanding any provision of the Charter, the Board of County Commissioners shall have the authority to abolish a municipality by ordinance where such municipality has twenty or fewer electors at the time of adoption of the ordinance abolishing the municipality. The right of self determination in local affairs is reserved and reserved to the municipalities except as otherwise provided in this Charter.

SECTION 6.02. MUNICIPAL POWERS.

Each municipality shall have the authority to exercise all powers relating to its local affairs not inconsistent with this Charter. Each municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

SECTION 6.03. MUNICIPAL CHARTERS.

A. Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

B. All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

SECTION 6.04. CHANGES IN MUNICIPAL BOUNDARIES.

A. The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.

B. The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, >>with an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office. Changes that<< ~~[[unless the change]]~~ involve~~[[s]]~~ the annexation or separation of an area of which more than 250 residents are electors ~~[[, in which case]]~~ >>shall also require<< an affirmative vote of a majority of those electors voting ~~[[shall also be required]]~~. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.

C. No municipal boundary shall be altered except as provided by this Section.

SECTION 6.05. CREATION OF NEW MUNICIPALITIES.

(A) ~~The Board of County Commissioners~~ ~~[[and only the Board]]~~ may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

>>(B) A new municipality may also be created by petition of electors residing in the area to be incorporated in accordance with the following process:

1. An incorporation committee composed of a minimum of five (5) electors from the proposed area of incorporation will initiate the process by filing with

the Clerk of the Circuit Court an initiatory petition on a form prescribed by the Clerk for such purpose. The form shall identify the names and addresses of the Incorporation Committee members and describe the proposed incorporation area. Within seven (7) days of receipt of the form, the Clerk will determine if the form is acceptable and if it is acceptable shall approve the form of petition and provide the Incorporation Committee the total number of the electors within the proposed incorporation area and the number of required signatures which shall be equal to ten percent (10%) of the electors in the proposed incorporation area and shall notify the Board of County Commissioners. If the Clerk determines that the form of petition does not comply with the requirements of this Charter or inaccurately describes proposed boundaries, the Clerk may disapprove the form of petition and provide notification to the Incorporation Committee and the Board of County Commissioners of the disapproval. The Clerk shall advise the Incorporation Committee as to the reasons for disapproval and the Incorporation Committee may submit a new petition at any time.

2. (a) No later than ninety (90) days from the date of approval of the above form by the Clerk, the Board of County Commissioners shall review the appropriateness of the petition for incorporation and recommend any changes to the boundaries of the proposed municipality to the Incorporation Committee at a public hearing.

(b) At such public hearing, the Board of County Commissioners shall approve the proposed incorporation petition, as presented in the petition or as revised by the Incorporation Committee, or reject the incorporation petition as presented or as revised by the Incorporation Committee, only upon its determination that the proposed incorporation will not have contiguous boundaries or will leave an unincorporated enclave area within its boundaries.

(c) The County Commission's failure to review the incorporation petition within the time required by this paragraph is subject to mandamus by a court of competent jurisdiction.

3. The Incorporation Committee will have six (6) months from the date by which the Board was required to have reviewed the incorporation petition to obtain signatures equal to ten percent (10%) of the electors in the proposed incorporation area, with signatures on a petition provided by the Clerk. The petition shall require the name, address and signature of the elector but such signatures shall not have to be notarized.

4. The signed petitions will be submitted to the Clerk, who shall have thirty (30) days to canvass the signatures contained therein.
5. Upon certification of the sufficiency of the signatures on the petition, the Clerk shall present the petition to the Board of County Commissioners at their next regularly scheduled meeting, at which time the Board shall call an election to authorize the creation of a municipality, which election shall occur no sooner than ninety (90) and no greater than one hundred twenty (120) days from the date the Clerk certifies the signatures. The election shall be held, whenever practicable, in conjunction with another election scheduled to occur within the proscribed time period. The election shall be decided by an affirmative vote of a majority of electors voting in the proposed incorporation area.
6. During the sixty (60) days following the certification of the petition, the Board shall complete a budgetary analysis in cooperation with the Incorporation Committee of and on the proposed incorporation area and schedule at least one public hearing prior to the incorporation election. The budgetary analysis, including a response by the incorporation committee if submitted, shall be provided to the resident electors of the proposed municipality by mail and shall be made available at locations within the proposed municipality. Such budgetary analysis shall at a minimum estimate all of the identifiable revenues generated by the proposed incorporation area prior to incorporation, and present the operating expenses of comparable small, medium and large municipalities providing typical municipal services.
7. Within 30 days after certification of the election, the Board of County Commissioners shall appoint, from a list proposed by the Incorporation Committee, a five member Charter Committee which shall, within ninety (90) days after appointment, create a Charter for the newly incorporated area setting forth at least the form of government and governing body of the newly incorporated area. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by the County Home Rule Charter and the Constitution and general laws of the State of Florida; provided, however, any proposed municipality whose boundaries include any area outside the urban development boundary, as may be described in the County's Comprehensive Development Master Plan, shall abide by the permitted uses as set forth in such plan. Upon completion, the proposed Charter will be submitted to the electors of the municipality no sooner than 60 days and no later than 120 days after it is completed. Upon an affirmative vote of a majority of those electors within the municipality, the municipal charter shall become effective and the municipality shall be created at the time stated in the municipal charter.<<

Agenda Item 10(A)(3)

121409 Resolution

RESOLUTION CALLING A COUNTYWIDE SPECIAL ELECTION IN MIAMI-DADE COUNTY, FLORIDA, TO BE HELD IN CONJUNCTION WITH A GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 2012, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF MIAMI-DADE COUNTY THE QUESTION OF WHETHER TO AMEND HOME RULE CHARTER PROVISIONS PERTAINING TO CHANGES IN MUNICIPAL BOUNDARIES AND CREATION OF NEW MUNICIPALITIES

The item if approved will accomplish the following:

Section 6.04 Changes in Municipal Boundaries (Annexation)

- 1) Requires a 2/3 vote of the Board (currently a majority) to change a municipal boundary

Section 6.05 Creation of New Municipalities

Outlines a new process for incorporation by petition as follows:

- Committee of no less than 5 individuals file a petition with the Clerk of the Court
- The Clerk will approve or disapprove the form within 7 days
- Within 90 days from the approval of the Clerk, the Board shall review the petition and make any recommended changes to the boundary
- Committee shall obtain signatures from 10% of the registered voters in the area within 6 months
- Clerk will have 30 days to canvas the signatures on the petition
- The Board at their next scheduled meeting shall call for an election of the area between 90 and 120 days from the Clerks certification
- Within 60 days following the certification from the Clerk, the Board will complete a budgetary analysis and have one public hearing
- Within 30 days after the certification of the election the Board will appoint a Charter Committee which shall create a municipal charter within 90 days.
 - Any area outside the UDB shall be governed by the uses outlined in the County's CDMP
- The Charter shall be submitted to the voters of the area within 60 to 120 days

ISSUES

- The petition process removes all Board discretion from the process
- The petition process has the possibility of creating small municipalities with boundaries that do not make sense (either fiscally or geographically)
- The Board can only modify the boundaries of the incorporation proposal if the area is not contiguous or will leave an enclave
- The proposed process does not allow for any pre-arranged conditions in the proposed municipal charters currently in the Miami-Dade County Code Chapter 20 Section 20-25 and 20-26
 - Retention of garbage and refuse collection and disposal
 - May limit PWWM's ability to pay debt service
 - Remain in the Fire Rescue District
 - Remain in the Library District
 - Contract with MDPD for 3 years for local patrol services

This may cause the Most Favored Nations Clause in the Charters of Miami Lakes, Doral, Palmetto Bay, Miami Gardens, and Cutler Bay to trigger potentially allowing the municipalities to opt out of the Fire and Library districts.

Additionally, the County cannot impose any restrictions on properties that are considered Facilities of Countywide Significance if incorporated.



HARVEY RUVIN
MIAMI-DADE CLERK
COURTS • COMMISSION • RECORDER • FINANCE

Telephone: (305) 349-7333
Fax: (305) 349-7403
E-Mail: clerk@miami-dadeclerk.com
Web Site: <http://www.miami-dadeclerk.com>

DADE COUNTY COURTHOUSE
ROOM 242
73 West Flagler Street
Miami, FL 33130

July 10, 2010

Chairman and Board of County Commissioners
SPCC, 111 NW 1st Street, 2nd floor
Miami, Florida 33128

RE: Charter Review Task Force Recommendations/COC

Dear Commissioners:

Allow me to comment regarding 3 of the Charter Review Task Force's recommendations which will substantially affect the Office of the Miami-Dade Clerk of the Circuit Court (COC).

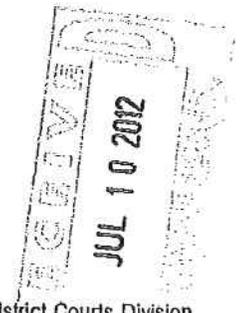
First, the Task Force is recommending that the COC be placed in the line of succession in the event of a vacancy in the Office of the Mayor.

Should this provision become part of the Charter it would create a huge conflict as the Charter assigns the job of processing and certifying the results of recall petitions to the COC. The COC would then be in a position of affecting the very vacancy that he or she could be in line to fill.

Clearly, the COC must remain a "neutral party" able to carry out its duties in an even-handed manner in order to enable the public to have essential confidence in its process.

Second, the Task Force suggests that the COC replace the Mayor in the procurement process when the Mayor has declared a "Conflict of Interest". Putting the COC in that role would again lead to further conflict and disfunction.

The Task Force was perhaps uninformed that the COC's Clerk of the Board Division currently has numerous responsibilities in the procurement process, including: doing the original advertisement, receiving and time stamping bid packages, custodial responsibilities dealing with timeliness, cone of silence, selection committee reports, and transmittal issues of Award/Rejection recommendations and more.



In the event of a bid protest, the COC is the appointing authority for Hearing Examiners, manages the time requirements and generally maintains custody of the appeal file.

The COC is the attesting authority of all procurement contracts. I respectfully suggest that this recommendations would lead to a breakdown in public confidence rather than improving it.

Finally, the Task Force proposes to add language regarding incorporation, placing the COC as the authority responsible for certifying the citizen petitions seeking incorporations. I deem this as a mere scrivener's error, based on the Task Force's incorrect assumption that the COC already does this.

Miami-Dade County is the only County in Florida to have an appointed Supervisor of Elections. In order to avoid the perception of conflict, OUR CHARTER PRESCRIBES THE COC as the entity to handle recall procedures/certification process. ALL OTHER INITIATORY PETITION CERTIFICATIONS are and should remain the responsibility of the Supervisor of Elections, who maintains and houses the voter registration roles

In conclusion, the COC must be maintained as an INDEPENDENT NEUTRAL PARTY, as it is in the public's best interest that the office that has custody of all Court files, all Board of County Commissioners records, as well as the real property Official Record Book – BE KEPT INTACT AND UNCONFLICTED.

Respectfully,



Harvey Ruvin, Clerk
Circuit and County Courts

Cc: Carlos Gimenez, Mayor
Robert A. Cuevas, County Attorney
Charter Review Task Force Members
Luis G. Montaldo, Esq., Clerk's Counsel
Christopher Agrippa, Division Chief, Clerk of the Board

MEMORANDUM

Agenda Item No. 10(A)(9)

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

DATE: July 17, 2012

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

SUBJECT: Resolution calling a special
election for the purpose of
submitting to the electors the
question of whether to amend
the Home Rule Charter
regarding County franchise fees
and utility tax revenues

The accompanying resolution was prepared and placed on the agenda by the County Attorney's Office, pursuant to the direction in Resolution No. R-253-12.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

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

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SUBJECT: Agenda Item No. 10(A)(9)

Please note any items checked.

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- 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. 10(A)(9)
7-17-12

RESOLUTION NO. _____

RESOLUTION CALLING A COUNTYWIDE SPECIAL ELECTION IN MIAMI-DADE COUNTY, FLORIDA, TO BE HELD IN CONJUNCTION WITH A GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 2012 FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF MIAMI-DADE COUNTY THE QUESTION OF WHETHER TO AMEND THE HOME RULE CHARTER REGARDING COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES

WHEREAS, the Board of County Commissioners pursuant to Section 9.07 of the Miami-Dade County Home Rule Charter desires to place the attached Charter amendment before the electors of Miami-Dade County on the November 6, 2012 General Election ballot,

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

Section 1. A countywide special election is hereby called and shall be held in Miami-Dade County, Florida in conjunction with a General Election on Tuesday, November 6, 2012, for the purpose of submitting to the qualified electors of Miami-Dade County the proposal for amendment to the Home Rule Charter in the form attached hereto and made a part hereof.

Section 2. Notice of such election shall be published in accordance with Section 100.342, Florida Statutes.

Section 3. The result of such election shall be determined by a majority of the qualified electors of Miami-Dade County voting upon the proposal. The polls at such election shall be open from 7:00 a.m. until 7:00 p.m. on the day of such election. All qualified electors of Miami-Dade County, Florida shall be entitled to vote at said election. The County registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until twenty-nine (29) days prior to the date of such election, at which time the registration books will

close in accordance with the provisions of general election laws. The question shall appear on the ballot in substantially the following form:

CHARTER AMENDMENT REGARDING
COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES

SHALL THE CHARTER BE AMENDED TO REQUIRE CERTAIN COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES FROM AREAS SUBSEQUENTLY ANNEXED OR INCORPORATED INTO A MUNICIPALITY BE PAID TO THE MUNICIPALITY AND PROVIDE THAT ANY SUCH MUNICIPALITY SHALL HAVE THE EXCLUSIVE RIGHT TO NEGOTIATE A NEW ELECTRIC FRANCHISE WITHIN ITS MUNICIPAL BOUNDARIES WHEN THE CURRENT COUNTY ELECTRIC FRANCHISE AGREEMENT EXPIRES?

YES

NO

Section 4. The form of the ballot shall be in accordance with the requirements of general election laws.

Section 5. Early voting shall be conducted in accordance with the requirements of general election laws.

Section 6. Absentee paper ballots may be used by qualified electors of Miami-Dade County for voting on this question. The form of such absentee ballot shall be in accordance with the requirements prescribed by general election laws.

Section 7. A sample ballot showing the manner in which the question or proposal aforesaid will appear at this election shall be published and provided in accordance with the applicable provisions of general election laws.

Section 8. This special election on the proposal aforesaid shall be held and conducted in accordance with applicable provisions of the general laws relating to elections and the

provisions of the Miami-Dade County Home Rule Charter. The County Mayor or his or her designee, the Finance Director, and the Clerk of the County Commission are hereby authorized and directed to take all appropriate actions necessary to carry into effect and accomplish the provisions of this resolution. This election shall be a nonpartisan election. Election officials in connection with this election shall be appointed in accordance with the provisions of general election laws.

Section 9. This election shall be canvassed by the County Canvassing Board, in accordance with the provisions of Section 3.07 of the Home Rule Charter.

The foregoing resolution 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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Cynthia Johnson-Stacks

MIAMI-DADE COUNTY HOME RULE CHARTER

ARTICLE - 6¹

MUNICIPALITIES

SECTION 6.01. CONTINUANCE OF MUNICIPALITIES.

The municipalities in the county shall remain in existence so long as their electors desire. No municipality in the county shall be abolished without approval of a majority of its electors voting in an election called for that purpose. Notwithstanding any provision of the Charter, the Board of County Commissioners shall have the authority to abolish a municipality by ordinance where such municipality has twenty or fewer electors at the time of adoption of the ordinance abolishing the municipality. The right of self determination in local affairs is reserved and preserved to the municipalities except as otherwise provided in this Charter.

SECTION 6.02. MUNICIPAL POWERS.

Each municipality shall have the authority to exercise all powers relating to its local affairs not inconsistent with this Charter. Each municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

SECTION 6.03. MUNICIPAL CHARTERS.

A. Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

B. All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

SECTION 6.04. CHANGES IN MUNICIPAL BOUNDARIES.

A. The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.

B. The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, unless the change involves the annexation or separation of an area of which more than 250 residents are electors, in which case an affirmative vote of a majority of those electors voting shall also be required. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended.

C. No municipal boundary shall be altered except as provided by this Section.

SECTION 6.05. CREATION OF NEW MUNICIPALITIES.

The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

SECTION 6.06. CONTRACTS WITH OTHER UNITS OF GOVERNMENT.

Every municipality in this county shall have the power to enter into contracts with other governmental units within or outside the boundaries of the municipality or the county for the joint performance or performance by one unit in behalf of the other of any municipal function.

SECTION 6.07. FRANCHISE >>FEES<< AND UTILITY TAXES.

Revenues realized from franchise >>fees<< and utility taxes imposed by municipalities shall belong to municipalities.

>>Upon annexation of a portion of the unincorporated area of the County, franchise fees and utility taxes imposed by the County which are attributable to an area annexed into a municipality shall first be used by the County to pay the annexed area's annual pro-rata share of debt service payments secured by such franchise fee or utility tax revenues, which annual pro-rata share shall be determined, at the time of the annexation, with the balance to be paid to the municipality to be used for municipal services. Upon incorporation of a portion of the unincorporated area of the County, franchise fees and utility taxes imposed by the County which are attributable to a newly created municipality shall first be used by the County to pay such municipality's annual pro-rata share of debt service payments secured by such franchise fee or utility tax revenues at the time of the approval of the newly created municipality's charter, with the balance to be paid to the municipality to be used for municipal services.

The annual pro-rata share of debt service payments attributable to the annexed area or the newly created municipality shall be determined by multiplying the total debt service on the outstanding debt in the fiscal year prior to the annexation or creation of the municipality by the annexed area's or the newly created municipality's percentage share of revenues pledged by the County to the repayment of the debt in such fiscal year. Notwithstanding the foregoing sentence, if the bond ordinance in effect at the time of the incorporation or annexation authorizing the issuance of the debt requires the calculation of the annual pro rata share to be made in another manner, then the formula set forth in the bond ordinance shall be used instead.

After the annexation of an area into a municipality or the incorporation of a new municipality, the County shall not secure any debt with revenues derived from franchise fees or utility taxes imposed in the annexed area or the new municipality, unless the debt is for the purpose of refunding debt secured by such revenues and so long as such refunding will realize an interest cost savings and will not extend the original term of the debt being refunded. Nothing herein shall be deemed to preclude or prohibit the County from issuing debt secured by revenues derived from franchise fees or utility taxes imposed in the unincorporated area of the County.

This section shall not affect any interlocal agreement in effect as of November 1, 2012, which provides for the distribution of franchise fees or utility tax revenues to the County and a municipality.

Any municipality created or any municipality that has annexed unincorporated areas of the County during the term of the County's electric franchise agreement shall have sole authority, upon the expiration of such agreement, to negotiate and enter into a new electric franchise agreement granting the privilege to provide electricity within the boundaries of the municipality as of the expiration of such agreement and construct, maintain or operate in, under, on, over and across the present and future streets, alleys, bridges, easements and other public places throughout the municipality.<<

Agenda Item 10(A)(9)

121408 Resolution

RESOLUTION CALLING A COUNTYWIDE SPECIAL ELECTION IN MIAMI-DADE COUNTY, FLORIDA, TO BE HELD IN CONJUNCTION WITH A GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 2012 FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF MIAMI-DADE COUNTY THE QUESTION OF WHETHER TO AMEND THE HOME RULE CHARTER REGARDING COUNTY FRANCHISE FEE AND UTILITY TAX REVENUES

This legislation if approved will accomplish the following:

- Utility Taxes and Franchise Fees will be transferred to new municipalities
- Utility Taxes and Franchise Fees will be transferred to annexing municipalities
- Municipalities will be responsible for their pro-rata share of outstanding debt service

Currently the Miami-Dade County Code does:

- Incorporations - Release Utility Taxes and Franchise Fees to new municipalities
 - By practice County staff has required new municipalities to make debt service payments for outstanding debt issued with Utility Tax or Franchise Fee backing
 - The Code only addresses the issuance of Stormwater Utility debt service (Sec. 20-26)
- Annexations – County retains Utility Taxes (Sec. 20-8.2) in perpetuity and Franchise Fees (Sec. 20-8.1) until the Franchise with FPL is over in 2020.

Fiscal Impact to UMSA

Currently the FPL franchise payment to UMSA for the annexation areas is approximately \$2.4 million

The Utility Tax Payments from FPL and WASD are estimated to be over \$5 million