

MEMORANDUM

Agenda Item No. 11(A)(19)


TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: November 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution urging the Florida Legislature to amend section 337.403, Florida Statutes, to provide local governments such as Miami-Dade County with additional enforcement options to obtain compliance with utility removal notices, or to enact similar legislation consistent with the above

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
County Attorney

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MEMORANDUM
(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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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)(19)
11-7-23

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO AMEND SECTION 337.403, FLORIDA STATUTES, TO PROVIDE LOCAL GOVERNMENTS SUCH AS MIAMI-DADE COUNTY WITH ADDITIONAL ENFORCEMENT OPTIONS TO OBTAIN COMPLIANCE WITH UTILITY REMOVAL NOTICES, OR TO ENACT SIMILAR LEGISLATION CONSISTENT WITH THE ABOVE

WHEREAS, section 337.403(1), Florida Statutes, provides that a utility that is placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor found by an authority such as Miami-Dade County (the “County”) to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of such public road or publicly owned rail corridor, the utility owner shall, with certain limited exceptions, “upon 30 days’ written notice to the utility or its agent by the authority, initiate the work necessary to alleviate the interference at its own expense”; and

WHEREAS, section 337.403(1) further provides that, “the work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner”; and

WHEREAS, at present, utility companies often either do not respond entirely to notices issued by the County pursuant to section 337.403(1), or provide delayed responses and attribute such delays to such utility companies’ workload; and

WHEREAS, while section 337.403(3) provides that where the utility owner fails to perform the work at its own expense within the time stated in the notice or other such time as agreed by the authority and the utility owner, the authority, such as the County, “shall proceed to cause the utility work to be performed . . . and such expense shall . . . be charged against the owner . . . ,” challenges emerge when the County may either: (a) not possess the expertise to perform such work, or (b) believe it to be imprudent to perform such work without the cooperation of the utility company because of the risks of negatively impacting or disrupting County residents and customers of the utility company; and

WHEREAS, as such, as a practical matter, the County is frequently left with no real mechanism to require utility companies’ compliance, thereby sometimes introducing significant and unnecessary delay to critical County projects; and

WHEREAS, at the same time, such utility companies continue to apply to, and receive permits from, the County for non-County projects; and

WHEREAS, increasing the ability of authorities such as the County to enforce compliance with utility removal notices pursuant to section 337.403(1) would enable the County to implement projects more efficiently and expeditiously, which ultimately redounds to the benefit of the County’s many residents and visitors; and

WHEREAS, this Board wishes to urge the Florida Legislature to amend section 337.403, Florida Statutes, to provide local governments such as the County with additional enforcement options to obtain compliance with utility removal notices issued pursuant to section 337.403(1) including, but not necessarily limited to, authorizing the County to: (a) levy fines for a utility company’s non-compliance with notices to such utility company under section 337.403(1); (b) refrain from issuing additional permits to a utility company until such utility company is in full

compliance with outstanding utility relocation notices to such company; and (c) remove or deactivate the interfering utilities after the expiration of an additional 90-days' written notice beyond the initial 30-days' written notice currently required under Florida law if the utility company fails to comply,

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 amend section 337.403, Florida Statutes, to provide local governments such as the County with additional enforcement options to obtain compliance with utility removal notices issued pursuant to section 337.403(1) including, but not necessarily limited to, authorizing the County to: (a) levy fines for a utility company's non-compliance with notices to such utility company under section 337.403(1); (b) refrain from issuing additional permits to a utility company until such utility company is in full compliance with outstanding utility relocation notices to such company; and (c) remove or deactivate the interfering utilities after the expiration of an additional 90-days' written notice beyond the initial 30-days' written notice currently required under Florida law if the utility company fails to comply, or to enact similar legislation consistent with the above.

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

Section 3. Directs the County's state lobbyists to advocate for the actions described in section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2024 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Eileen Higgins. It 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:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of November, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

D.P.C

Dale P. Clarke