

MEMORANDUM

Substitute
Agenda Item No. 5(A)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 4, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to the
Miami-Dade County Expressway
Authority; exercising Miami-
Dade County's Home Rule
powers preserved within Article
VIII, section 6 of the Florida
Constitution of 1968 and the
Miami-Dade County Home
Rule Charter; superseding
and nullifying the special act
contained in sections 13, 14, 15,
16 and 17 of Chapter 2019-169
of the Laws of Florida;
abolishing The Greater Miami
Expressway Agency in Miami-
Dade County created by such act

Ordinance No. 21-35

This substitute differs from the original in that section 5 of the ordinance is amended to set forth that the creditors of the governmental unit that is being abolished are protected by the following: (1) all assets, facilities, tangible and intangible property, liability for any bonds, and any other rights or obligations of the Miami-Dade County Expressway Authority that were transferred to the Greater Miami Expressway Authority under Chapter 2019-169 revert, by operation of law, to the Miami-Dade County Expressway Authority and (2) any additional assets obtained or liability incurred by the Greater Miami Expressway Authority under any apparent authority shall, by operation of law, become the responsibility of the Miami-Dade County Expressway Authority.

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Joe A. Martinez and Chairman Jose "Pepe" Diaz, and Co-Sponsors Commissioner Sally A. Heyman, Commissioner Kionne L. McGhee and Senator Javier D. Souto.


Geri Bonzon-Keenan
County Attorney

GBK/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 4, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Substitute
Agenda Item No. 5(A)

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 _____

Substitute
Agenda Item No. 5(A)
5-4-21

ORDINANCE NO. 21-35

ORDINANCE RELATING TO THE MIAMI-DADE COUNTY EXPRESSWAY AUTHORITY; EXERCISING MIAMI-DADE COUNTY’S HOME RULE POWERS PRESERVED WITHIN ARTICLE VIII, SECTION 6 OF THE FLORIDA CONSTITUTION OF 1968 AND THE MIAMI-DADE COUNTY HOME RULE CHARTER; SUPERSEDING AND NULLIFYING THE SPECIAL ACT CONTAINED IN SECTIONS 13, 14, 15, 16 AND 17 OF CHAPTER 2019-169 OF THE LAWS OF FLORIDA; ABOLISHING THE GREATER MIAMI EXPRESSWAY AGENCY IN MIAMI-DADE COUNTY CREATED BY SUCH ACT; PROVIDING SEVERABILITY, EXCLUSION FROM THE CODE, AND AN EFFECTIVE DATE

WHEREAS, on November 6, 1956, the people of Florida amended the Florida Constitution by adopting Article VIII, Section 11 of the Florida Constitution of 1885, preserved in Article VIII, Section 6 of the Florida Constitution of 1968 (“Home Rule Amendment”), which authorized the people of Miami-Dade County to adopt a home rule charter; and

WHEREAS, the Home Rule Amendment provides that, upon the adoption of the Home Rule Charter, the people of Miami-Dade County would have the power, among others, to “abolish ... authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise...,” and that the Legislature would relinquish its power to enact special laws that apply only to Miami-Dade County; and

WHEREAS, on May 21, 1957 the electors of Miami-Dade County adopted a home rule charter (“Miami-Dade County Home Rule Charter”); and

WHEREAS, pursuant to sections 1.01(A)(11), (19), and (24) of the Miami-Dade County Home Rule Charter, the Board of County Commissioners was granted “the power to carry on a central metropolitan government” including, but not limited to, the authority to abolish special purpose districts and “any county office created by the Legislature” and to “[s]upersede, nullify, or amend any special law applying to this county, or any general law applying only to this county, or any general law where specifically authorized by the Constitution”; and

WHEREAS, section 9.04 of the Miami-Dade County Home Rule Charter contains a supremacy clause that provides:

A. This Charter and the ordinances adopted hereunder shall in cases of conflict supersede all municipal charters and ordinances, except as herein provided, and where authorized by the Constitution, shall in cases of conflict supersede all special and general laws of the state.

B. All other special and general laws and county ordinances and rules, and regulations not inconsistent with this Charter shall continue in effect until they are superseded by ordinance adopted by the board pursuant to this Charter and the Constitution; and

WHEREAS, on December 13, 1994, the Miami-Dade County Board of County Commissioners adopted Ordinance 94-215, forming the Dade County Expressway Authority (now known as the Miami-Dade County Expressway Authority) pursuant to the Florida Expressway Authority Act; and

WHEREAS, the Florida Expressway Authority Act is a general law which allowed some Florida home rule counties to form agencies of the state known as expressway authorities “to acquire, hold, construct, improve, maintain, operate, and own expressway systems” consisting of state roads; and

WHEREAS, on May 3, 2019 the Florida Legislature, by sections 13, 14, 15, 16, and 17 of Chapter 2019-169 of the Laws of Florida (the “Greater Miami Expressway Agency Act”), attempted to create the Greater Miami Expressway Agency wholly within Miami-Dade County, abolish the Miami-Dade Expressway Authority, and transfer all the assets, liabilities, and powers from the Miami-Dade Expressway Authority to the new agency; and

WHEREAS, the Greater Miami Expressway Agency Act relates exclusively to Miami-Dade County in that it, among things: (1) creates an agency of the state that exists only in Miami-Dade County; (2) restricts the appointment authority of Miami-Dade County and the County’s Transportation Planning Organization by prohibiting them from appointing members of the abolished Miami-Dade County Expressway Authority to the new Agency’s board; (3) requires the governing body of the only agency capable of being created under the act to review the Miami-Dade Expressway Authority’s employees to determine whether those employees will keep their jobs; (4) defines the term “Agency” as only meaning the Greater Miami Expressway Agency; (5) prohibits anyone who has lobbied the Miami-Dade Expressway Authority within the previous four years from serving as an officer of the new agency; (6) prohibits anyone who has been an employee of a person or entity that has done business with the former Miami-Dade County Expressway Authority from serving as an officer of the new agency; (7) imposes restrictions on former officers, employees, or consultants of the Miami-Dade County Expressway Authority; (8) creates a toll rebate program only within Miami-Dade County; (9) transfers the governance and control of the Miami-Dade County Expressway Authority to the Greater Miami Expressway Authority; and (10) dissolves only the Miami-Dade County Expressway Authority and impacts no other expressway authority in Florida; and

WHEREAS, this Board finds that the Greater Miami Expressway Agency Act only operates in Miami-Dade County and relates exclusively to Miami-Dade County, and is therefore a special law (or a general law applying only in Miami-Dade County) in violation of the Home Rule Amendment to the Florida Constitution; and

WHEREAS, this Board finds that the Florida legislature's attempt to abolish the Miami-Dade County Expressway Authority, create the Greater Miami Expressway Agency, and transfer all the assets, liabilities, and powers from the Miami-Dade Expressway Authority to the new agency is an infringement upon the local home rule authority granted to the people of Miami-Dade County; and

WHEREAS, on September 19, 2000, this Board adopted Ordinance No. 00-111 to exercise authority under the Miami-Dade County Home Rule Charter and Home Rule Amendment to the Florida Constitution to supersede and nullify a similar special law and abolish a similar local board created by the Florida legislature to divert a portion of indigent care surtax funds from public general hospitals in Miami-Dade County to private hospitals in Miami-Dade County; and

WHEREAS, on September 4, 2002, the Florida Third District Court of Appeal agreed holding that the law "as written, is applicable only to Miami-Dade County, and therefore, is an unconstitutional special law;" and

WHEREAS, under these similar circumstances, this Board wishes to exercise its responsibility and authority under the Miami-Dade County Home Rule Charter and Home Rule Amendment to the Florida Constitution, and abolish the Greater Miami Expressway Agency,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The foregoing recitations are hereby incorporated by reference.

Section 2. This Board finds that sections 13, 14, 15, 16 and 17 of Chapter 2019-169 of the Laws of Florida together constitute a special law applying only to Miami-Dade County (or a general law applying only in Miami-Dade County) that is inconsistent with the common interest of the people of Miami-Dade County.

Section 3. This Board, in the exercise of the home rule powers vested in Miami-Dade County by Article VIII, Section 6 of the Florida Constitution of 1968 and the Miami-Dade County Home Rule Charter, hereby supersedes and nullifies Sections 13, 14, 15, 16, 17 of Chapter 2019-169 of the Laws of Florida.

Section 4. This Board further finds that the Greater Miami Expressway Agency, created or required to be created by Section 15 of Chapter 2019-169 of the Laws of Florida, is an agency whose jurisdiction lies wholly within Miami-Dade County that is inconsistent with the common interest of the people of Miami-Dade County.

Section 5. This Board, in the exercise of the home rule powers vested in Miami-Dade County by Article VIII, Section 6 of the Florida Constitution of 1968 and the Miami-Dade County Home Rule Charter, hereby abolishes the board, offices, and functions of the Greater Miami Expressway Agency created or required to be created by Section 15 of Chapter 2019-169. >>In addition, by virtue of the abolition of the Greater Miami Expressway Authority and the nullification of Sections 13, 14, 15, 16, 17 of Chapter 2019-169 of the Laws of Florida, (1) all assets, facilities, tangible and intangible property, liability for any bonds, and any other rights or obligations of the Miami-Dade County Expressway Authority that were transferred to the Greater Miami Expressway Authority under Chapter 2019-169 revert, by operation of law, to the Miami-

Dade County Expressway Authority and (2) any additional assets obtained or liability incurred by the Greater Miami Expressway Authority under any apparent authority shall, by operation of law, become the responsibility of the Miami-Dade County Expressway Authority.<<¹

Section 6. The County Attorney is authorized to prosecute or defend any lawsuits to ensure that the purpose and intent of this ordinance are fulfilled.

Section 7. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 8. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall be excluded from the Code of Miami-Dade County, Florida.

Section 9. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

May 4, 2021

Approved by County Attorney as
to form and legal sufficiency:

GKS for GBK

Prepared by:

OR

Oren Rosenthal

Co-Prime Sponsors: Commissioner Joe A. Martinez
Chairman Jose "Pepe" Diaz

Co-Sponsors: Commissioner Sally A. Heyman
Commissioner Kionne L. McGhee
Senator Javier D. Souto

¹ The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.