

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years:	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					

ADDITIONAL FTE

POSITIONS (Cumulative) _____

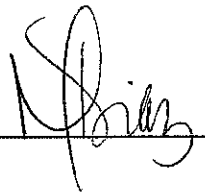
Is Item Included In Current Budget? Yes ___ No ___

Budget Account No: Fund ___ Agency ___ Org. ___ Object ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:


 OFMB *5/16/2013*
5155 N 5/17


 Contract Dev. and Control *5/16/13*

B. Legal Sufficiency:

N/A
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

(CLERK'S NOTE: Item 5.G.1. was taken at this time.)

5.G.1.

DISCUSSED WITH DIRECTION: Staff requests Board direction: regarding a proposed settlement agreement and ordinance amendments to the Inspector General Ordinance. Should the Board direct staff to accept the settlement and ordinance amendments, the Board should also appoint two (2) individuals to serve on the Ordinance Drafting Committee to expedite the ordinance amendment process. **SUMMARY:** Proposed amendments to the ordinance would provide for a contract fee to defray in part the expenses of the Inspector General (IG) office. As a regulatory fee, the contract fees collected can only be used to pay for IG inspection, audit and other oversight operations tied to contract activities of the County and cities. The cities have refused to pay any amount to fund the IG Office beyond the contract fees they would collect, leaving the County to fund the balance of IG operations. Dade County employs the contract fee as a method of partially offsetting IG operation costs. The contract fee was originally employed by the County Commission to apply to County government operations only, but was discontinued several months after implementation due to administrative costs. The proposed settlement agreement would end all litigation between the cities, the Clerk and Comptroller, and the County. As part of the settlement, the cities have tentatively offered to provide some amount of funding to offset the operational costs of the IG office pending full implementation of the contract fee system. As of this writing, however, no concrete proposal to provide such funding has been offered. Countywide (LB) (County Attorney)

Assistant County Attorney Leonard Berger said that:

- The proposed settlement was another step in the dispute resolution process that began after fifteen of the cities filed a lawsuit challenging the County's method of funding the Office of the Inspector General (OIG).
- The OIG and the cities had developed the last best settlement offer, along with IG ordinance amendments. The ordinance would provide a contract fee on select contracts, which included some exemptions due to federal funding restrictions.
- The City of West Palm Beach (West Palm Beach), along with other cities, were considering paying the County \$100,000, but no other concrete settlement proposals were forthcoming.
- Staff's recommendation was to go forward with the amendments.

- The board should appoint the Ordinance Drafting Committee to draft proposed amendments. Staff could then bring back an amended ordinance and a settlement.
- Another option would be to continue with the process until the March 26, 2012, dispute resolution meeting.

PUBLIC COMMENTS: Alexandria Larson, Suzanne Squire, Dennis Lipp, Leo Solar, Morley Alperstein, Newbolt Wilson, Tony Fransetta, Iris Scheibl, Matty Mattioli, George Peltzmacher, Bob Margolis, Jeff Hmara, Ernie Zimmerman, Phil Shapkin, Richard Radcliffe, and David Baker.

Mr. Berger stated that if a resolution had not been reached after March 26, 2012, mediation would occur. He added that many elected officials from each of the 15 municipalities could be expected to participate in the mediation. He said that West Palm Beach was the initiating entity.

Commissioner Marcus stated that she understood that the OIG supported the current funding system. She said that the .25 percent fee was not recommended since it probably would not fully fund the OIG; however, she said that she supported the Local Government Electronic Reporting System (LOGER).

Inspector General Sheryl Steckler stated that she was concerned about how the settlement agreement had been written. She added that not using LOGER was an attack on the funding base and that using all the exemptions would completely abolish the budget.

Commissioner Marcus inquired if the OIG would be satisfied with the exemptions reinstated, subject to being charged .25 percent.

The OIG's Chief of Administration, Joe Doucette, stated that the OIG had worked with the Office of Financial Management and Budget (OFMB) and had concluded that LOGER was the only system with a fixed number. He said that audited uniform reporting provided a fixed number, which explained why LOGER was mutually agreed upon until the lawsuit was filed.

Commissioner Marcus commented that, based on the lack of cooperation from the cities, it was unclear to estimate the dollars that could be generated from them to fund the OIG.

Mr. Doucette stated that in 2010 the board had implemented a system that the OIG would collect .25 percent on nonexempt contracts; \$30,000 was collected over a six-month period for startup and collection issues. He requested that the board consider all contracts since the OIG was responsible for the oversight and since the original system did not generate anticipated funds.

Mr. Berger stated that it was misleading to assume that the first six months of operation indicated future performance. He said that the lawsuit would take about two years to finalize.

Mr. Doucette stated that staff was concerned about determining the minimum level of adequate funding; analyzing how funds would be attained; and, establishing the contracts for applying the IG contract fee.

Mr. Berger stated that the charter was written broadly enough to be consistent with a LOGER system financing method or a contract fee method. He added that if the County lost the lawsuit, the funding method would be struck, and the County would continue to pay until it was able to devise another method consistent with the charter that would be legally approved and would involve the cities' funding participation.

Commissioner Aaronson said that he initially anticipated that the Inspector General's expenses would cost \$5 million and that he would not support the suggestions of the fifteen municipalities involved in the lawsuit. He said that 72 percent of County citizens voted in support of the OIG. He suggested that eliminating the auditing portion of OIG expenses would save approximately \$1 million. He said that the county could be divided into the municipalities and the unincorporated portions, and that the OIG could charge on a per-capita basis. The .25 percent fee could still apply to all municipalities, and any deficit could be equally divided, he concluded.

Commissioner Santamaria stated that he wished to regain public trust by working with the OIG. He added that in a recent Palm Beach Post editorial, he read that the cities suing the County wished to prevent the money oversight of local officials.

Ms. Steckler stated that the LOGER system was the only existent funding base that was selected by the drafting committee. She added that the current ordinance provided sufficient funding until another reliable, auditable formula could be found.

Commissioner Abrams stated that sufficient funding would not be provided since the County had to supplement funds for the duration of the lawsuit. Ms. Steckler stated that if the cities paid, the funding would be adequate. Commissioner Abrams said that he believed too many exemptions existed because of state and federal contractual obligations.

Mr. Berger responded that a number of the exemptions were in the OIG's policies and procedures when the .25 percent tax was originally implemented. He added that the exemptions existed primarily from restrictions and guidelines on federal- or state-allocated funds.

Commissioner Abrams said that the County did not propose to short-fund the Inspector General, but was defending the lawsuit. He said that exemptions should be reexamined to determine if any could be eliminated and that the board could suggest the per-capita proposal to the cities.

Mr. Weisman stated that a meeting with the cities would be held next week to discuss the settlement; however, the cities objected to levying the fees themselves to pay for the OIG. The charter amendment stated that the OIG would be funded by all governmental entities and staff attempted to work with the .25 percent. He said that the LOGER method was the only way to ensure OIG funding was equitable and had locked in figures.

MOTION to reject the proposed settlement agreements and the Inspector General Ordinance amendments. Motion by Commissioner Taylor and seconded by Commissioner Marcus.

Commissioner Taylor said that she opposed the proposal. She said that she wanted to maintain the original agreement and preferred to go forward with the lawsuit. She added that the County should have its money returned with interest if the lawsuit prevailed.

Mr. Berger informed the board that staff would file a counterclaim for the amount owed.

Commissioner Burdick stated that using the .25 percent could manipulate the funding and prevent adequate city funding. If the cities were inadequately funded, the County would be responsible for OIG funding, she said. She stated that she was committed to providing adequate funding so that the OIG could do its job and that the LOGER system was the only equitable way to generate dollars.

Commissioner Santamaria clarified that most of the OIG's costs would be paid by vendors and contractors, not the taxpayers. He said that the fee percentage could be increased or decreased and that only .18 percent was being currently charged. He added that the OIG could be self-supporting by charging fees, similar to the building department.

Mr. Doucette stated that when the program was implemented in March 2010, all existing contracts were excluded since the fee did not apply to them. He added that variations in the startup and implementation periods made it a complex process allowing only \$27,498 to be collected.

Mr. Berger stated that:

- The LOGER looked at all the contract activity in three select-object categories that closely resembled the contract fees the OIG reviewed and took .25 percent of that amount as a base.

- The system simultaneously approved the authorized annual budget and allocated funds based on the expenses of each city.
- He said that an opportunity to have a contact fee could occur if LOGER was approved by a court.

Mr. Doucette added that in situations where the fee was not allowable by the federal government, the OIG would still have oversight jurisdiction over those entities. Mr. Berger stated that placing the issue in a referendum probably could not happen since the League of Cities did not want a countywide system that obligated them to pay funds from their general budget. Commissioner Burdick clarified that anything placed on a ballot could still be litigated by the cities.

Commissioner Vana added that the County would be supplementing the OIG's budget until the lawsuit was settled.

Mr. Berger stated that the OIG reviewed having interlocal agreements with the cooperating cities to pay for services. He added that Clerk & Comptroller Sharon Bock was amenable to an agreement that allowed for payment of previously withheld funds to the IG and that municipal funding may be available over the next couple years.

UPON CALL FOR A VOTE, the motion carried 7-0.

Aaronson	Yes	
Abrams	Yes	
Burdick	Yes	
Marcus	Yes	Secunder
Santamaria	Yes	
Taylor	Yes	Maker
Vana	Yes	

*The
City
of
West Palm Beach*



"The Capital City of the Palm Beaches."

May 10, 2013

Sent via email: dnieman@co.palm-beach.fl.us

Denise Nieman, Esq.
County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Dear Denise:

This will follow up our telephone conversation of May 8, 2013. As we discussed, I listened to the tape of the BCC meeting held on May 7, 2013 and write to correct the record regarding some of the comments that were made during the discussion following public comment. As you know, I was invited to a meeting at the county on March 29, 2013 that was attended by Commissioner Hal Valeche, Council Member Joe Russo, Bob Weisman, Phil Mugavero and you.

I accepted the invitation because, as you also know, the cities from the outset have consistently supported finding a lawful resolution to the funding for the inspector general (IG) program. As I have said often, we are all partners of the county in various endeavors and take no joy whatsoever in being adversaries in this litigation. We have continually maintained our position that there is a lawful means to fund the IG program and that it should be a simple matter to resolve this lawsuit.

It is my firm belief, however, that during the March 29 meeting I made it abundantly clear that the cities were not making a new settlement offer. I was at the meeting for the sole purpose of discussing a proposal suggested by former commissioner Karen Marcus and Council Member Joe Russo.

I confirmed that the cities remain willing to act as collection agents for the county in connection with a vendor fee equal to 0.25% of all eligible contracts entered into by the cities with third parties. I explained to Commissioner Valeche that, because the cities do not provide the inspector general services, the cities are not legally permitted to charge an inspector general service fee to the contractors with whom they do business. I further confirmed that the cities fully support the county imposing such a fee.

I made very clear, however, that the IG audit services were not an issue for the cities. The lawsuit expressly makes clear that the only issue for the cities is that they do not want to receive a bill from the county for inspector general services. The cities' position is that the inspector general program must be funded by countywide ad valorem taxes paid by all county and municipal taxpayers. Some recovery of such funding can be obtained from vendor fees imposed by the county. At no time did I ever state that the cities would sue the county if vendor fees were used to fund IG audit services.

OFFICE OF THE CITY ATTORNEY

401 Clematis Street - 5th floor
P.O. Box 3366 (33402)
West Palm Beach, Florida 33401

Tel: 561/ 822-1350
Fax: 561/ 822-1373

Attachment # _____

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Denise Nieman, Esq.
May 10, 2013
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Toward the end of the meeting Bob made a suggestion that was a variation on what Karen Marcus and Joe Russo were proposing. Bob inquired as to whether the cities could support a scenario by which the cities could contract with the IG for audit services and the county would no longer be required to budget for such services. I said I thought that was a concept the cities could support.

As you know, after the Chapter 164 joint meeting of the county and the cities, county staff and cities' staff spent several weeks jointly drafting an ordinance that would impose a fee on eligible county and city contracts. In that proposed ordinance, the cities would act as collection agents. That ordinance was considered by the county commission on March 20, 2012 and was not approved.

Because I participated in drafting the original settlement ordinance, I volunteered to draft the proposed change relating to IG audit services. I did the drafting and sent it to you, Lenny Berger and Phil Mugavero for review and delivery to Bob Weisman. At no time did I communicate that the draft was a settlement offer from the cities. I actually thought I made clear at the meeting that under no circumstances could a revised ordinance be presented to the county commission as having come from the cities. It would either need to be a county proposal or a joint proposal, but it was not a cities' proposal.

In summary, there is no new settlement proposal from the cities. There is a draft of the original settlement ordinance that now has revisions regarding IG audit services suggested by Bob Weisman. The cities did not threaten to sue the county if vendor fees are used for IG audit services. Under no circumstances would it be accurate to submit the revised ordinance to the county commission as a settlement proposal from the cities. It would be accurate to report to the county commission that the cities support reconsidering the prior settlement ordinance which included the county charging vendor fees. Additional revisions would have to go back to the cities for approval.

Denise, please be so kind as to deliver a copy of this letter to Bob. I very much appreciate the challenge of trying to communicate with elected officials in a public setting while a lawsuit is pending. I am confident that Bob was merely attempting to let the board know that there was a possible solution and did not deliberately intend to attribute that solution solely to the cities or to misstate the cities' position regarding IG auditing services.

Regards,

Claudia M. McKenna
City Attorney

CMM/bjm

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