

## Deborah Thomas

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**From:** Commissioner, D2 <D2.Commissioner@brevardfl.gov>  
**Sent:** Monday, November 23, 2020 8:29 PM  
**To:** Duisberg, Cheryl; Donna Scott; Kimberly Powell; Deborah Thomas; Samantha McDaniel; Nicole Summers  
**Cc:** iaff2969.bramson@gmail.com; Kathleen Prothman; Mark Peterson; Steve Burdett; Giles Malone; Dave Berman (dberman@floridatoday.com); Commissioner, D2  
**Subject:** Please add this memo to the minutes for December 3, 2020  
**Attachments:** Memo re D2 CARES Act Allocations.pdf  
  
**Importance:** High

Dear Clerk to the Board:

The attached memo will be provided to other commissioners prior to the 12/3 BoCC meeting. As such, I would ask that you please include it in the meeting minutes for that date's BoCC meeting. Should you have any question(s), please feel free to reach out. Thanks in advance for your assistance.

Truly,

/s/ Bryan

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November 23, 2020

**Memo Discussing Issue Coming before BoCC on Thursday, December 3, 2020**

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the December 3, 2020 BoCC meeting. Please see the attached County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

Approximately 3 hours and 28 minutes into the Thursday, November 5, 2020 Brevard County Board of County Commissioners ("BoCC") workshop, District 1 Commissioner (now Commission Chair) Rita Pritchett moved to delegate authority to allocate \$25M in federal CARES Act funding, out of the roughly \$105M received, by the BoCC, such that each commissioner would be entitled to allocate up to \$5M in federal CARES Act funding as he or she sees fit to any recipient(s) within Brevard County so long as the allocation is reviewed by the BoCC's outside consultant, TetraTech, and found to be a low risk expenditure (from the standpoint of potential federal clawback of allocated funds). I seconded this motion and it passed 3:2, with Commissioners Tobia and Isnardi (now Zonka) in the negative.

Approximately 1 hour and 4 minutes into the Tuesday, November 10, 2020 BoCC meeting, County Attorney Bentley indicated, in pertinent part, "... given your prior motions, at the workshop, were not exactly as clear as we would like them, we would appreciate a motion with those conditions that it is CARES-related COVID impacts and TetraTech has approved and that we have an agreement with a clawback and audit provision..." In response, I expressed my belief that the Commission had already done that. Commissioner Smith echoed this sentiment: "well, that's what I thought," to which Commissioner Pritchett replied that she believed Ms. Bentley was looking for a "clearer motion." In response, I stated, "I want to make sure that we address whatever the underlying concern is. If there is something that staff needs clarification on, I'd rather just clarify it and make sure everyone is on the same page..." Ms. Bentley replied, "we're looking for clarification because, at the last workshop meeting, you did say CARES criteria and TetraTech approved a number of times but when you made your final motion, it was a little bit unclear so that's why I'm asking for the clarification."

In pertinent part, I replied, "... if someone feels differently, certainly we can address it... if someone feels differently, let's figure it out now. It has to be an expense that's considered a low risk expense, per TetraTech, and it has to be something which occurs within Brevard County,

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though not necessarily within the individual commissioner's district or it could potentially span multiple districts, like the hazard pay that I was talking about wouldn't benefit one district more than the other necessarily. It would apply from the south end to the north end." Addressing Commissioner Pritchett, I went on to state, "It's kind of one of those things where you already have the authority to do it. I hate to ask for permission to do what you can already do."

A little later, at approximately 1 hour 9 minutes into the meeting, I stated, "...I don't want there to be confusion in terms of viewing this as setting a precedent where they have to come back after we've already gotten the authority because, frankly, I don't want to have to come back to get everyone's blessing, even if they would bless it anyway. I'd rather just go and get it done... As long as it passes the criteria, as to the portion that was allocated for D2 to disburse, according to the criteria that we discussed... I don't plan on coming back to ask for permission to allocate what I've already been authorized to allocate."

Despite unambiguous clarity as to both the BoCC's intentions as well as to the scope of BoCC authority delegated to individual commissioners, I have encountered extreme difficulties, not with TetraTech, but with certain staff members, in having them follow the BoCC's explicit direction in implementing requested allocations. The reasons offered, by staff, have varied and when I have, in the interests of diplomacy, modified my proposals to account for staff concerns, new or different concerns invariably arise to the extent that at least some have struck me as pretextual and obstructionist.

While there have been several proposed allocations I have asked staff to forward to TetraTech for review, staff has seemingly taken it upon themselves to do internal analysis of my proposals separate and apart from simply forwarding those proposals to TetraTech, the entity we are paying tax dollars to in order to review eligibility and evaluate risk. That is what TetraTech was explicitly contracted to do.

If staff does not trust TetraTech to do their job, why wasn't this concern raised to the BoCC? If staff trusts TetraTech to do their job, why are we paying TetraTech and staff, whether hourly or by salary, to perform the same function?

The BoCC never conditioned the delegation of authority on staff's satisfaction with the proposal. Per the BoCC's direction, the only approval needed is that of TetraTech which would serve to signify that the allocation is COVID-related and at low risk of clawback from the federal government.

While I will leave out the most absurd arguments offered to avoid embarrassing individual staff members, I have identified a single supposed roadblock which, if removed, appears to resolve all pending issues for those items in which staff has expressed any degree of concern.

Before outlining the solution, I would like to briefly discuss the problem. With respect to the hazard pay I proposed, staff's latest position is that I may allocate the desired amount to the public safety fund in reimbursement of BCFR payroll expenses but that, in order to be allocated from that fund to the first responders, it would require new BoCC approval as the money would no longer be properly classed as CARES funding as the deposit into that public safety fund would

constitute the technical allocation of those CARES Act dollars. I have heard similar arguments as to other proposed allocations, including a proposal to allocate funding which would reimburse qualifying emergency operations expenses for the benefit of constructing the new EOC.

As to the firefighter hazard pay proposal, at one point, I was told that there could be a roadblock with the fire union as they would have the right to negotiate. While, on its face, that may sound reasonable, think about it. What possible reason would the fire union have to say “no” to, in essence, having their membership receive more funding than they are due without having to perform any additional work? I suggested, to staff, that the union could potentially waive any right to negotiate on this limited issue and, voila! Yet another “new” issue was conveniently introduced to the mix.

I was then told a certain department would have to associate each fire rescue call for service with the particular first responder(s) who responded and that this might take upwards of six weeks of staff time. When I suggested I wanted to call a special BoCC meeting as I did not wish for that department to be unable to implement the plan due to inadequate time, that six week number was revised to one week. When I was unable to acquire a quorum for my desired special meeting date, that number was revised back up once again.

When I expressed the view that each full time BCFR first responder (EMT, paramedic, firefighter, ocean rescue lifeguard, or similar) is exposed, on each and every call for service, to a certain level of risk based upon the fact that a percentage of the population is COVID-positive, this, too, was made into an issue not by TetraTech but, rather, by county staff well before the proposal ever reached TetraTech.

When I contacted a particular department director, in the absence of the County Manager, who is presently out ill, I was matter-of-factly told that I should have reached out to the County Manager despite both the County Manager being out ill and despite the board having explicitly delegated the authority to allocate \$5M in CARES Act funding to me. You can’t make this stuff up!

While the overwhelming majority of staff have been and remain an absolute pleasure to deal with, certain staff members have been quite the opposite on this issue. Absent BoCC direction to the contrary, staff should not insist on performing the function TetraTech was hired to perform.

Consistent with board direction, my proposals, including the BCFR hazard pay proposal, should have been sent, verbatim and without poisoning annotation, to TetraTech for analysis and review. If staff wished to point out a legitimate concern or to request a revision, prior to sending a proposal to TetraTech, such communications would have been welcomed and given due consideration.

Without getting any further into the weeds and delving into minutiae, I believe that I have found a solution to all pending issues which will serve to vastly reduce the required amount of staff-hours expended in tallying figures and/or setting up programmatic exports, from SAP, for evaluation. It also appears to free us from the December 30, 2020 deadline associated with receiving goods/having training completed.

The goal, with the arguably more difficult items, is to remove them from the CARES Act requirements so that they can be expended without those restrictions. As long as we have clearly reimbursable expenses to tie in for each allocation, nothing appears to preclude us from placing the resulting allocation into a new fund or cost center. Only that initial allocation, to the new cost center/fund, will need to be vetted by TetraTech as the money will no longer be subject to CARES Act requirements.

Similarly, nothing precludes that cost center or fund from having an explicit restriction or multiple restrictions placed upon it in advance of the allocation. I have spoken with County Finance to confirm they are able to open new funds and/or cost centers with explicit spending restrictions.

I would like to have County Finance set up new funds or cost centers for our use in allocating CARES Act funding. All of the following proposals are contemplated as coming out of the \$5M allocated to D2.

The first will be a cost center (or fund) in which we will reimburse \$500,000 in qualifying emergency operations payroll and/or other qualifying expenses. That cost center (or fund) will have a restriction associated with it, upon its creation, indicating that, absent a majority vote from the BoCC on or before July 1, 2021, that withdrawals/disbursements from that cost center (or fund) may only be used for capital expenses related to the construction and/or improvement of the new EOC. The cost center or fund will be created with that restriction explicitly tied to it. This alleviates the technical issue of potentially having to go back before the board to allocate from that fund for the intended purpose. As those funds will no longer be subject to CARES Act requirements once they are allocated to that cost center / fund, all known potential issues associated with this proposed allocation would vanish.

The second will be a cost center (or fund) in which we will reimburse an amount equal to the number of FTE BCFR first responders (e.g., EMTs, paramedics, ocean rescue employees, firefighters, and similar) times \$2000. I estimate this will amount to roughly \$900,000. The reimbursement will be tied to BCFR payroll and/or any other qualifying public safety expenses to which staff wishes it to be tied. This cost center (or fund) will have a restriction associated with it, upon its creation, indicating that, absent a majority vote from the BoCC on or before July 1, 2021, that withdrawals/disbursements from that cost center (or fund) may only be used for paying a one-time lump sum (e.g., hazard pay, bonus, or similar) to BCFR first responders in the amount of \$1500 per FTE, prorated for those who work part-time. Any remaining funds may be used for any BCFR expense approved by the BoCC.

While County Budget estimated that we would need only \$675,000 in order to fund \$1500 per BCFR first responder, I am adding a roughly 33% overage to allow for the possibility that we may have to pay benefits costs on the hazard pay. The goal is to put \$1500, pre-tax, into the pockets of each full time BCFR first responder.

In order to allow me to accomplish the above desired goals and to prevent any sort of gamesmanship or interference by even well-meaning staff, **I would ask that the BoCC pass the following motion on December 3, 2020** with the caveat that, based upon the existing BoCC

delegation of authority, I believe that individual commissioners already have the authority to do what I am proposing, below, in excruciating detail.

#### **PROPOSED MOTION:**

The instant motion shall not be construed, in any way, to limit the authority delegated, by the Brevard County Board of County Commissioners, on Thursday, November 5, 2020, as clarified on Tuesday, November 10, 2020.

On Thursday, November 5, 2020, the Brevard County Board of County Commissioners formally delegated authority to allocate \$25M of federal CARES Act funding such that each County Commissioner receives \$5M to allocate as he or she wishes provided: (1) the recipient(s) is/are located within Brevard County and (2) the allocation is deemed to be "low" risk by our outside consultant, TetraTech.

This action was explicitly clarified and discussed, in much detail, on Tuesday, November 10, 2020, by the Brevard County Board of County Commissioners, at a duly noticed meeting of that body.

Since that date, staff has identified various concerns with respect to the limits of the authority delegated by the Brevard County Board of County Commissioners.

While such action was never proscribed, in order to cure any potential issue(s), the Brevard County Board of County Commissioners explicitly authorizes the creation of new funds and cost centers, as may be requested by individual commissioners, into which qualifying expenses may be reimbursed without necessitating further authorization by the Brevard County Board of County Commissioners. The allocation into any such fund or cost center must still be vetted by TetraTech and found to be "low" risk.

Upon the request of any County Commissioner, the CAO, BCFR, Budget, HR, Housing & Human Services, and CMO staff are directed to timely identify qualifying expenses for reimbursement purposes and to assist in the creation and funding of such funds or cost centers in cooperation with County Finance. This explicitly contemplates staff timely forwarding proposed allocations to TetraTech for review without annotation or comment intended to negatively influence such review.

Without additional action, on the part of the Brevard County Board of County Commissioners, any individual commissioner who requests the creation of any such fund or cost center may, after its creation and subsequent to its funding with qualifying expenses, cause to be disbursed, from any such fund or cost center, any funds allocated by said commissioner for any expense(s) for which said commissioner attests there exists and/or will exist an articulable public health and/or public safety benefit.

The following allocations are explicitly recognized as resulting in an articulable public health and/or public safety benefit: Any allocation(s) in which funding is made available to first responders, medical practitioners, medical entities (including hospitals and pharmacies), nursing, paramedic & EMT training programs and/or students (not to exceed the cost of in-state tuition and fees). For purposes of this section, emergency operations personnel may be viewed as first responders.

It is believed that allocations from newly created funds or cost centers, as contemplated in the above motion, may not have to be committed to particular expenditures on or before December 30, 2020 as the funds contained therein would no longer be CARES Act funds given that their deposit into any such fund or cost center would serve as an allocation and render the resulting funds deposited no longer falling under the purview of CARES Act requirements.