
**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC04-1056**

Upon Request From The Attorney General
For An Advisory Opinion As To The
Validity Of A Financial Impact Statement

**ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: FLORIDA MINIMUM WAGE AMENDMENT**

**INITIAL BRIEF OF SPONSOR,
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STATEMENT OF THE CASE AND FACTS

On May 11, 2004, the Secretary of State, pursuant to Florida Statute section 15.21, certified the Florida Minimum Wage Amendment (“Amendment”) and forwarded it to the Attorney General. On June 7, 2004, the Attorney General requested the Court’s opinion on the Amendment’s compliance with the single-subject requirement and Florida Statute section 101.161. On June 29, 2004, the Court held oral argument after expedited briefing. A decision is currently pending.

Also on June 29, 2004, the Attorney General requested the Court’s opinion as to whether the financial impact statement (the “Impact Statement”) prepared by the Financial Impact Estimating Conference (“FIEC”) with respect to the Amendment is in accordance with Florida Statute section 100.371. The Court has jurisdiction pursuant to article IV, section 10 and article V, section 3(b)(10) of the Florida Constitution.

Florida Statute section 100.371 requires FIEC to determine the estimated increase or decrease in revenues or costs to state and local governments of the Amendment and to create the Impact Statement to be placed on the ballot next to a summary of the Amendment. On June 3, 2004, FIEC held a public meeting to hear testimony on the fiscal impact of the Amendment. At the meeting, Dr. Robert Pollin presented FIEC with an uncontroverted assessment of the net fiscal impact of the Amendment on state and local government budgets. On June 16, 2004, Dr.

Pollin submitted a written assessment to FIEC estimating the Amendment would produce \$2.9 million in fiscal savings to the state.¹ FIEC conducted its own internal analysis and estimated the Amendment would cost the state approximately \$7.3 million. FIEC unanimously concluded this impact was “very small” compared to total employee compensation paid by the state.

After careful deliberation, FIEC, on June 25, 2004, submitted the Impact Statement to the Attorney General. The Impact Statement states: “[t]he impact of this amendment on costs and revenues of state and local governments is expected to be minimal.” On July 2, 2004, FIEC published a financial information statement (the “Information Statement”) that describes in greater detail the projected financial impact of the Amendment on state and local government.² In particular, the Information Statement summarizes the following analyses that were considered by FIEC in determining the financial impact of the Amendment: (1) a survey of state and local governments; (2) an internal analysis based on state and national data; and (3) the research of Dr. Pollin. Each analysis concluded that the impact of the Amendment on state and local government costs and revenue is likely to be minimal.

¹ Dr. Pollin is a professor of economics at the University of Massachusetts-Amherst. His report to FIEC is attached as Exhibit A.

² A copy of the Information Statement and its Summary are attached as Exhibit B.

SUMMARY OF THE ARGUMENT

The Court's review of the sufficiency of the Impact Statement is limited to two narrow issues: (1) whether the financial impact statement addresses the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the Amendment as required by Florida Statute section 101.371(6)(a); and (2) whether the financial impact statement is set forth in clear and unambiguous language, no more than 75 words in length, as required by Florida Statute section 101.371(6)(b)(3). The Impact Statement easily satisfies both these requirements and should be approved for inclusion on the ballot.

The Impact Statement states as follows: **“The impact of this Amendment on costs and revenues of state and local governments is expected to be minimal.”** This statement, when viewed separately or in combination with the ballot summary that it will accompany, could not be written in a more simple, accurate and understandable manner. Voters at all levels of sophistication will have no trouble comprehending the Impact Statement, which accurately conveys the conclusions of FIEC.

STANDARD OF REVIEW

As with ballot summaries, the Court does not review “the merits or the wisdom of” the Impact Statement but rather whether the Impact Statement complies with Florida statute section 100.371. Cf. Advisory Op. to the Atty. Gen. re Authorizes Miami-Dade & Broward Voters to Approve Slot Machines in Parimutuel Facilities, No. SC03-857, 2004 WL 1064930, at *2 (Fla. May 13, 2004). Section 100.371, in turn, requires the Court to determine (1) whether the financial impact statement addresses the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the Amendment; and (2) whether the financial impact statement is set forth in clear and unambiguous language, no more than 75 words in length.

Although this appears to be a matter of first impression, in determining whether the Impact Statement addresses the appropriate topic and is clear and unambiguous, the Court should adopt the deferential standard applied to ballot summaries for proposed constitutional amendments. Cf. Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000). Thus, the Impact Statement should be approved unless it is “clearly and conclusively defective.”

THE IMPACT STATEMENT SATISFIES SECTION 100.371

A. The Impact Statement Addresses the Amendment's Estimated Effect on Revenues and Costs to State and Local Governments

The Impact Statement properly addresses “the estimated increase or decrease in revenues or costs to state or local governments resulting from” the Amendment. Fla. Stat. § 100.371(6)(a) (2004). The purpose of a financial impact statement is to provide voters fair notice of the estimated financial effect of an amendment on government entities so they may cast an intelligent and informed ballot.³ As with the ballot summary and title of an amendment, the financial impact statement need not and cannot – given space limitations – explain every potential financial detail or effect of a proposed amendment. Cf. Advisory Op. to the Atty. Gen. re Local Trs., 819 So. 2d 725, 731 (Fla. 2002) (the title and summary need not explain every detail or ramification of the amendment).

In the Impact Statement, FIEC clearly fulfills its first obligation under section 101.371 by stating that **“the impact of this Amendment on costs and revenues of state and local governments is expected to be minimal.”** This sentence addresses the required subject matter in a direct and forthright manner. Indeed, there can be no question that the Impact Statement addresses but a single

³ If the Impact Statement addresses topics unrelated to the estimated financial effect on state and local governments, the Impact Statement would violate section 100.371 and improperly touch on the merits of the Amendment. Cf. Advisory Op. to the Atty. Gen. re Protect People From the Health Hazards of Second-Hand Smoke, 814 So. 2d 415, 421 (Fla. 2002) (it is for the voters to “ultimately determine the wisdom of the policy alternative presented to them”).

topic: the predicted financial impact of the Amendment on state and local government.

Moreover, although the Court does not review the merits, substance or even the accuracy of FIEC's conclusions as present in the Impact Statement, it nevertheless provides an accurate summary of FIEC's conclusions. Just as the Amendment's ballot summary informs voters of the chief purpose of the Amendment, the Impact Statement informs voters of the chief financial effect of the Amendment on state and local government budgets.

Here, FIEC concluded that the Amendment may potentially cost the state \$13.6 million in increased labor costs that would be offset by \$6.3 million in higher tax receipts, resulting in a net cost of approximately \$7.3 million. Information Statement at 5. (relying on U.S. Bureau of Labor Statistics employment surveys). FIEC explicitly states that the increased labor cost estimate represented .033% of the total state and local government labor costs in 2003. Id.

Similar to FIEC, Dr. Pollin concluded that the Amendment will have a small financial impact on government entities. In his report, Dr. Pollin considered the Amendment's added salary and administrative costs to the state budget as well as the potential healthcare savings and increased tax revenues for the state. Id. at 5-6. He concluded that the Amendment's total net effect to state and local government was an estimated \$2.9 million in fiscal savings, which represents a miniscule or

“minimal” .00005% of Governor Bush’s proposed \$55.4 billion state budget for 2004-2005.⁴ *Id.* at 5.

B. The Impact Statement Reflects the Amendment’s Financial Effect on State and Local Governments in a Clear and Unambiguous Manner

The Impact Statement also satisfies the second requirement of Florida Statute section 100.371 because it provides a clear and unambiguous statement that explains the Amendment’s financial impact on local and state government budgets. Fla. Stat. § 100.371(6)(b)(3). In short, concise language, the Impact Statement declares that the impact of the Amendment “on costs and revenues of state and local governments is expected to be minimal.”

The Impact Statement provides a straightforward and easily understood account of the Amendment’s potential effect and cannot be more concise in explaining that effect to voters. Although FIEC and Dr. Pollin’s conclusions differ as to whether the Amendment would produce “minimal” added costs or fiscal savings, the results of both reports show only an immaterial potential financial effect and the term “minimal” – as used in the Impact Statement – clearly and simply covers both projections in a neutral manner. No one could reasonably argue that a few million dollars is more than “minimal” in the context of a \$55 billion state budget. Nor could anyone argue that the Impact Statement does not

⁴ Governor Bush’s proposed budget is available at <http://www.ebudget.state.fl.us>.

adequately summarize FIEC's finding that the Amendment will have "minimal" impact on state and local government revenues and costs.

Relying on substantial, competent data, FIEC determined that the Amendment's financial impact to government entities was "expected to be minimal." The Impact Statement clearly sets forth FIEC's findings in a simple, understandable sentence that any voter can comprehend. Thus, the Impact Statement satisfies section 100.371 because it clearly and unambiguously explains the financial impact of the Amendment on state and local government budgets.

CONCLUSION

The Impact Statement easily satisfies the requirements of section 100.371 because it clearly and unambiguously states the potential financial effect the Amendment will have on revenues and costs for state and local government. Thus, the Court should approve the Impact Statement for placement on the general ballot.

Respectfully submitted this 6th day of July, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail to the persons on the attached service list this 6th day of July, 2004.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), typeface used in this brief is a 14-point Times New Roman.

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