

IN THE SUPREME COURT OF FLORIDA

Case No. SC04-1172

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: REPEAL OF HIGH SPEED RAIL AMENDMENT

**COMBINED INITIAL BRIEF AND ANSWER BRIEF OF THE
SPONSOR,
DERAIL THE BULLET TRAIN**

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SUMMARY OF THE CASE AND FACTS

Derail the Bullet Train (“DEBT”) is the sponsor of an initiative petition to present a constitutional amendment to repeal Article X, Section 19, Florida Constitution, which mandates the development and operation of a high speed ground transportation system.

On June 7, 2004, the Attorney General petitioned this Court for an advisory opinion as to whether the initiative petition complies with the requirements of Article IX, Section 3, Florida Constitution, and Section 101.161(1), Fla. Stat. (2003). This Court rendered its opinion on July 15, 2004, approving the proposed initiative for placement on the ballot. See Advisory Opinion to the Atty Gen. re: Repeal of the High Speed Rail Amendment, 2004 WL 1574241 (July 15, 2004).

Subsequently, pursuant to Chapter 04-33, Laws of Florida, the Financial Impact Estimating Conference (“FIEC”) prepared the financial impact statement as to the estimated decrease in costs to the State that will result if the proposed initiative to repeal Article X, Section 19, Florida Constitution, is passed. The financial impact statement reads as follows:

Passage of this amendment could result in state cost savings ranging from \$42 billion to \$51 billion over the next 30 years, based on the statewide system currently defined in law. This estimate assumes the repeal of associated laws and could be reduced by federal or private sector funding.

The estimated 30 year impact equates to average costs savings of between \$4,700 and \$5,700 per Florida household, or \$157 to \$190 per year.

The FIEC forwarded the completed financial impact statement to the Attorney General on July 15, 2004, and on July 20, 2004, pursuant to the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Fla. Stat., the Attorney General requested that this Court render an opinion as to whether the financial impact statement prepared by the FIEC on the proposed constitutional amendment, by initiative petition, is in accordance with Section 100.371, Fla. Stat., as amended by Chapter 04-33, Laws of Florida.¹

This combined Initial and Answer Brief is submitted by the Sponsor of the Proposed Initiative, pursuant to this Court's Order dated, July 20, 2004, requesting that combined Initial and Answer Briefs be simultaneously submitted on July 27, 2004.

SUMMARY OF THE ARGUMENT

The financial impact statement is in compliance with Section 100.371, Fla. Stat. The financial impact statement clearly and unambiguously informs the voter, in less than seventy-five (75) words, of the probable costs savings ranging from \$42 billion to \$51 billion over thirty (30) years resulting from the repeal of the mandate to the State

¹All references to Section 100.371, Fla. Stat., are to Section 100.371, Fla. Stat., as amended by Ch. 04-33, Laws of Florida.

to develop and operate a high speed ground transportation system as required by Article X, Section 19, Florida Constitution. Further, the FIEC, in reaching such probable costs savings, clearly informed the voters that such determination is based on the assumption that the Legislature repeals the laws it enacted to implement this mandate.

STANDARD OF REVIEW

As with ballot summaries, the Court does not review the “merits or the wisdom” of the financial impact statement but rather whether the financial impact statement complies with Section 100.371, Fla. Stat. Although this appears to be a matter of first impression, in determining whether the financial 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. Thus, the financial impact statement should be approved unless it is “clearly and conclusively defective.”

ARGUMENT

THE PROPOSED FINANCIAL IMPACT STATEMENT COMPLIES WITH THE REQUIREMENTS IN SECTION 100.371, FLORIDA STATUTES, AS AMENDED BY CH. 04-33, LAWS OF FLORIDA.

The FIEC is required to prepare a clear and unambiguous financial impact statement which summarizes in seventy-five (75) words or less the estimated increase or decrease in revenues or costs to the state or local government as a result of the proposed initiative. Section 100.371, Fla. Stat., provides, in pertinent part:

(6)(a). . . the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the proposed initiative.

* * *

(6)(b)3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days. (Emphasis added.)

Further, reading Section 100.371(6)(b)3., Fla. Stat., in conjunction with Section 100.371(6)(a), Fla. Stat., as well as with Article XI, Section 5(b), Florida Constitution, the phrase “range of potential impacts” in Section 100.371(6)(b)3., Fla. Stat., must relate to the phrase “probable financial impact” set forth in the constitution. The financial impact statement adopted by the FIEC for the instant proposed amendment to repeal the mandate for development and operation of a high speed ground transportation system states:

Passage of this amendment could result in state cost savings ranging from \$42 billion to \$51 billion over the next 30 years, based on the statewide system currently defined in law. This estimate assumes the repeal of associated laws and could be reduced by federal or private sector funding. The estimated 30 year impact equates to average costs savings of between \$4,700 and \$5,700 per Florida household, or \$157 to \$190 per year.

A. The Financial Impact Statement estimates the decrease in costs to the State which would result from the proposed initiative.

The purpose of requiring the preparation of a financial impact statement is to inform the public of the probable financial impact of an amendment to the constitution proposed by initiative petition. See, Art. XI, § 5(b), Fla. Const. The financial impact statement relating to the proposed initiative adequately addresses the estimated increase or decrease in revenues or costs to the State as a result of the proposed initiative. A financial impact statement is required to address only the increase or decrease in

revenues to the state or local governments. See §100.371(6)(a), Fla. Stat. As such, the instant financial impact statement correctly addresses only the costs savings to the State as the constitutional mandate holds the State responsible for funding the development and operation of the high speed ground transportation system. Thus, estimated increases or decreases in revenues or costs to local government is not applicable in this instance.

B. The Financial Impact Statement is clear, unambiguous and is less than seventy-five (75) words.

This financial impact statement clearly and unambiguously states the probable costs savings for the proposed amendment and is less than seventy-five (75) words. While the requirements of Section 100.371, Fla. Stat., have been previously addressed by this Court, in determining whether the statement is clear and unambiguous, the Court should consider case law interpreting whether the ballot title and summary of a proposed initiative are clear and unambiguous, as required by Section 101.161, Fla. Stat., as that section and Section 100.371, Fla. Stat., have similar purposes. The requirement for the language to be “clear and unambiguous” with regards to the ballot title and summary of a proposed initiative is to inform the voter and ensure that the voter will not be misled by the ballot and cast an intelligent vote. Advisory Op. to Att’y Gen. re: Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998); Advisory Op.

to Att’y Gen. re: Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998); Askew v. Firestone, 421 So. 2d 151, 154-56 (Fla. 1982). Similarly, the purpose of the financial impact statement required by Section 100.371, Fla. Stat., is to ensure the voter is informed of the probable financial impact of the proposed initiative which will allow the voter to cast an informed and intelligent vote. See Art. XI, §5(b), Fla. Const. Thus, the test for addressing whether a ballot title and summary is clear and unambiguous so as not to mislead the voters, is equally applicable to the review of a financial impact statement.

Here, the financial impact statement provides the probable costs savings to the State in a range from \$42 billion to \$51 billion over thirty (30) years, and in reaching such probable costs savings assumes correctly that the existing laws passed by the Legislature to implement the current mandate to develop and operate a high speed ground transportation system will be repealed. Such summary of probable financial impact to the State is definitive and not misleading. The fact that the stated costs savings are contingent upon the repeal of the existing laws implementing Article X, Section 19, Florida Constitution, does not render the financial impact statement unclear or misleading.² With respect to the assumption, it is clear that once the mandate is

² Sections 341.8202, *et seq.*, Fla. Stat. (2003), implement Article X, Section 19, Florida Constitution.

repealed, the State will be no longer mandated to spend State funds to implement the high speed ground transportation system. Thus, the Legislature may or may not choose to amend or repeal the existing statutes relating to development of a high speed ground transportation system. The financial impact statement clearly and unambiguously informs the voter of this contingency and clearly indicates that the proposed initiative would simply remove the constitutional mandate that the State appropriate money to implement a high speed ground transportation system. See Chiles v. Phelps, et al., 714 So. 2d 453 (Fla. 1998); State of Florida ex rel. Collier Land Investment Corp., 188 So. 2d 781 (Fla. 1966).

Further, the financial impact statement provides for a range of costs savings, and the FIEC was correct in setting a range. See § 100.371(6)(b)3., Fla. Stat. In addition, the financial impact statement serves the overall goal of informing voters of the probable financial impact of the proposed initiative, and does not editorialize.

CONCLUSION

The financial impact statement pertaining to the proposed initiative to repeal Article X, Section 19, Florida Constitution, complies with the requirements in Section 100.371, Fla. Stat. Thus, Derail the Bullet Train, the sponsor of the initiative, respectfully requests that the financial impact statement be approved for placement on the ballot.

Respectfully submitted this 27th day of July, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the following parties via hand delivery on this 27th day of July, 2004.

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CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this COMBINED INITIAL AND ANSWER BRIEF has been typed using the 14 point Times New Roman font as required by Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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