

**IN THE SUPREME COURT OF FLORIDA**

Case No. SC04-1497

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Review After Remand of  
Financial Impact Statement

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ADVISORY OPINION  
TO THE ATTORNEY GENERAL

RE: REVISED FINANCIAL IMPACT STATEMENT FOR  
REPEAL OF HIGH SPEED RAIL AMENDMENT

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BRIEF OF THE SPONSOR,  
DERAIL THE BULLET TRAIN

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**TABLE OF CONTENTS**

	<b>Page</b>
Table of Authorities . . . . .	i
Statement of the Case and Facts . . . . .	1
Summary of the Argument . . . . .	2
Standard of Review . . . . .	2
Argument . . . . .	3
THE PROPOSED FINANCIAL IMPACT STATEMENT COMPLIES WITH THE REQUIREMENTS IN SECTION 100.371, FLORIDA STATUTES. . . . .	3
Conclusion . . . . .	8
Certificate of Service . . . . .	9-10
Certificate of Font Size . . . . .	10

**TABLE OF AUTHORITIES**

<b><u>FLORIDA CASES</u></b>	<b><u>PAGE NO.</u></b>
<u>Advisory Op. to the Att’y Gen. - Authorizes Miami-Dade &amp; Broward County Voters to Approve Slot Machines in Parimutuel Facilities</u> , Case No. SC04-1057 (July 15, 2004) . . . . .	3
<u>Advisory Op. to Att’y Gen. Re: Public Protection From Repeated Medical Malpractice</u> , Case No. SC04-1288 (Aug. 6, 2004) . . . . .	6
<u>Advisory Op. to the Att’y Gen. - Repeal of High Speed Rail Amendment</u> , Case No. SC04-1172 (Aug. 3, 2004) . . . . .	1, 3, 4
<u>Advisory Op. to Att’y Gen. Re: Right of Citizens to Choose Health Care Providers</u> , 705 So. 2d 563 (Fla. 1998) . . . . .	5
<u>Advisory Op. to the Att’y Gen. Re: Term Limits Pledge</u> , 718 So. 2d 798 (Fla. 1998) . . . . .	5
<u>Chiles v. Phelps, et al.</u> , 714 So. 2d 453 (Fla. 1998) . . . . .	7
<u>Greenwood v. Oates</u> , 251 So. 2d 665 (Fla. 1971) . . . . .	6
<u>State of Florida ex rel. Collier Land Investment Corp.</u> , 188 So. 2d 781 (Fla. 1966) . . . . .	7
<b><u>CONSTITUTION</u></b>	<b><u>PAGE NO.</u></b>
Article X, Section 19, Florida Constitution . . . . .	2, 7, 8
Section 5, Article XI, Florida Constitution . . . . .	3

**FLORIDA STATUTES**

**PAGE NO.**

Chapter 2004-33, Laws of Florida . . . . . 1, 8

Section 100.371, Florida Statutes . . . . . 1, 2, 3, 4, 6, 8

Section 100.371(6)(a), Florida Statutes . . . . . 3, 4

Section 100.371(6)(b), Florida Statutes . . . . . 5

Section 100.371(6)(a) and (b)3., Florida Statutes . . . . . 3

Section 101.161, Florida Statutes . . . . . 5

## **STATEMENT OF THE CASE AND FACTS**

Previously this Court rendered an advisory opinion finding that the first and third sentences of the initial financial impact statement prepared by the Financial Impact Estimating Conference (“Conference”) relating to the initiative entitled “Repeal of the High Speed Rail Amendment” did not comply with Section 100.371, Florida Statutes, as amended by Chapter 2004-33, Laws of Florida (hereinafter referred to as “Section 100.371, Florida Statutes”). See Advisory Opinion to the Attorney General - Repeal of High Speed Rail Amendment, Case No. SC04-1172 (Fla. 2004). Thus, this Court remanded the initial financial impact statement to the Conference for redrafting. On August 12, 2004, the Conference submitted its revised financial impact statement (“Statement”) which is under review in the instant case. The revised Statement provides:

The probable financial impact of passage of this amendment is a state cost savings ranging from \$20 billion to \$25 billion over the next 30 years. This estimate assumes the repeal of associated laws, the use of state bonds to finance construction, and could be reduced by federal or private sector funding.

Subsequently, the Attorney General requested this Court to render an advisory opinion regarding whether the revised Statement complies with the requirements of Section 100.371, Florida Statutes.

## **SUMMARY OF THE ARGUMENT**

The revised Statement clearly and unambiguously informs the voter in less than seventy-five (75) words, of the probable financial impact which is a costs savings to the State of \$20 to \$25 billion over the next thirty (30) years due to the repeal of the mandate in Article X, Section 19, Florida Constitution. The Conference revised the initial Statement as suggested by this Court by refining the first sentence to reflect the “probable financial impact” and deleting the third sentence which originally estimated the average costs savings per household and per year. Therefore, the revised Statement complies with Section 100.371, Florida Statutes.

## **STANDARD OF REVIEW**

As with ballot summaries, the Court does not review the “merits or wisdom” of the financial impact statement, but only whether the financial impact statement complies with the requirements in Section 100.371, Florida Statutes. Thus, this Court should adopt the deferential standard applied to the review of ballot summaries for proposed constitutional amendments. Thus, a 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.

Financial impact statements are governed by Section 5, Article XI, Florida Constitution, which requires the Statement to provide the “probable financial impact of any amendment proposed by initiative pursuant to section 3.” Also, Section 100.371, Florida Statutes, requires the financial impact statement to clearly and unambiguously provide an estimate of the increase or decrease in revenues or costs to the State or local governments as a result of the proposed initiative being passed in no more than seventy-five (75) words. §100.371(6)(a) and (b)3., Fla. Stat. However, it is permissible to provide a range of probable financial impacts, but such range must relate to the “probable financial impact” required by the Florida Constitution and the phrase in Section 100.371(6)(a), Florida Statutes, regarding the increase or decrease of revenues to state or local governments. Id.; Advisory Op. to the Att’y Gen. -Repeal of High Speed Rail Amendment, Case No. SC04-1172 (Aug. 3, 2004); Advisory Op. to the Att’y Gen. - Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutuel Facilities, Case No. SC04-1057 (July 15, 2004).

In reviewing the initial financial impact statement for the instant initiative, this Court found that the first and third sentences did not comply with Section 100.371, Florida Statutes, because:

[T]he use of the word “could” in the first sentence, the financial impact of the amendment is not expressed in terms of probable financial impact.” Further, because the financial impact is expressed in terms of average cost savings “per Florida household” in the third sentence, the financial impact statement goes beyond addressing “revenues or costs to state or local governments.”

See Advisory Op. to the Att’y Gen. -Repeal of High Speed Rail Amendment, Case No. SC04-1172 (Aug. 3, 2004). The Court did not comment on any other portion of the initial financial impact statement. In redrafting the financial impact statement, the Conference directly addressed this Court’s concerns by addressing only the probable financial impacts as they relate the costs savings to the State as required by Section 100.371(6)(a), Florida Statutes, and deleting the third sentence which related to the costs savings per household and per year. The revised Statement provides:

The probable financial impact of passage of this amendment is a state cost savings ranging from \$20 billion to \$25 billion over the next 30 years. This estimate assumes the repeal of associated laws, the use of state bonds to finance construction, and could be reduced by federal or private sector funding.



Thus, the revised Statement complies with Section 100.371(6)(a), Florida Statutes, and this Court's opinion of August 3, 2004.

In addition, Section 100.371(6)(b), Florida Statutes, requires that a financial impact statement be clear, unambiguous, and less than seventy-five (75) words. This requirement has a similar purpose to that of the "clear and unambiguous" requirement for ballot titles and summaries in Section 101.161, Florida Statutes. The purposes of both requirements are to ensure that the voter will not be misled and may cast an intelligent vote. See e.g., Advisory Op. to the 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). Thus, the appropriate test for whether the revised Statement is clear and unambiguous is whether the Statement misleads the voter.

Further, it is clear from the public meetings held by the Conference and the revised Statement that the range of probable financial impact is based on certain assumptions. It is inherent in the process for making estimates of future probable financial impact that certain assumptions be made since not all information is currently ascertainable as to future events. Thus, it is not improper for the revised Statement to include certain assumptions. The inclusion of assumptions does not render the revised Statement unclear and ambiguous, nor does the inclusion of the

assumptions mislead the voter. Instead, the identification of certain assumptions further educates the voter as to the basis for the estimated probable financial impact which better enables the voter to make an informed decision.

This Court is constrained to review the compliance of the revised Statement with Section 100.371, Florida Statutes, and is not authorized to question the merits or wisdom of the estimation. ' 100.371, Florida Statutes; see e.g., Advisory Op. to Att= Gen. Re: Public Protection From Repeated Medical Malpractice, Case No. SC04-1288 (Aug. 6, 2004)(stating “the Court expresses no opinion on the merits of the revised financial impact statement.”). Similar to this Court’s review power as an appellate court regarding the acceptance of factual findings by the trier of fact, this Court should not go behind the factual findings in the statement nor question the merits or wisdom of the statement, but accept the factual basis of the Statement by the Conference as correct. Greenwood v. Oates, 251 So. 2d 665, 669 (Fla. 1971) (“It is not the function of an appellate court to substitute its judgment for that of the trier of fact.”). Simply because assumptions are noted within the revised Statement, the Statement does not mislead the voters.

Here, the revised Statement clearly and unambiguously states that the probable financial impact will be a costs savings ranging from \$20 to \$25 billion to the State over the next thirty (30) years. The revised Statement correctly assumes

that the existing laws passed by the Legislature to implement the current mandate for the State 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 probable financial impact assumes repeal of the existing laws implementing Article X, Section 19, Florida Constitution, does not render the revised Statement unclear or misleading. With respect to this assumption, it is clear that once the mandate is repealed, the State will no longer be mandated to spend State funds to implement the high speed rail system. The revised Statement clearly and unambiguously informs the voter of this assumption and clearly indicates that the proposed initiative would simply remove the constitutional mandate that the State appropriate funds to implement a high speed rail system. It is the Legislature's choice whether to amend or repeal the existing statutes relating to the development of 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 fact that the revised Statement provides that the costs savings could be reduced by federal or private funds does not render the statement unclear or ambiguous. The constitutional mandate that the State develop and operate a high speed ground transportation system clearly mandates that the State is the entity

charged with implementing such mandate. By the revised Statement acknowledging that some federal and private funds may have been provided does not mislead the voter, but rather further informs the voter that if such funds were to be provided, the amount of such funds could not be ascertained at this time so as to accurately reflect any costs savings related to such funding.

Thus, the revised financial impact statement is clear and unambiguous. Further, the revised financial impact statement is not more than seventy-five (75) words. Therefore, the revised Statement complies with the requirements of Section 100.371, Florida Statutes.

### **CONCLUSION**

The revised financial impact statement pertaining to the proposed initiative to repeal Article X, Section 19, Florida Constitution, complies with the requirements in Section 100.371, Florida Statutes, as amended by Chapter 2004-33, Laws of Florida. Thus, Derail the Bullet Trail, the Sponsor of the initiative, respectfully requests that the revised financial impact statement be approved for placement on the ballot.

Respectfully submitted,

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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 17<sup>th</sup> day of August, 2004.

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**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that this 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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