

BRIEFINGS



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REQUIRING A HIGH SPEED RAIL SYSTEM DOES NOT BELONG IN THE FLORIDA CONSTITUTION Repealing The Requirement Will Ensure the Project Will Be Built Only If and When It Makes Sense and the State Can Afford It

A slim majority of Floridians voting in the November 7, 2000 election amended the state Constitution to require a high speed ground rail transportation system connecting Florida's five largest urban areas. The amendment passed by a simple majority (52.7%) of those voting on the measure but had the support of less than half (47.2%) of the people voting in the election. The amendment generated considerable controversy, with its detractors saying it was not feasible and that the state could not afford it. Proponents contended that a project of such magnitude of time and cost as the high speed rail should be beyond the reach of future legislatures and governors to derail.

On November 2, 2004, voters will decide whether to remove the constitutional mandate and return decision-making authority and accountability to the Governor and Legislature. Lacking an affirmative vote, the project will proceed.

In an October 2000 report, *The State Constitution Is Not The Appropriate Destination For Proposed High Speed Rail*, Florida TaxWatch reiterated its long history of opposing attempts to legislate using the Constitution. Over the past two decades, TaxWatch evaluated and commented on several dozen proposed constitutional amendments, and in a September 1994 report stated, "Florida's Constitution should be a basic document that contains the root guidelines by which Florida law should be written and imposed."

The 2000 Florida TaxWatch report did not take a position on the advisability of building a high speed rail system, noting a system that could ensure significant ridership and substantial private sector investment might be good for the long-term benefit of Florida's economy, environment and transportation network. The report cited four concerns about the 2000 constitutional amendment:

- Previous high speed rail proposals and plans had not adequately satisfied the goal of ensuring sufficient ridership and substantial private sector investment.
- The 2000 amendment limited the state to then existing high speed rail systems, foreclosing on future alternatives that might be more cost effective and offer greater benefits in a constantly changing technological environment.
- The 2000 amendment required construction to begin less than three years after voter approval, which might be insufficient time for financing, acquisition of right-of-way and design.
- The 2000 amendment did not specify the high speed rail's funding source, or identify the effects on Florida's existing spending obligations.

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What Has Happened Since 2000?

Over the past four years, a confluence of events have created fiscal and security issues confirming the inadvisability of tying the Legislature's hands by mandating a multi-decade transportation infrastructure project in Florida's Constitution:

- The Florida Transportation Commission's 2003-04 report to the Governor and Legislature finds that Florida faces a transportation crisis because, just to maintain current service levels on the state highway system for the next decade -- independent of a high speed rail -- estimated needs top \$70 billion while anticipated revenue of under \$50 billion will create a \$2 billion average annual shortfall.
- The 2004 Legislature wisely committed at least \$100 million annually to Intermodal Systems Development and authorized allocation of at least 50% of new discretionary funds to intermodal systems. Establishing intermodal systems and achieving a successful track record prior to constructing a high speed rail system likely would boost public confidence and willingness to invest.
- Voter approval of another ill-advised constitutional amendment in 2002, mandating class size reduction by 2011, carries a price tag of \$20 billion to \$27.5 billion over the first eight years and \$2.5 billion annually thereafter.
- Congressional enactment of "Leave No Child Behind" legislation requires a qualified teacher in each classroom by 2006, estimated to cost Florida taxpayers \$577.5 million annually.
- Increased costs of defending against terrorism since September 11, 2001.
- Declining values in the stock market that give pause for concern among some Floridians about a multi-decade commitment to major projects such as the high speed rail.
- Public concern about multi-billion personal, public and private sector costs of Hurricanes Charley, Frances, Ivan and Jeanne in August and September 2004.

Conflicting Views on Taxpayer Exposure

In deciding whether to keep or discard the constitutional requirement for a high speed rail, voters this November will weigh the benefits, costs and risks of continuing to mandate building the system at this time versus returning decision-making authority and accountability to their elected leaders. Perspectives on these considerations run the gamut:

- The High Speed Rail Authority appointed by the Governor, Senate President and House Speaker found in its January 2004 annual report that the economic benefits of the high speed rail's initial phase in terms of new jobs, new sales to Florida firms and enhanced property values will exceed the cost of constructing and operating the system, and that these benefits will continue to be realized as the system expands throughout the state.
- The Center for Economic Forecasting and Analysis at Florida State University noted in recent testimony to state analysts that three Florida studies conducted since 1997 each predict several billion dollars in net benefits from building the high speed rail.

- Under the High Speed Rail Authority's current funding plan, taxpayers' exposure is capped at \$75 million a year for 36 years.
- The high speed rail's cost has escalated from a 2000 Department of Transportation estimate of between \$5 billion and \$11 billion to a \$20 billion - \$25 billion estimate by the state's Financial Impact Estimating Conference pursuant to a 2002 constitutional amendment requiring publication of the projected fiscal impact of General Election ballot measures proposed by citizen initiatives.
- Governor Jeb Bush, a persistent critic of the high speed rail amendment, calls its projected costs "extraordinary" and says it will not be viable during the next decade, adding, "It's possible 30 years from now with new technologies high speed rail will be cost effective and an important part of our transportation system."
- Florida's Chief Financial Officer and Treasurer, Tom Gallagher, whose constitutional responsibilities include evaluation of the financial soundness of state projects, stated in March 2004 that implementing a project of the high speed rail's magnitude will be devastating to the state's future. Based on current project estimates, he notes, the average Florida household would pay \$4,275.
- Treasurer Gallagher cites a January 2002 High Speed Rail Authority report estimating that the cost to build the first 80-mile leg between Orlando and Tampa would be \$1.2 billion to \$1.8 billion: "Those price estimates have already nearly doubled. Once adequate engineering studies have been performed and right of way approvals obtained, the costs are certain to escalate."
- A Washington, D.C. transportation economic research consulting firm hired by high speed rail opponents estimates total costs at \$6.4 billion for Tampa to Orlando, \$17.2 billion for Orlando to Miami, and \$73.4 billion for the rest of the state.
- Treasurer Gallagher stated that taxpayers risk footing the bill for the high speed rail project because it is not attracting financial support from the federal government and because private companies have not shown interest in investing a greater share of their own capital.
- The Executive Director of the High Speed Rail Authority points out that federal funding is an essential element of the high speed rail plan, and that no such high cost projects in the United States have been completed without federal government participation. The Authority's latest annual report notes that private sector interest is evidenced by substantial investment made by four entities that submitted construction proposals. Two proposals that were responsive to all requirements offer guaranteed prices for construction and rolling stock and assumption of part of the financial risk of the project's operation.
- While independently approving ballot language for the November election, the Florida Supreme Court accepted \$20 billion - \$25 billion as an approximate cost of the high speed rail project to taxpayers for right of way, construction, rolling stock, operation and debt service over the next 30 years. The Florida Supreme Court previously rejected a financial (or cost savings if repealed) impact statement of estimated savings of \$42 billion to \$51 billion since this larger number includes the full statewide system costs that are beyond those required by this constitutional mandate.

FINANCIAL IMPACT ESTIMATING CONFERENCE
FINANCIAL IMPACT STATEMENT REVISED
August 12, 2004

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.

Point/Counterpoint

Florida TaxWatch research shows widely varying assumptions and conclusions on the viability and taxpayer value of building the high speed rail. The following summary material is provided for readers' information and evaluation.

1. Has a compelling case been made that a properly designed, constructed and financed high-speed rail will work financially and in other ways to benefit Floridians?

YES

- An August 2002 report by the Center for Economic Forecasting and Analysis at Florida State University stated: "...over the past five years three comprehensive Florida studies of high speed rail have been completed and each study documented the findings that the amount of benefits flowing from development of a high speed rail project in the evaluated corridor areas (Orlando-Tampa and Orlando-Miami) generates considerable amounts of benefits well in excess of the projects' costs."

The Center's report states that more than a dozen high speed rail and magnetic levitation system economic benefit studies conducted since the early 1970s converge on a central conclusion: "Benefits from implementing a version of high speed ground transportation across the most highly populated urbanized areas of Florida will, over time, generate benefits that are considerably in excess of system costs."

The report states that the loss of potential economic benefits to private sector businesses, the public and the state from not building the full high speed rail system would include 41,267 jobs, \$11.7 billion in wages and salaries, \$34.1 billion in additional economic activity, and a \$5.7 billion loss of other benefits.

- The High Speed Rail Authority's January 2004 annual report to the Governor and Legislature states that the economic benefits of the high speed rail's initial phase in terms of new jobs, new sales to Florida firms and enhanced property values will exceed the cost of constructing and operating the system, and that these benefits will continue to be realized as the system expands throughout the state.

The Authority's report states that the plan of finance provided in the Fluor-Bombardier proposal (which has been selected to design, build and operate the high speed rail) anticipates government funding of the project's infrastructure, supported by Fluor-Bombardier's assumption of construction cost overruns and financial operating risks backed by parent company guarantees of \$50 million.

"A second critical assumption ... is that Federal tax credit bonds would be available to finance the infrastructure and that the principal on these bonds would be repaid by the State's commitment to an annual appropriation of \$75 million...." The executive director of the High Speed Rail Authority says that if federal tax credit bonds or other means of federal funding are not available, the state's required investment would increase to \$135 million per year.

The Authority's report states that full cost estimates result in all but \$287 million of the state's investment in the Tampa to Orlando leg (repeatedly acknowledged as the one with the best potential for profitability) being repaid over a 30-year operating period.

- The High Speed Rail Authority's 2002 report stated that the Tampa to Orlando leg would generate 6,500 new jobs and \$950 million in increased property values. Similarly, a 2001 Cross State Rail System Feasibility Study prepared by STV Incorporated for the Florida Department of Transportation estimated 7,000 new jobs and \$8.5 billion in total sales among Florida firms would result from the project.
- Under the High Speed Rail Authority's current funding plan, taxpayers' exposure is \$75 million per year for 36 years. The Authority's 2004 report states that a contract with Flour Bombardier is contingent on the availability of sufficient funding commitments from state, federal and private sources. As noted above, the executive director of the Authority points out that no such high cost projects in the United States have been completed without federal government participation.

MAYBE

- An August 2001 report by the Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) states: "Past efforts to establish a high-speed rail system in Florida have generated considerable controversy. Proponents of the system cited studies that concluded high-speed rail has the potential to create jobs, improve travel time, reduce traffic congestion, save energy, reduce air pollution and prevent traffic fatalities. However, opponents of the system reviewed the same studies and concluded that their projected capital construction costs and ridership projections were overly optimistic."

NO

- In March 2004, the state's Chief Financial Officer and Treasurer, Tom Gallagher, whose constitutional responsibilities include evaluation of the financial soundness of state projects, said that if the constitutional requirement is not removed this November, taxpayers risk footing the bill because the project is not attracting financial support from the federal government, because private companies have not shown interest in investing a sufficient amount of their own money for a high speed rail, and because taxpayers will absorb anticipated cost escalations.

- Gov. Bush calls the high speed rail's projected costs "extraordinary" and says it will not be viable during the next decade.
- In May 2004, Sen. Jim Sebesta (R-St. Petersburg), a project supporter, said the High Speed Rail Authority had just \$.3 billion of \$2.6 billion needed to build the Tampa to Orlando leg.
- In July 2004, Treasurer Gallagher stated that federal support for the high speed rail is unlikely to be forthcoming, and that the Financial Impact Estimating Conference's cost savings to Florida taxpayers of \$42 billion to \$51 billion over the next 30 years from not building the high speed rail completely justifies canceling it.
- In July 2004, a Washington, D.C. transportation economic research consulting firm hired by high speed rail opponents estimated total costs at \$6.4 billion for Tampa to Orlando, \$17.2 billion for Orlando to Miami, and \$73.4 billion for the rest of the state.
- Events since the high speed rail amendment's passage listed on see page 2 underscore that it is inadvisable to require construction of a high speed rail.

2. Does projected ridership justify the cost of a High Speed Rail?

YES

- The High Speed Rail Authority's January 2004 annual report finds that the ridership study estimates for the project are a reasonable basic to plan for the Phase 1 Part 1 project (Tampa to Orlando). Fluor Bombardier, which has been selected to design, build and operate the high speed rail, is willing to accept the risk associated with ridership forecast and to back its commitment with a \$50 million credit from its parent companies out of a total estimated capital exposure of \$1.9 billion to Florida taxpayers.
- According to a 1997 KPMG study, intercity trips between Miami, Orlando and Tampa will reach 100 million by 2010. At least 10% of 274,000 daily trips by automobile would be diverted to the high speed rail.
- According to surveys conducted at the Orlando airport by the Florida High Speed Rail Authority, Disney World alone could provide the high speed rail more than two million riders annually, worth \$26 million in revenues to the high speed rail operation.

MAYBE

- Studies conducted by KPMG and SYSTRA in 1998 estimated that 8 million to 8.5 million people would ride annually on high speed trains between Tampa, Lakeland, Orlando, Palm Beach, Fort Lauderdale and Miami. However, while an independent review conducted for the High Speed Rail Authority by Wilbur Smith & Associates generally concurred with KPMG's and SYSTRA's assumptions, this review found the ridership estimates to be optimistic.

NO

- In March 2004, the state's Chief Financial Officer and Treasurer stated that High Speed Rail Authority lacks a trustworthy ridership survey.
- In July 2004, the Chairman of the Washington, D.C. transportation economic research consulting firm hired by high speed rail opponents, testified to the Financial Impact Estimating Conference that proponents of the train have over estimated how many riders it would attract.
- A document released by Governor Bush's Office notes that an expert Peer Review Panel did not endorse a November 2002 ridership study conducted for the High Speed Rail Authority.

The Panel concluded that the method used in the ridership study to forecast market share did not meet the standard necessary to provide the panel with a high level of confidence in the forecast. The Panel stated these predictions are "inherently more difficult due to the absence of any comparable context with which to make comparisons."

The Panel further questioned the incentive for rail travel, pointing to negligible time savings (a four minute savings during off-peak travel time and a 16 minute savings during peak travel time), lack of flexibility (intermodal choices) in transportation once arriving at the station, and the \$25 average cost of a one-way ticket from Tampa to Orlando, compared to the flexibility and lower costs of one-way car travel at \$10.

The Panel also concluded that characteristics of Florida intercity travel cast doubt on broad acceptance of high speed rail services in the Tampa-Orlando corridor.

Governor Bush concluded that: "the lack of endorsement by the Peer Review Panel raises serious doubt that the state can secure financing from the investment community backed solely by ridership revenue. The intent of the ridership study was to provide an investment grade report to support financing, backed by ridership revenue, for operations, maintenance and rolling stock.

"Without a sound investment grade report, the state will have no choice but to back any financing with a secure state source of funding such as the gas tax. As you know, we are nearing our legislatively mandated debt limit even now. Permitting substantially greater debt to finance high speed rail will place the state's financial standing and current high rating on outstanding bonds in peril."

Money Spent on HSR is Less Money for DOT Work Program

Of course \$25 billion is an incredible amount of money, and Florida has a number of pressing needs and commitments. So, funding the high speed rail becomes a question of priorities. The plan is to use transportation revenues to fund the project, but nothing in the current constitutional amendment requires that, so the use of General Revenue is always a possibility. If the Legislature decides to go outside of transportation revenues for funding, it puts the high speed rail project in direct competition with others like the 2002 Reduced Class Size Constitutional mandate; Medicaid for seniors and nursing care; and health care for indigent mothers and children; K-12 teachers and student academic instruction; and universal (no charge to use) Pre- K for 4-year olds.

Should transportation revenues be used, it is clear that the high speed rail will likely put substantial strain on those dollars. Florida's transportation needs are daunting. It takes \$2.7 billion in additional revenue annually just for upkeep of the current road and bridge system. The Florida Transportation Commission says there will be a \$2 billion annual deficit between transportation needs and revenues over the next decade.

Governor Bush stated that funding Phase I of the high speed rail will result in at least an \$810 million reduction in the Department of Transportation Work Program between 2004 and 2009, causing projects to be deferred or cancelled. This will negatively impact local development plans, substantially reduce expansion of roadways and worsen congestion.

The Governor asserts that Phase II will result in at least three times the reduction in Work Program commitments, meaning that beginning in 2010 at least \$700 million in project commitments must be reduced. This reduction will continue each year through at least 2030 in order to satisfy debt service on bonds issued to pay the capital costs of high speed rail.

The Department of Transportation and the Governor's Office estimated that by 2037, the state will have lost nearly \$17 billion in planned highway capacity projects in order for high speed rail to be fully implemented. This does not include the remaining phases of the statewide project—almost 1,000 additional miles of high speed rail costing \$27 billion in 2003 dollars.

Amending The Constitution Is Too Easy

While the United States Constitution has been amended 27 times (including the original 10 Bill of Rights and two amendments which cancelled out each other) over more than 215 years, Florida's Constitution inadvisably has been amended 95 times in just the past 34 years.

Prior to November 2000, Florida's Constitution had never been amended to mandate a multi-billion dollar capital expenditure for an operating system like the high speed rail. Since then, it has been further amended to require class size reduction and universal pre-kindergarten estimated to cost annually several billion dollars to several hundred million dollars, respectively.

Florida TaxWatch recommended adoption of some of the several dozen proposed constitutional amendments it reviewed over the past two decades and recommended voter disapproval of others. One that it opposed was the 1994 Stop Turning Out Prisoners (STOP) amendment that would have prevented early release of prison inmates and would have cemented a one-cent (at that time a 7th cent) sales tax in the Constitution. TaxWatch opposed the amendment because it was not appropriate for inclusion in the state's basic governing document. TaxWatch's opposition to the 2000 high speed rail amendment was based on this same fundamental principle.

The state's bedrock document of organic law should be a body of precepts that sets forth, controls and guides the basic structure of government and key governmental functions to provide for the health, safety and welfare of Floridians. High speed rail is not a basic guideline of Florida government, but rather an infrastructure and spending priority issue that should be left in the domain of the Legislature.

The state's bedrock document should be a body of precepts that sets forth, controls and guides the basic structure of government and key governmental functions to provide for the health, safety and welfare of Floridians. Our Constitution should not be cluttered with specific provisions.

Closing Comments

Requiring construction of a high speed rail system does not belong in the Florida Constitution. As noted above, TaxWatch has a long history of opposing attempts to legislate using the Constitution because it should remain a basic document that contains the root guidelines by which Florida law should be written and imposed.

These factors strongly suggest that even if the high speed rail plan was ideal, now is not the time to build and impose in "constitutional concrete" a mandate which will, by all accounts, cost tens of billions of dollars (with the backing of the full faith and credit of state taxpayers) and with wide-eyed ridership guesstimates that may or may not pan out.

Florida TaxWatch recognizes the conceptual benefits of an accountable, cost effective and properly located high speed rail system in Florida. Our best judgment tells us, however, that there is not clear and compelling evidence that the system should be built at this time. It is more than a matter of whether the proponents or opponents are more right or wrong, but rather that there should be a high hurdle to clear before placing a heavy multi-decade fiduciary burden on the taxpayers of Florida. Unless the current constitutional strait jacket is removed, a required high speed rail will continue to be ensconced in concrete and must go forward.

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**Appendix: Proposed Constitutional Amendment
REMOVING HIGH SPEED RAIL SYSTEM REQUIREMENT**

ARTICLE X, SECTION 19

BALLOT TITLE: Repeal of High Speed Rail Amendment

BALLOT SUMMARY: This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

TEXT OF AMENDMENT

Article X, Section 19, Florida Constitution, is hereby repealed in its entirety.

**2000 CONSTITUTIONAL AMENDMENT
MANDATING HIGH SPEED RAIL SYSTEM**

ARTICLE X, SECTION 19

(Initiative)

BALLOT TITLE: Florida Transportation Initiative for statewide high speed monorail, fixed guideway or magnetic levitation system.

BALLOT SUMMARY: To reduce traffic and increase travel alternatives, this amendment provides for development of a high speed monorail, fixed guideway or magnetic levitation system linking Florida's five largest urban areas and providing for access to existing air and ground transportation facilities and services by directing the state and/or state authorized private entity to implement the financing, acquisition of right-of-way, design, construction and operation of the system, with construction beginning by November 1, 2003.

TEXT OF AMENDMENT

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article X, Section 19, Florida Constitution, is hereby created to read as follows:

High Speed Ground Transportation System.

To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant to state approval and authorization, including the acquisition of right-of-way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

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