

State Constitution Is Not the Appropriate Destination for Proposed High Speed Rail

*This issue raises the specter of requiring a supermajority to amend the
Constitution*

*Three out of four proposed Constitutional Amendments (86 of 116) passed
since 1970*

On November 7, 2000, Florida voters will decide whether to force the state or a state authorized private entity to begin building a high speed ground transportation system to connect Florida's five largest urban areas not later than November 1, 2003.

If approved, the proposal will amend Florida's Constitution to initiate what experts foresee as a two decades-long process of financing, acquisition of right-of-way, design, construction and operation of a system estimated by the Florida Department of Transportation to cost between \$5.6 billion for a diesel system and \$11.2 billion for a magnetically levitated system. The proposed amendment requires the use of one of three current high speed rail systems. One of these, a monorail system, currently does not operate anywhere in the world in excess of the proposed amendment's 120 miles per hour minimum speed requirement. Another, a magnetic levitation system, is not yet being used for commercial intercity transportation anywhere in the world, in part because of its cost.

Proposed Amendment Prompts Concerns

A high speed rail 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. However, past highspeed rail proposals and plans have not adequately satisfied this goal and as such the proposed constitutional amendment raises additional concerns.

One concern is that the amendment limits the state to current high speed rail systems, foreclosing on any future alternatives that are more cost effective and offer greater benefits in a constantly changing technological environment. Who knows what new options the future holds? Proponents of Amendment One say it is intended to be all inclusive of technologies listed in Section 341.322(13), Florida Statutes, which appears on page three of this report.

A second concern is that the proposed constitutional amendment requires construction to begin less than three years after voter approval, which may not allow sufficient time for financing, acquisition of right-of-way and design. Proponents say the initial link would be

between Tampa Bay and Orlando, where most right-of-way has been acquired and environmental impact assessments completed. They add that a bond issue would be floated for that segment alone, and that "commencement of construction" could mean as little as beginning to shovel dirt.

A third concern is that the amendment does not specify the high speed rail's funding source. Florida Department of Transportation officials have stated that passenger fees would pay for only half of the estimated \$5.6 to \$11.2 billion cost. The remainder would come from other sources such as redirected funds for planned road projects or other state needs, or higher taxes. Proponents say the state would build the infrastructure, then bid the system's operation to private vendors. They suggest that a tax on tickets, franchise fees for parking, restaurants and other concessions, plus redirection of the \$70 million annual legislative appropriation that is currently being used for other transportation priorities such as seaports and airports would go a long way toward supporting the high speed rail system.

Amending The Constitution Is Too Easy

The Florida Constitution is a body of precepts, the purpose of which is to set forth, control and guide key governmental functions and the basic structure of government to provide for the health, safety and welfare of Floridians. The purpose of a constitutional amendment is not to reverse the perceived "unwisdom" of elected representatives. The Constitution should not be cluttered, though it often is, with specific provision pronouncements designed to appeal to sentiments perceived to be popular with segments of the electorate. Because a proposition makes its proponents or some voters "feel rectified" does not necessarily raise such a proposition to Constitutional dignity.

This Briefing does not address whether Florida should or should not build a high speed rail system, but whether mandating this system in the Florida Constitution is or is not appropriate. For a discussion of the benefits and drawbacks of the previous high speed rail project, see Florida TaxWatch's Ideas in Action "High Speed Rail: Two Opinions," September 1998.

Over the past thirty years, Florida's Constitution has been amended an incredibly high 86 times out of 116 propositions (74.1%), mainly in areas of fundamental governance that it already addressed such as public finance and taxation, public education, legislative and judicial organization and procedures, and environmental protection. Never has the Florida Constitution been amended to mandate a multi-billion dollar capital expenditure for an operating system like the high speed rail.

Since its founding in 1979, Florida TaxWatch has 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. It should not be a repository for policy issues that the Legislature refuses to tackle in law." The High Speed Rail amendment is

not a basic guideline of Florida government, but an infrastructure and spending priority issue that should be left in the domain of the Legislature. However, proponents of this amendment believe this is a proposal to expand a basic transportation function of government.

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

Why Is A High Speed Rail System Being Proposed By Constitutional Amendment?

Proponents of Amendment One say its genesis was a sense of frustration over the on-and-off status of building a high-speed rail, and the belief that a project of such magnitude of time and cost, if approved, should be beyond the reach of future legislatures and governors to derail.

Proponents note that the concept of a high speed rail for Florida has been discussed for decades; that a legislatively established High Speed Rail Transportation Commission studied it beginning in 1984; and that in 1992 the Legislature enacted the Florida High-Speed Rail Transportation Act (Chapter 341, Florida Statutes). Proponents point out that this law has not been repealed, they contend that it is not being observed by the Governor and Legislature, and they therefore are pushing a strong constitutional amendment.

The existing law of the land (Florida Statutes) states, in part:

341.321 (1), F.S. The intent of ss. 341.3201-341.386 is...to encourage and enhance the establishment of a high-speed rail transportation system connecting the major urban areas of the state as expeditiously as is economically possible.

341.321 (1)(d), F.S. Sections 341.3201-341.386 are a declaration of legislative intent that the state pursue the development of a high-speed rail transportation system to solve transportation problems and eliminate their negative effect on the citizens of this state.

341.321 (5), F.S. The legislative intent of ss. 341.3201-341.386 is to establish a centralized and coordinated permitting and planning process for the location of a high-speed rail transportation system and such system's construction, operation, and maintenance....

341.321 (7), F.S. Upon the legislative findings, the Legislature preempts, by ss. 341.3201-341.386, any question, issue, or determination that the high-speed rail

transportation system is needed.

341.322 (13), F.S. "High-speed rail transportation system" means any high-speed fixed guideway transportation system for transporting people or goods, which system is capable of operating at speeds in excess of 120 miles per hour, including a monorail system, dual track system, suspended rail system, magnetic levitation system, or pneumatic repulsion system....

The Bar To Amend Florida's Constitution Should Be Raised

The 1994 Florida TaxWatch report cited above stated that under current law in Florida, a very small proportion of registered voters -- as few as 17.2% of all voters in 1980 -- had made 62 (now 86) changes in the Constitution, many of which have significantly affected the structure and operation of Florida's government. By contrast, the United States Constitution has survived for more than 200 years with only 17 effective amendments beyond the original ten Bill of Rights. The Florida TaxWatch report recommended raising the bar on approval of constitutional amendments from a simple majority to a supermajority of three-fifths of those voting on each proposed constitutional amendment.

The 1994 Florida TaxWatch report concluded: "Considering the importance of the decision being made, a supermajority vote should be required for amending the constitution to ensure that there is a meaningful consensus of voters who express their will on each proposed amendment to the state constitution -- the most basic and fundamental document of Florida law."

During the 1995 session, the Florida Legislature considered placing such a constitutional amendment on the ballot. The Florida House of Representatives passed a three-fifths supermajority requirement of those voting on each constitutional amendment by a vote of 77 to 40, and a Senate committee passed a corresponding measure, but no action was taken by the full Senate. In 1996, voters approved a constitutional amendment requiring a two-thirds supermajority of electors voting in an election (often a much higher standard than the two-thirds supermajority voting on each amendment) to constitutionally impose new or higher state taxes and fees.

Closing Comments

Currently, the voters of Florida have no specific guidelines to help them decide when a proposed constitutional amendment reaches the level of a basic functional, structural or weighty change in their government or constitution. Therefore, it is essential that such changes are only adopted when there is deep and wide consensus of the voters. Florida TaxWatch finds that requiring a supermajority vote of the electors to amend Florida's Constitution would accomplish this. Consequently, this should be one of the first resolutions considered by the 2001 General Session of the Florida Legislature.

Amendment One attempts to offer a broad answer to a difficult problem, but it raises more questions (and quite likely very expensive ones) than answers. In an abundance of caution and consistent with its past recommendations, Florida TaxWatch recommends that the voters disapprove Amendment One.

As an independent and non-partisan research institute and taxpayer watchdog, the research findings, conclusions and recommendations of Florida TaxWatch do not necessarily reflect the view of its members, staff or distinguished Board of Trustees.

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