

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1700

SPONSOR: Ethics and Elections Committee, Senator Cowin and others

SUBJECT: Constitutional initiatives; financial impact statement

DATE: March 24, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	Fav/CS
2.	Brown	Lang	JU	Favorable
3.			FT	
4.			RC	
5.				
6.				

**I. Summary:**

The Committee Substitute for Senate Bill 1700 requires the Financial Impact Estimating Conference to develop a short statement for inclusion on the ballot, identifying the financial impact of each amendment to the Florida Constitution proposed by initiative.

The committee substitute establishes a Financial Impact Estimating Conference comprised of principals from the Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have appropriate expertise in the subject matter of the initiative, or their designees.

The Committee Substitute to Senate Bill 1700 also imposes a requirement for the Financial Impact Estimating Conference to draft an initiative financial information statement further detailing the financial impact of the measure. This statement must be a summary no more than 500 words and additional detailed information that includes assumptions made to develop the financial impact, the work papers, and any other information deemed relevant by the Financial Impact Estimating Conference.

The summary and additional information shall be made available at supervisors of elections offices, each polling place on election day, and on the website of the Secretary of State and the Office of Economic and Demographic Research. Each supervisor of elections office, which has a website, shall post the summary from the financial information statements on their website and shall include the internet addresses for the financial information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the mailing required by section 101.20, Florida Statutes.

The bill is effective upon becoming law.

This bill substantially amends or repeals the following sections of the Florida Statutes: 15.21, 16.061, 100.371, 100.381, 101.161, 101.62, and 216.136.

## II. Present Situation:

### *General Background on Constitutional Amendments*

Section 10 of Article IV of the State Constitution requires the Attorney General to request an advisory opinion of the Florida Supreme Court regarding the validity of any initiative petition submitted by the Division of Elections. Section 16.061, F.S. requires the Attorney General to request this opinion within 30 days of receiving the initiative petition. Although the Court is not required to hold a hearing within a specified time, the Court is constitutionally required to render their written opinion expeditiously.<sup>1</sup>

There is no limitation or judicial review as to the subject matter of a proposed amendment. However, the language contained in the initiative is constitutionally required to relate to a single subject.<sup>2</sup> Regarding the standard of review for legislative proposals, the Supreme Court has typically applied a presumption of validity to these amendments.<sup>3</sup>

### *Financial Impact Statements*

In 2002, the Legislature enacted a law requiring a fiscal impact statement on the ballot for all constitutional amendments.<sup>4</sup> The Florida Supreme Court subsequently held that the law was unconstitutional because it was not necessary to ensure ballot integrity, the only basis on which legislation impacting the initiative process could be upheld.<sup>5</sup> The Court noted, however, that “[i]f Floridians wish to have a fiscal impact statement included with all initiatives to amend the constitution, then they can vote to adopt House Joint Resolution 571.”<sup>6</sup> At the 2002 general election, Floridians did precisely that --- effectively negating the Supreme Court’s decision. Committee Substitute for Senate Bill 1700, similar to the 2002 law, is the implementing bill mandated by the 2002 constitutional amendment.

In Florida, the professional staffs from the Legislature and Executive branches met in a series of regularly scheduled Consensus Estimating Conferences to provide the forecasts needed to support the planning and budgeting process. These conferences are held at least three times a year according to the following schedule: once in the fall to provide forecasts for the Governor’s budget recommendations, once in the winter to provide final estimates for the Legislature’s appropriation process, and once in the spring to adjust the winter forecast to reflect legislative changes. Impact conferences are held when estimates are needed to determine the impact of

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<sup>1</sup> s. 10, art. IV, *Fla. Const.*

<sup>2</sup> s. 3, art. XI, *Fla. Const.*

<sup>3</sup> Thomas R. Rutherford, *The People Drunk or the People Sober? Direct Democracy Meets the Supreme Court of Florida*, St. Thomas Law Review, page 75 (Fall 2002).

<sup>4</sup> Chapter 2002-390, Laws of Florida.

<sup>5</sup> *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (Fla. 2002).

<sup>6</sup> *Id.* at 964-65. House Joint Resolution 571 states that the legislature shall provide by general law for the provision of a fiscal impact statement to the public, *prior to the holding of an election*. Read literally, this language does not appear to unequivocally authorize the inclusion of a fiscal impact statement *on the ballot* as opposed to at some time preceding the election. However, the Court’s decision strongly suggested that the adoption of the amendment would serve to remove the 2002 statute’s constitutional infirmities.

changes or proposed changes to current law or current administration or when a fiscal impact statement for a constitutional amendment proposed by citizen initiative is required.

Statutory authority for the consensus forecasts is provided in s. 216.133 to s. 216.137, F.S., which specify the duties of each conference and designates the conference principals and participants. Revenue estimating is carried on as part of the overall consensus estimating process. Subsection (3) of s. 216.136, F.S., provides that the principals of the Revenue Estimating Conference are the Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the House and Senate who have forecasting expertise, or their designees. Historically, the representatives of the House and Senate have been the staff directors of the tax committees, and the policy coordinator overseeing tax issues has represented the Governor's Office.

### III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1700 establishes a Financial Impact Estimating Conference to prepare a financial impact statement of not more than 50 words for inclusion on the ballot for any constitutional initiative measure that has received a threshold level of statewide and geographic support. The proposed Financial Impact Estimating Conference shall consist of four principals; one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative. All meetings of the Financial Impact Estimating Conference are required to be open meetings.

The Financial Impact Estimating Conference is required to reach consensus or majority concurrence on the financial impact statement. The Financial Impact Estimating Conference is required to submit the financial impact statement to the Attorney General and the Secretary of State within 45 days after receipt of the amendment or within 30 days after receipt, if receipt is 120 days or less before the election. If the Conference does not agree on the statement, the following language shall appear on the ballot: "The fiscal impact of this measure, if any, cannot be reasonably determined at this time."

The financial impact statement must be clear, unambiguous, and no more than 50 words in length. The statement may set forth a range of potential impacts.

The Attorney General must petition the Florida Supreme Court for an advisory opinion on whether the financial impact statement meets all legal requirements. If the Court strikes down the fiscal impact statement, it must remand it to the Financial Impact Estimating Conference for re-drafting, *provided* the Court's opinion is rendered at least 75 days before the election. In order to facilitate the preparation and mailing of ballots, including advance overseas absentee ballots, if the Court has not approved a financial impact statement for a particular measure by the 55<sup>th</sup> day preceding the election, the financial impact statement shall be deemed approved for placement on the ballot.

The financial impact statement must be separately set forth on the ballot after the ballot summary as required by s 100.161(1), F.S.

The Financial Impact Estimating Conference must also draft an initiative financial information statement further detailing the financial impact of the measure. This statement must be a summary of no more than 500 words and additional detailed information that includes assumptions made to develop the fiscal impact, the work papers, and any other information deemed relevant by the Financial Impact Estimating Conference. The Department of State is required to provide copies of the summary from the statements. The summary and additional information shall be made available at supervisors of elections offices, each polling place on election day, and on the website of the Secretary of State and Office of Economic and Demographic Research. Each supervisor of elections office, which has a website, shall post the summary from the financial information statements on their website and shall include the internet addresses for the financial information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the mailing required by s. 101.20, F.S.

The Secretary of State is required to immediately submit all currently active initiative petitions it received before the effective date of this bill, to the Financial Impact Estimating Conference.

The bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The Financial Impact Estimating Conference may incur additional costs to comply with the requirements in the bill, including research costs. The amount of these additional costs will vary depending on the number and complexity of constitutional amendments that require the preparation of a financial impact statement and financial information statement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida Supreme Court is not required to advance the review of the financial impact language on its docket, or to rule expeditiously, as it is constitutionally required to do for petition reviews. However, it is assumed that the Court will do so in a timely fashion; alternatively, the impact statement will appear on the ballot absent court review.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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