

Citizens Initiative, requirement of fiscal note

Number: INFORMAL

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The Honorable Tom Rossin
Democratic Leader
228 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator Rossin:

You ask about the constitutionality of Senate Bill 68-E relating to constitutional amendments proposed by citizens initiative. The bill creates a new subsection (6) to section 100.371, Florida Statutes, which provides:

Within 45 days after approval of the proposed ballot language by the Supreme Court pursuant to s. 3(b)(10), Art. V of the State Constitution, or for any initiative approved for the general election ballot for 2002, within 45 days after this act becoming a law, whichever occurs later, the Revenue Estimating Conference shall complete an analysis and summary analysis of the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the proposed initiative. The Revenue Estimating Conference shall solicit information from any proponents or opponents of the initiative and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. The members of the Revenue Estimating Conference shall reach a consensus or majority concurrence on the estimated fiscal impact of the initiative. If the Revenue Estimating Conference does not reach consensus and a tie vote exists, the tie shall be decided in favor of the estimate of the Governor's designee to the Revenue Estimating Conference. A summary of the estimated fiscal impact must be included within the ballot summary as required in s. 101.161(1).

The bill also amends section 101.161(1), Florida Statutes, to require that the separate summary of the estimated fiscal impact by the Revenue Estimating Conference not exceed 30 words.

The Constitution provides for the amendment of its provisions by joint resolution agreed to by three-fifths of the members of each house of the Legislature, Constitution Revision Commission, Constitutional Convention, or Taxation and Budget Reform Commission, as well as by citizens' initiative. Senate Bill 68-E's requirement of a fiscal note placed on the ballot of a constitutional amendment applies only to those amendments proposed by citizens' initiative. The bill therefore imposes an additional burden on the citizens' initiative process that is not recognized under the State Constitution and which is not shared by amendments proposed by other methods. While information regarding fiscal impact may be generated during the legislative, constitution revision, taxation and budget reform or constitution convention process, such information relating to constitutional amendments proposed by such entities would appear to be equally important for the voter to see on the ballot. Questions relating to equal protection may therefore arise

regarding the disparate treatment of initiative petitions.

By expressly making its provisions applicable to those initiatives scheduled for the 2002 general election, Senate Bill 68-E attempts to change the process midstream for those ongoing initiative petitions that either have obtained Supreme Court approval for placement on the ballot or are awaiting such approval. The process of citizens' initiatives has heretofore been without governmental involvement or interference. As the Supreme Court recognized in *Evans v. Firestone*, 457 So. 2d 1351, 1358 (Fla. 1984), the 1968 revision of the constitution for the first time permitted the people *themselves* to propose amendment of a section of the Constitution. The language of the initiative as well as the drafting of a ballot title and summary have been the responsibility of the sponsors. While the Division of Elections in the Department of State approves the ballot title and summary, the division has generally considered its role to be ministerial. See section 100.371(3), Florida Statutes. Where government has become involved, such as through the petitioning for an advisory opinion of the Supreme Court, such actions were authorized by the Constitution, or were intended to ensure the voter was not misled. See, e.g., Article IV, section 10, and Article V, section (b)(10), Florida Constitution. However, Senate Bill 68-E seeks to inject state government into the initiative process statutorily by permitting state government to comment on the impact of the initiative, thereby diminishing the public's role in the citizens' initiative process and leaving citizens with no avenue to review whether such comment would be misleading.

Finally, I would note that the bill states that within 45 days after approval of the ballot language by the Supreme Court or 45 days after the bill becomes law, whichever is later, the Revenue Estimating Conference must complete a fiscal analysis of the proposed initiative, including a summary not to exceed 30 words that must be included within the ballot summary. Article XI, section 5(a), Florida Constitution, requires that a proposed amendment to or revision of the Constitution "shall be submitted to the electors at the next general election held more than ninety days after the . . . initiative petition . . . is filed with the secretary of state[.]"

Thus, if the requisite number of signatures for an initiative petition has been verified more than 90 days before the general election, the Constitution requires that the initiative be placed on the ballot at the next general election (unless removed by the Supreme Court). Under the proposed bill, however, if the Supreme Court renders its opinion less than 45 days before the general election, the Revenue Estimating Conference may not be able to complete its analysis in order to add the fiscal impact statement for placement on the ballot. As noted above, the bill expressly states that the summary of the estimated fiscal impact must be included within the ballot summary. The effect of this provision would delay a vote on the initiative until the following general election, a result that would appear to be in conflict with the provisions of Article XI, section 5, Florida Constitution.

Furthermore, there may be concerns about whether the proposed bill constitutes an unlawful delegation of authority by the Legislature to staff. This delegation to the Revenue Estimating Conference to analyze and summarize the fiscal impact of citizens' initiatives appears to contain no specific standards to control performance of this duty.

I trust that the above comments may be of assistance to you in considering Senate Bill 68-E.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk