

High speed rail transportation system initiative

Number: INFORMAL

Date: October 23, 2000

The Honorable Burt Aaronson
Palm Beach Board of County Commissioners
301 North Olive Avenue
West Palm Beach, Florida 33401

Dear Commissioner Aaronson:

The Board of County Commissioners has expressed its concern regarding the proposed constitutional amendment for development of a high speed rail transportation system. I understand that the county commission has adopted a resolution opposing the amendment. Two questions have been raised regarding the Statewide High Speed Rail Initiative if the initiative is approved during the November 2000 election:

- 1) May the amendment be modified or repealed by a later constitutional amendment?
- 2) If the Legislature fails to take any action by November 1, 2003, as required by the initiative, what legal action may be taken?

Question One

Nothing in the initiative or in the constitution itself precludes the subsequent amendment or repeal of the initiative by a later constitutional amendment. Thus, if the statewide high speed rail initiative passes during the November 2000 general election, it may be amended or repealed by a subsequent constitutional amendment. Such later amendment could be proposed by citizens' initiative or by legislative joint resolution (or indeed by any permissible method of amending the state constitution).[1]

Question Two

The initiative contains no direction regarding implementation of the high speed system. With such a lack of specifics, the amendment normally would not be considered to be self executing but would require legislative action before it could be implemented.[2] The statewide high speed rail initiative, however, imposes a requirement that construction of the system is to begin on or before November 1, 2003.

If the Legislature fails to take action, it is possible that interested persons might bring a mandamus action to compel the Legislature to take action. Whether such an action would be successful is difficult to predict, especially in light of the lack of specifics regarding implementation. As this office noted in its petition to the Supreme Court in March, it is difficult to conceive how a remedy could be fashioned by a court, should the Legislature or Governor and Cabinet fail to act, without the court performing legislative or executive functions.

I trust the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] See Art. XI, s. 1, Fla. Const. (joint resolution to amend constitution); Art. XI, s. 2, Fla. Const. (constitution revision commission); Art. XI, s. 3, Fla. Const. (citizen initiatives); and Art. XI, s. 4, Fla. Const. (constitutional convention).

[2] See *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960), stating:

"The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether . . . the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment[.]"