

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ethics and Elections Committee

BILL: SB 734

INTRODUCER: Senator Justice

SUBJECT: Campaign Financing/Local Government

DATE: March 5, 2007

REVISED: 03/20/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>CA</u>	<u></u>
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 734 prohibits a local government or person acting on its behalf from using public money to support or oppose issues, referendums, or amendments that the public will vote on at an election. Other persons or groups are prohibited from accepting public money from a local government or person acting on its behalf if the money is intended to be used to support or oppose issues, referendums, or amendments that the public will vote on at an election. The bill also prohibits local governments from using public funds to buy political advertisements. The bill exempts local government communications that factually and objectively describe an issue, referendum, or amendment's purpose as long as a majority of the local government's elected body approves the communication and the communication does not advocate for the passage or defeat of the issue, referendum, or amendment. The bill specifically does not prohibit candidates, political organizations, or others from using public meeting places that are controlled by local government if these meeting places are made available on an equal basis to all candidates, political organizations, or others.

A civil penalty in the form of a fine not to exceed \$1,000 per count would apply to any violation of this bill pursuant to section 106.265, Florida Statutes.

Senate Bill 734 takes effect on July 1, 2007.

This bill creates section 106.113 of the Florida Statutes.

II. Present Situation:

Currently, local governments are not prohibited from using public money to advocate for the passage or defeat of an issue, referendum, or amendment the outcome of which will be decided at an election.

Section 106.15, F.S., prohibits persons from making, soliciting, or knowingly accepting any political contribution in a building owned by a government entity unless the building or any portion of the building has been rented for the specific purpose of holding a campaign fundraiser.

Section 106.011, F.S., defines a political advertisement as a paid expression in any communications media as defined in 106.011(13), F.S., whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by any other means except by the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. However, a political advertisement does not include:

- A statement by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or issue, in that organization's newsletter, which newsletter is distributed only to the members of that organization.
- Editorial endorsements by any newspaper, radio or television station, or other recognized news medium.

III. Effect of Proposed Changes:

Senate Bill 734 prohibits local governments or persons acting on behalf of local governments from either directly or indirectly spending public funds to support or oppose issues, referendums, or amendments if the outcome of those issues, referendums, or amendments will be decided at an election. The bill also prohibits other persons or groups from accepting public funds from local governments or persons representing local governments if the funds are intended to support or oppose issues, referendums, or amendments that will be subject to a vote of the electors. Moreover, a local government or person acting on behalf of a local government is prohibited from using public funds to buy political advertisements.

The bill defines a local government as including the following:

- Counties
- Municipalities
- School districts
- Departments
- Agencies
- Boards

- Bureaus
- Districts
- Commissions
- Authorities
- Any other similar body of a county, municipality, school district, or other political subdivision of the State of Florida
- Any other political subdivision of the State of Florida

Senate Bill 734 exempts a local government communication that factually and objectively describes an issue, referendum, or amendment's purpose. However, this communication cannot advocate for the passage or defeat of an issue, referendum, or amendment. Furthermore, before any local government communication can be made, a majority of the members of the local government's elected body must approve of the communication.

The bill specifically does not prohibit candidates, political organizations, or others from using public meeting places that are controlled by local government if these meeting places are made available on an equal basis to all candidates, political organizations, or others.

A civil penalty in the form of a fine not to exceed \$1,000 per count would apply to any violation, pursuant to section 106.265, Florida Statutes.

The bill takes effect July 1, 2007.

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:

Although Senate Bill 734 may have an economic impact on local government, its effect cannot be determined at this time and will likely vary on an issue-by-issue basis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Supreme Court has upheld the use of public funds by local government to advocate with respect to a local referendum. In *People Against Tax Revenue Mismanagement, Inc. v. County of Leon*, 583 So. 2d 1373, 1374 (Fla. 1991), Leon County voters passed an optional sales tax in a local referendum. After the referendum passed, plaintiffs argued that the sales tax election was invalid because local governmental agencies used public funds and public resources to mount an informational campaign supporting the referendum. Plaintiffs described the agencies' actions as "violat[ing] the 'neutral forum' of the election." *Id.* at 1374, 1375. In response, the Florida Supreme Court stated:

Such a position, however, is tantamount to saying that governmental officials may never use their offices to express an opinion about the best interests of the community simply because the matter is open to debate. A rule to that effect would render government feckless. One duty of a democratic government is to lead people to make informed choices through fair persuasion.

* * *

. . . [L]ocal governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose. The people elect governmental leaders precisely for this purpose.

Id. at 1375 (footnote omitted).

VIII. Summary of Amendments:

Barcode 610222 by the Ethics and Elections Committee:

The amendment deletes subsections (2), (3), (4), (5), and (6) of the bill. The amending language prohibits a local government or person acting on its behalf from spending or authorizing the spending and prohibits a person or group from accepting, public funds for a political advertisement or electioneering communication that involves an issue, referendum, or amendment that the public will vote on at an election. The amendment provides an exception to this prohibition for electioneering communications that are limited to factual information. The amendment clarifies that a local government elected official is not prohibited from expressing an opinion on any issue at any time as long as it does not violate the prohibition stated above. (WITH TITLE AMENDMENT).

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
