

Office of Inspector General  
Robert E. Clift, Inspector General

*Robert E. Clift*  
June 2, 2014

Report of Pinellas Suncoast Transit Authority No. 14C-6007

## EXECUTIVE SUMMARY

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In a letter<sup>1</sup> to Secretary Ananth Prasad dated April 1, 2014, Florida Senator Jeff Brandes<sup>2</sup> expressed concerns over whether the Pinellas Suncoast Transit Authority (PSTA) used public funds in violation of state law. The Senator questioned whether PSTA expended public funds to advocate for the referendum included in the Greenlight Pinellas transit development initiative. According to the letter, under Sections 104.31 and 106.113, Florida Statutes (F.S.), “local governmental entities and their staff are prohibited from expending funds on behalf of, or advocating for, an initiative that is political in nature and pending consideration by referendum of the electorate.” The letter also states, the prohibitions apply to “taxpayer dollars spent by a state entity regardless of whether the funds originated from state or federal sources.” The Senator requested the Florida Department of Transportation’s (department) Office of Inspector General (OIG) review expenditures made by the PSTA of approximately \$800,000 for promotions of the Greenlight Pinellas educational campaign (Greenlight campaign).

The jurisdiction of the department’s OIG, as defined by Section 20.055, F.S., includes the requirement to: “Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.”

We reviewed expenditures for the Greenlight campaign to determine if PSTA violated the advocacy provisions of state law. **Our review disclosed** no evidence that PSTA Greenlight communications contained text prohibited by law. We also reviewed state funds available to PSTA through department grant agreements to determine if they were used in accordance with laws, rules, regulations and the provisions of the grants. **We determined** PSTA did not use state funds to pay for the Greenlight campaign. The department reimbursed PSTA only for operational assistance and the costs of operations directly incident to the provision of public transit services and in specific accordance with the terms of grant agreements. A review of PSTA records disclosed Federal Transit Administration (FTA) and local funds were used for the Greenlight campaign.

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<sup>1</sup> Attachment 1: Senator Brandes’ Letter

<sup>2</sup> Senator Jeff Brandes represents Florida’s 22<sup>nd</sup> District which consists of parts of Hillsborough and Pinellas counties.

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## **BACKGROUND AND INTRODUCTION**

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### *PSTA Profile*

PSTA, formerly known as Central Pinellas Transit Authority, is a public transit provider in Pinellas County, Florida which has an area of 280 square miles and a population of approximately 930,000 residents (2013 Census). In 1982, PSTA was created as an independent special district<sup>3</sup> by a special act<sup>4</sup> of the Florida Legislature. In 1984, PSTA expanded its service area by merging with the St. Petersburg Municipal Transit System. Today, PSTA has a fleet of 203 buses and trolleys which currently serves 5,115 bus stops on 40 routes in Pinellas County including two express routes that travel to Tampa. PSTA serves most of the unincorporated area and 19 of the county's 24 municipalities. PSTA provides transit services which include fixed route and Demand Response Transportation for persons with disabilities. PSTA is governed by a 15-member Board of Directors (Board) appointed by local governments. The Chief Executive Officer is responsible for PSTA's daily operations and directly supervises key personnel in the areas of finance, planning, bus operations, maintenance, administration and marketing. In 2013, PSTA employed a total of 617 employees.

### *PSTA Funding*

For fiscal year 2014, the Board adopted an operating and capital budget totaling \$86.5 million. To fund its operations, PSTA relies upon revenue from state, federal and local sources. PSTA receives federal and state assistance in the form of grants. Local revenues are generated through ad valorem taxes, passenger fares and advertising revenues. Of the \$63,294,731 in total revenues, local income makes up the majority (79%) of PSTA's total revenues.



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<sup>3</sup> An Independent Special District is a local unit of special-purpose government that provides specialized governmental services and operates within limited boundaries. It is created by general law, special act, local ordinance or by rule of the Governor and Cabinet.

<sup>4</sup> Chapter 82-368, *Laws of Florida*

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To date, PSTA has been awarded a total of 21 state grants from the department. These state grants are funded primarily through the Public Transit Block Grant Program, the Transit Corridor Program, the Public Transit Service Development Program and the Commission for the Transportation Disadvantaged (CTD). The state grants are purposed for state infrastructure, transit corridor improvement, the park and ride lot program, trips for the transportation disadvantaged and the operation of public transit services. The original amount of these state grants totals \$14,755,010 (Attachment 3). PSTA grants are managed through the District Seven (District) office.

All state grants awarded to transit agencies are cost reimbursement grants. To receive reimbursement, PSTA is required to submit invoices along with quarterly progress reports to the District outlining their route productivity and ridership data to include passenger trip revenue, revenue miles and revenue hours. The District monitors PSTA's transit services through monthly evaluations of ridership, on-board surveys, passenger comments, driver responses, evaluations of passengers per revenue hour/mile and feedback from public meetings. Additionally, PSTA is required to publish their performance metrics in the newspaper on an annual basis. By state law, PSTA must also submit annual audited financial statements. For fiscal year 2013, PSTA went above this requirement by submitting a more extensive *Comprehensive Annual Financial Report* prepared by an independent auditor for review by the District.

#### *Greenlight Pinellas Plan*

According to the Pinellas County Metropolitan Planning Organization, Pinellas County is expected to grow by more than 200,000 people and 148,000 jobs by the year 2040. In response to these projections and the increasing demand for public transportation, PSTA developed the Greenlight Pinellas Plan (Greenlight). Greenlight is a comprehensive transportation initiative that includes transformational bus improvements and future passenger rail that will significantly enhance public transportation in Pinellas County.<sup>5</sup>

To pay for the proposed improvements, the plan includes a 1% sales tax referendum.<sup>6</sup> The Pinellas County Board of Commissioners declared its intent<sup>7</sup> to place a referendum question on the November 4, 2014 ballot seeking approval of a levy of 1% to fund countywide transportation projects. If the referendum passes, the additional sales tax revenue would augment PSTA's current revenue stream and result in the elimination of the portion of property taxes currently dedicated to transit.<sup>8</sup> Implementation of the plan would begin on January 1, 2016. According to PSTA, some of the proposed

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<sup>5</sup> As stated on PSTA website link to [www.greenlightpinellas.com](http://www.greenlightpinellas.com)

<sup>6</sup> Pinellas County Ordinance No. 13-34 authorizes the county to levy a discretionary sales surtax (referred to as the "Charter County and Regional Transportation System Surtax") subject to elector approval.

<sup>7</sup> In Resolution No. 13-19

<sup>8</sup> As stated on PSTA website link to [www.greenlightpinellas.com](http://www.greenlightpinellas.com)

enhancements would include a 65% increase in overall bus service throughout the county on most major Pinellas corridors, rapid bus corridors connecting major employment and activity centers, additional bus service to and from Tampa and the airport in the evenings and on weekends, doubled bus service in northern Pinellas County, extended service hours and a future passenger rail line from St. Petersburg to Clearwater. PSTA expects the Greenlight improvements to cost \$2.2 billion and \$130 million to operate annually, with a fully operational rail line in 2024.

### *Greenlight Educational Campaign*

In 2013, PSTA launched the Greenlight educational campaign to help inform the public of the benefits of improved transportation. According to PSTA, the transit authority has engaged thousands of bus riders, business and community leaders and residents through outreach efforts associated with Greenlight, the Rail Alternative Analysis and the Community Bus Plan. PSTA's Manager of Communications informed us PSTA has endeavored to increase public awareness of Greenlight by conducting informational presentations at community events and distributing promotional items to the residents of Pinellas County.

### *Referendum Supporters & Opponents*

Yes on Greenlight is a pro-referendum campaign that was launched in February 2014 to advocate for the Greenlight plan.<sup>9</sup> Supporters of Yes on Greenlight are “encouraging voters to approve a one-cent sales tax increase in November that will transform bus service and create a modern passenger rail system.”<sup>10</sup> Friends of Greenlight, the political action committee supporting the Yes on Greenlight campaign, is dedicated to promoting the Greenlight Pinellas mass transit initiative. An internet search disclosed Friends for Greenlight is funded through private campaign contributions.<sup>11</sup>

It was brought to our attention the Yes on Greenlight logo had similar design features to the Greenlight Pinellas logo. Upon inquiry, PSTA management stated the Greenlight Pinellas logo is not copyrighted and other organizations are currently using variations of the logo. Additionally, they denied any affiliation between Greenlight Pinellas and Friends for Greenlight or the Yes on Greenlight campaign. The Yes on Greenlight website has been modified since we began our review. The Yes on Greenlight logo has also been revised as shown below.



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<sup>9</sup> The campaign was initially named “Yes for Greenlight”

<sup>10</sup> As stated on the campaign’s initial website [www.yesforgreenlight.com](http://www.yesforgreenlight.com)

<sup>11</sup> From Pinellas County Supervisor of Elections website ([www.voteinellas.com](http://www.voteinellas.com))

No Tax for Tracks, the primary opponent of the expanded transportation plan, states it “is singularly focused on the defeat of the Greenlight Pinellas Referendum on November 4th, 2014.”<sup>12</sup> Groups like No Tax for Tracks argue the tax increase amounts to a 300%<sup>13</sup> tax hike that will give residents the highest sales tax in the state and particularly hurts the non-homeowner poor. Groups resistant to the plan disagree with the addition of dedicated bus lanes, saying it will worsen congestion by eliminating lanes used for other traffic. Opponents also contend a rail system is unnecessary, cost ineffective and a waste of taxpayer money, and that it would duplicate the services already provided by the bus system.<sup>14</sup>

## **RESULTS OF REVIEW**

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The purpose of this engagement was to:

- determine if Greenlight campaign expenditures violated the advocacy provisions of state law; and
- determine whether state funds available to PSTA through department grant agreements were used in accordance with laws, rules, regulations and the provisions of the grants.

### *Legal Considerations Related to Advocacy*

PSTA’s General Counsel states expenditures related to Greenlight Pinellas fully comply with all applicable laws, including Chapter 106, F.S. He outlines his legal conclusions in a presentation (Attachment 5) given to the PSTA Board and later summarized in a memo to the OIG (Attachment 6). He states,

Under 106.113, Florida Statutes, public agencies are prohibited from expending public funds on political advertisements. A political advertisement is defined as a paid expression in a communications medium...by means other than the spoken word in direct conversation, which ***expressly advocates*** the election or defeat, or the approval or rejection of an issue.

With regard to express advocacy, PSTA’s General Counsel states,

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<sup>12</sup> As stated on the No Tax for Tracks social media site

<sup>13</sup> As stated on the No Tax for Tracks website ([www.railtaxfacts.com](http://www.railtaxfacts.com)) which states this claim based on an increase in PSTA’s budget from its current \$34 million per year to about \$120-130 million if the referendum passes

<sup>14</sup> As stated on the No Tax for Tracks website ([www.railtaxfacts.com](http://www.railtaxfacts.com))

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In order for an advertisement to be a prohibited political advertisement that expressly advocates, the communication must contain the ‘magic words’ as described by the Supreme Court of the United States in *Buckley v. Valeo*, 424 U.S. 1 (1976). The Supreme Court determined that language such as “vote for” “oppose” or “cast your ballot for” constitute express advocacy.<sup>15</sup>

PSTA’s General Counsel also addresses the permissibility of specific actions of elected officials with regard to influencing voters. He states elected officials may express their opinions as they are “permitted to use their official positions to influence another’s vote with respect to a ballot proposal,” citing 104.31, F.S.

The department’s Office of General Counsel staff reviewed the presentation developed by PSTA’s General Counsel and stated,

The power point presentation by [PSTA’s General Counsel] appears to be an accurate statement of law and has current legal citations including references to a 2012 Florida Department of State, Division of Elections Opinion on the matter [Attachment 7]. We agree that the Department of State, Division of Elections or Attorney General’s Office may provide greater legal assistance and knowledge on the election issues as the investigation develops.

**Our review disclosed no evidence PSTA campaign expenditures violated the advocacy provisions of state law.** Communications on PSTA’s “Greenlight Pinellas” website, advertisements and promotional items contained no text prohibited by law nor any “magic words” which would expressly advocate for electors to vote “yes” in the referendum. Orders for promotional items were reviewed and there was no evidence these items contained statutorily prohibited phrases.



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<sup>15</sup> PSTA’s General Counsel adds that the Florida Division of Elections has made clear through numerous opinions, including Advisory Opinions 05-06 & 12-05, that this standard is also applied in Florida.

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*Sources of Funding for the Greenlight Campaign*

To determine the source of funding used for the campaign, we reviewed a sample of Greenlight purchases to date, including grant agreements, general ledger detail, purchase orders, paid invoices, receiving documents, copies of checks, bank statements and financial statements. We traced documentary evidence supporting transactions to details in PSTA's accounting records to verify the existence and accuracy of recorded amounts. **We determined** no state grant funding was used to finance the Greenlight campaign. PSTA requested and received direct authorization from the FTA for the use of federal funds for Greenlight educational messaging and branding, including development of a Greenlight website. In addition, PSTA records disclosed the use of income received from local sources for PSTA operations including the Greenlight campaign.

Greenlight purchases fell into one of two categories: messaging and branding or advertising and marketing. A total of \$620,525 was expended for the campaign from January 1, 2012, through April 17, 2014. The majority (53%) of Greenlight expenditures were for messaging and branding, funded with monies received directly from FTA. All other Greenlight expenditures were related to advertising and marketing and were paid for using local funds. A summary of these Greenlight expenditures is provided in the table below:

Funding Type	Revenue Source	Expenditures to Date	Use of Funds
Local	PSTA General Funds (Property taxes, passenger fares, advertising revenue)	\$290,869	Advertising & Marketing
State	---	---	---
Federal	FTA Grants	\$329,656	Messaging & Branding
Total		<b>\$620,525</b>	

*Messaging and Branding*

Request for Proposal (RFP) #12-003P was issued by PSTA on January 30, 2012 to solicit proposals to develop its messaging and branding strategy. The purpose of the RFP was to:

“seek responses from experienced public relations/community outreach teams to develop a concise public presentation of [the existing]

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transportation plans<sup>16</sup> including, but not limited to: a consolidated 'branding' of these plans, public information materials, an implementation strategy and ongoing implementation support...[to] be used by PSTA and others to educate the community, but may also be adopted at their discretion by private-sector or campaign coalitions that may be established to promote a referendum campaign."

On May 9, 2012, Tucker/Hall, Inc.<sup>17</sup> was awarded the contract to develop PSTA's messaging and branding strategy, which eventually became known as "Greenlight Pinellas." We reviewed FTA grant agreements, provided by PSTA, associated with Greenlight purchases. FTA Grant FL-17-X001-00<sup>18</sup> gave PSTA approval to use funds in the amount of \$300,000 for "Pinellas County Public Transportation Educational Messaging and Branding" (Attachment 2). The grant agreement states, "from a legal standpoint, there shouldn't be any problem with PSTA's request to use the funding for messaging and branding." A second federal grant, FTA Grant FL-90-X758-00, authorized funds in the amount of \$48,576 to pay for other third-party contractual services including "Greenlight Pinellas Website Development" for fiscal years ended 2013 and 2014 (Attachment 2). Of the \$329,656 in total FTA funding that PSTA paid to Tucker/Hall, Inc., PSTA incurred expenses in the amount of \$299,800 for professional services related to educational messaging and branding; the remaining \$29,856 in expenses was incurred for the development of a "PSTA website project."<sup>19</sup> According to PSTA management, Tucker/Hall, Inc. is no longer contracting with PSTA or Yes on Greenlight as of January 1, 2014. PSTA has since developed a new "Greenlight Pinellas" website.

#### *Advertising and Marketing*

A review of PSTA records disclosed PSTA used local funds totaling \$290,869 to pay for marketing and advertising of the Greenlight initiative. We reviewed invoices and supporting documentation associated with PSTA's Greenlight marketing and advertising expenditures. These expenditures included purchases for online digital advertising, interior bus graphics, signs, large scale displays, newsletter advertisements, booth space at community events and promotional items. PSTA paid vendors for a variety of Greenlight promotional items such as pens, car magnets, golf umbrellas, tote bags, stick fans and buttons.

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<sup>16</sup> The RFP lists several of the transportation plans in existence at the time to include the TBARTA Master Plan, the MPO Long Range Transportation Plan, the PSTA Transit Development Plan and the Pinellas County Comprehensive Transportation Plan.

<sup>17</sup> A national public relations firm based in Tampa, Florida

<sup>18</sup> Earmarked for planning studies on the Central Avenue Bus Rapid Transit project

<sup>19</sup> Per Tucker/Hall, Inc. invoices

### *PSTA's Use of State Funding*

Since July 1, 2012, when PSTA launched its Greenlight campaign, PSTA has been awarded state grant funding in the amount of \$13,405,378 (Attachment 3). The funding consists of three types of grants to include Public Transit Block Grants, Transit Corridor Grants and CTD Trip and Equipment Grants. Two Public Transit Block Grants make up the majority of this funding, which totals \$7,932,895. The block grants are used to fund capital and operating costs of providing public transit service at 50% state matching participation. Eligible costs include the costs of operations directly incident to the provision of public transit services. Block grant funds may also be used for transit corridor and transit service development projects. Transit Corridor Grants provide funding to support new services within specific corridors when the services are designed and expected to help reduce or alleviate congestion or other mobility issues within the corridor. CTD grant funds are used to purchase passenger trips and/or capital equipment for the transportation disadvantaged pursuant to Chapter 427, F.S.

We reviewed invoices and supporting documentation submitted by PSTA to the department as well as reimbursements made to PSTA against the state grants (Attachment 4). Based on our review, **we determined** PSTA did not invoice or expend department funds to pay for the Greenlight campaign. PSTA invoiced the department only for operating assistance and the costs of operations directly incident to the provision of public transit services (operator salaries, diesel fuel and utilities) in accordance with the provisions of the grant agreements. There is no evidence the department reimbursed PSTA for any Greenlight expenditures against any of the state grants.

### *Allowability of Marketing*

Although PSTA did not use state funds to pay for the Greenlight campaign, some types of marketing expenses may have been allowable under the provisions of state law and grant agreements. According to Section 341.041, F.S., the department “shall assist in the development and implementation of marketing and passenger information programs for public transit and intercity bus services.” Furthermore, Section 341.051, F.S., authorizes the department to fund up to 50% of the net operating costs of transit service development projects that will improve system efficiencies, ridership or revenues by “improving marketing and consumer information programs, including, but not limited to, automated information systems and organized advertising and promotion programs.” The state block grants awarded to PSTA also contain provisions allowing for marketing. The specific language in the grant agreements states, “marketing of the [routes] will be through the PSTA website, PSTA Board/TAC and other meetings, TV/Radio commercials, schedules, advertisements in all buses and postings at all PSTA customer service locations and newspaper ads/press releases.”

## **APPENDIX A – Purpose, Scope and Methodology**

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The **purpose** of this engagement was to review PSTA expenditures for the Greenlight campaign to determine whether state funds were used in accordance with laws, rules, regulations and provisions of the grant agreements.

The **scope** of the engagement included a review of PSTA expenditures for the Greenlight campaign for the period January 1, 2012, through April 17, 2014.

Our **methodology** included the following:

- Interviewing Senator Jeff Brandes and Legislative Assistant Chris Spencer;
- Interviewing the PSTA Chief Executive Officer;
- Interviewing the department's Transit Office Manager;
- Communication with the Statewide Grants Coordinator;
- Communication with key District Seven staff to include the Intermodal Systems Development Manager, the Multi-modal Systems Administrator and the Transit & SSO Coordinator;
- Conducting an on-site visit to PSTA to interview the Chief Financial Officer, Accounting Manager, Grants Manager, Manager of Communications and PSTA General Counsel;
- Interviewing the department's General Counsel;
- Researching applicable statutes, rules, regulations, and department policies and procedures;
- Reviewing PSTA expenditures and supporting documentation to include general ledger detail, bank statements, purchase orders, invoices, copies of checks and financial statements;
- Audit testing of a sample of Greenlight expenditures incurred for the period from January 1, 2012, through April 17, 2014;
- Reviewing department reimbursements to PSTA and associated supporting documentation required for submittal by PSTA for payment;
- Reviewing all state grants awarded to PSTA by the department; and
- Reviewing federal grants awarded to PSTA by the FTA.

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APPENDIX B – PSTA Response

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Pinellas Suncoast Transit Authority

June 2, 2014

Ms. Susan O'Connell  
Contract Audit Manager  
Office of Inspector General  
Florida Department of Transportation  
605 Suwannee Street, MS 44  
Tallahassee, Florida 32399-0450

Dear Ms. O'Connell:

**RE: Florida DOT Office of Inspector General Advisory Report No. 14C-6007**

The Pinellas Suncoast Transit Authority (PSTA) has completed its review of this report and accepts the report which confirmed that PSTA has been implementing its Greenlight Pinellas outreach efforts in accordance with Florida law.

Thank you and the rest of the OIG Office staff for their thorough and timely review. We found them to be professional about their work.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Miller", is written over a faint, light-colored signature line.

Brad Miller  
PSTA Chief Executive Officer

cc: Ken Welch, PSTA Board Chair & Rest of PSTA Board

3201 Scherer Drive St. Petersburg, FL 33716  
[www.psta.net](http://www.psta.net) 727.540.1800 fax 727.540.1913

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Florida Department of Transportation

ATTACHMENT 1 – Senator Brandes’ Letter



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Transportation, Chair  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Education  
Health Policy

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act

**SENATOR JEFF BRANDES**  
22nd District

April 1, 2014

Ananth Prasad, Secretary  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, FL 32399-0450

Dear Secretary Prasad,

It has come to my attention that there is a dispute over whether the Pinellas Suncoast Transit Authority (PSTA), an Independent Special District as defined in §189.403 F.S., is in violation of state law regarding the participation of governmental entities in political advocacy. These allegations involve scarce taxpayer resources, and are, therefore, significant and deserve the utmost attention.

Recently the PSTA launched an educational campaign titled "Greenlight Pinellas", directly messaging and distributing materials to Pinellas residents concerning a proposed transit development initiative. These materials include novelties such, pens, and necklaces. The initiative includes a referendum for a 14% increase of the sales tax in Pinellas County that will appear on the November ballot. An unrelated political campaign, "Greenlight Yes", was also recently formed to directly advocate for this referendum.

Importantly as stewards of public tax monies, and under §104.31 F.S. and §106.113 F.S., local governmental entities and their staff are prohibited from expending funds on behalf of, or advocating for, an initiative that is political in nature and pending consideration by referendum of the electorate. However, local media attention surrounding the "Greenlight Pinellas" educational campaign has raised several critical questions that suggest potential violation of state law.

I am requesting that the Florida Department of Transportation Inspector General immediately conduct a review of the "Greenlight Pinellas" educational campaign. Specifically, I ask that the Inspector General review the expenditure by the PSTA of approximately \$800,000.00 for promotions of this campaign to determine if the expenditure constitutes a violation of state law.

Much of the money the PSTA spends comes from Federal funds that are directly appropriated to, or pass through, the Department. The prohibitions referenced in §106.113 F.S. applies to any

**REPLY TO:**

☐ 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745  
☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.fsenate.gov](http://www.fsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**Office of Inspector General  
Florida Department of Transportation**

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taxpayer dollars spent by a state entity regardless of whether the funds originated from state or federal sources.

Violations of our election laws and wasteful use of taxpayers' hard earned tax monies erode the fundamental principles of representative democracy and reduce the legitimacy of voter referenda. When questions arise concerning the conduct of a governmental entity influencing a political initiative it is our responsibility to act. Thank you for your consideration of this serious matter.

Kind regards,



Jeff Brandes

CC: The Honorable Don Gaetz, President of the Senate  
The Honorable Will Weatherford, Speaker of the House  
Senator Jack Latvala, Senate Ethics and Elections Committee Chairman  
Senator Joe Abruzzo, Joint Legislative Auditing Committee Co-Chairman  
Representative Lake Ray, Joint Legislative Auditing Committee Co-Chairman  
Brad Miller, PSTA Director  
David Martin, Florida Auditor General  
Robert Clift, FDOT Inspector General  
Pinellas County Legislative Delegation:  
Senator Arthenia Joyner  
Representative Ed Hooper  
Representative Darryl Rouson  
Representative Larry Ahern  
Representative James Grant  
Representative Kathleen Peters  
Representative Dwight Dudley  
Representative Carl Zimmerman

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**ATTACHMENT 2 – FTA Approvals**

The following pages include copies of FTA grants as provided by PSTA.

**FTA Grant FL-17-X001-00**

<b>DOT</b>		<b>FTA</b>
U.S. Department of Transportation		Federal Transit Administration
<b>Application</b>		
Recipient ID:	1080	
Recipient Name:	PINELLAS SUNCOAST TRANSIT AUTHORITY	
Project ID:	FL-17-X001-00	
Budget Number:	2 - Budget Approved	
Project Information:	Pinellas County Mobility Initiative- PMI	
<b>Part 1: Recipient Information</b>		
Project Number:	FL-17-X001-00	
Recipient ID:	1080	
Recipient Name:	PINELLAS SUNCOAST TRANSIT AUTHORITY	
Address:	3201 SCHERER DRIVE , ST. PETERSBURG, FL 33716 1004	
Telephone:	(727) 540-1800	
Facsimile:	(727) 540-1913	
<b>Union Information</b>		
Recipient ID:	1080	
Union Name:	TAMPA BAY AREA TRANSIT WORKERS UNION, INC.	
Address 1:	P.O. Box 17677	
Address 2:		
City:	Clearwater, FL 33764 1004	
Contact Name:	Oaksin O'Hara	
Telephone:	(727) 851-3300	
Facsimile:	(N/A) -	
E-mail:	oohara@live.com	
Website:	www.tbawu.com	
Recipient ID:	1080	
Union Name:	SERVICE EMPLOYEE INTERNATIONAL UNION	
Address 1:	C/O PSTA	
<b>44.24.00</b>	<b>SHORT RANGE TRANSIT PLANNING</b>	<b>0</b>
		<b>\$2,300,000.00</b>
		<b>\$2,300,000.00</b>
<p>The earmark will be used to conduct planning studies on the Central Avenue BRT project implementation (\$2,300,000).</p> <p>Approval was received from FTA on 4/23/12 to use funds towards Phase Two – Pinellas County AA Study: \$400,000 (canceled) and Pinellas County Public Transportation Educational Messaging and Branding \$300,000. FTA approval. From a legal standpoint, there shouldn't be any problem with PSTA's request. Please accept this as legal concurrence.</p> <p>Received approval from FTA on 7/12/12 to use remaining funds from grant FL 17-X001 towards PSTA's Bus Study: \$700,000 and LRTP assistance: \$300,000. The Phase 2 of the AA study will not be funded, which was previously approved by FTA on 4/23/12.</p>		

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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT  
(FTA G-12, October 1, 2005)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official's electronic signature is entered for this Grant Agreement, FTA has Awarded Federal assistance in support of the Project described below. Upon Execution of this Grant Agreement by the Grantee named below, the Grantee affirms this FTA Award, and enters into this Grant Agreement with FTA. The following documents are

incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(12), October 1, 2005,  
[http://www.fta.dot.gov/16874\\_16882\\_ENG\\_HTML.htm](http://www.fta.dot.gov/16874_16882_ENG_HTML.htm)
- (2) Any Award notification containing special conditions or requirements, if issued.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE GRANTEE DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING THE DATE OF THIS FTA AWARD SET FORTH HEREIN.

**FTA AWARD**

FTA hereby awards a Federal grant as follows:

Project No: FL-17-X001-00

Grantee: PINELLAS SUNCOAST TRANSIT AUTHORITY

Citation of Statute(s) Authorizing Project: Sec 117 (FY 2005 FHWA Approps.)

Estimated Total Eligible Cost (in U.S. Dollars): \$2,300,000

Maximum FTA Amount Awarded [Including All Amendments] (in U.S. Dollars): \$2,300,000

Amount of This FTA Award (in U.S. Dollars): \$2,300,000

Maximum Percentage(s) of FTA Participation:

Percentages of Federal participation are based on amounts included in the Approved Project Budget, modified as set forth in the text following the Project Description.

Date of U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Project Certification Date:

Project Description:

Pinellas County Mobility Initiative- PMI

The Project Description includes information describing the Project within the Project Application submitted to FTA, and the Approved Project Budget, modified by any additional statements displayed in this Grant Agreement, and, to the extent FTA concurs, statements in other documents including Attachments entered into TEAM-Web.

Awarded By:

Tom Thomson  
Deputy Regional Administrator  
FEDERAL TRANSIT ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION  
09/19/2008

Office of Inspector General  
Florida Department of Transportation

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FL-90-X758-00

**DOT**



**FTA**

U.S. Department of Transportation

Federal Transit Administration

### Application

Recipient ID:	1080
Recipient Name:	PINELLAS SUNCOAST TRANSIT AUTHORITY
Project ID:	FL-90-X758-00
Budget Number:	10 - Budget Approved
Project Information:	FTA Section 5307 Formula Funds FY 2011

#### Part 1: Recipient Information

Project Number:	FL-90-X758-00
Recipient ID:	1080
Recipient Name:	PINELLAS SUNCOAST TRANSIT AUTHORITY
Address:	3201 SCHERER DRIVE, ST. PETERSBURG, FL 33716 1004
Telephone:	(727) 540-1800
Facsimile:	(727) 540-1913

#### Union Information

Recipient ID:	1080
Union Name:	TAMPA BAY AREA TRANSIT WORKERS UNION, INC.
Address 1:	P.O. Box 17677
Address 2:	
City:	Clearwater, FL 33764 1004
Contact Name:	Oaksin O'Hara
Telephone:	(727) 851-3300
Facsimile:	(N/A) -
E-mail:	oohara@live.com
Website:	www.tbatwu.com

#### Project Details

This application is requesting funding under the FTA 5307 Formula Funds Program for eligible capital expenses in FY 2011, which will include Preventive Maintenance, Tire Lease, Security (lighting, radios, design), Passenger Landing Pads, Short Range Planning, replacement support vehicles, expansion buses, computer hardware & software, 3rd party contract, employee education, Contingency, and Project Administration.

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<b>11.71.11</b>	<b>OTHER 3RD PARTY CONTRACTUAL SERVICES</b>	<b>0</b>	<b>\$48,576.00</b>	<b>\$48,576.00</b>
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The funds in ALI 11.71.11 will be used to cover 3rd party contracts during FY 11/12 and remaining funds will be used to cover any additional 3rd party contracts for FY 12/13 and 13/14.

These contract will include but not limited to ADA In-Person Assessments and Greenlight Pinellas Website Development. - 20,000.00

<b>11.7D.02</b>	<b>EMPLOYEE EDUCATION/TRAINING</b>	<b>0</b>	<b>\$5,500.00</b>	<b>\$5,500.00</b>
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The funds in ALI 11.7D.02 will be used to cover direct expenses related to FTA required education/training for employees. This ALI may cover training such as Triennial Reviews, Procurement, Title VI, Project Management Oversight Reviews, and TIP/STIP Updates.

This ALI is an eligible Education and Training expenditures under circular 9030 1.D, page III-15 'up to one-half of 1 percent of Section 5307 funds are available to a State or public transportation authority recipient in a fiscal year to use for tuition and direct educational expenses (i.e. supplies, tuition, and travel to and from training at the National Transit Institute for education and training of State and local transportation employees.'

Employee training is included in the STIP and TIP.

<b>11.73.00</b>	<b>CONTINGENCIES/PROGRAM RESERVE</b>	<b>0</b>	<b>\$1,562,845.00</b>	<b>\$1,562,845.00</b>
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FTA encourages that grantees include a line item for contingency. Five percent is the normal figure and has proven to be sufficient over the years.

This year the contingency has been set at 3.93% of FTA funds in ALI 11.73.00 and will be used if additional funds are need to cover unexpected costs in the ALI's that are programmed in grant FL 90-X758.

<b>11.79.00</b>	<b>PROJECT ADMINISTRATION</b>	<b>0</b>	<b>\$120,000.00</b>	<b>\$120,000.00</b>
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Normally PSTA includes 3% of FTA funds for Project Administration. However, this year PSTA has programmed 1.04% of FTA funds in ALI 11.79.00 and we feel that this will be sufficient to cover expenses for this ALI.

The project admin ALI will be used for Project Admin of the capital projects listed in grant FL 90-X758.

<b>11.93.05</b>	<b>CONSTRUCT PED ACCESS / WALKWAYS</b>	<b>25</b>	<b>\$500,000.00</b>	<b>\$500,000.00</b>
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The funds in ALI 11.93.05 will be used to install approx. 25-50 ADA accessible landing pads and ADA compliant accessibility features.

PSTA has identified approximately 600 bus stops that require improvements. The improvements include curbs, curb ramps, curb cuts, landing pads, handrails, drainage culverts, and bike racks.

The construction of the passenger landing pads/walkways will vary in their pricing. The pricing is per linear foot and the connections and amenities needed for each area. The smallest pad would cost approx. \$300.00, with the largest costing approx. \$5000.00 +, depending in the passenger amenities and concrete connections that are needed.

**Office of Inspector General  
Florida Department of Transportation**

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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT  
(FTA G-18, October 1, 2011)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official's electronic signature is entered for this Grant Agreement, FTA has Awarded Federal assistance in support of the Project described below. Upon Execution of this Grant Agreement by the Grantee named below, the Grantee affirms this FTA Award, and enters into this Grant Agreement with FTA. The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(18), October 1, 2011, <http://www.fta.dot.gov/documents/18-Master.pdf>
- (2) The Certifications and Assurances applicable to the Project that the Grantee has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE GRANTEE DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING THE DATE OF THIS FTA AWARD SET FORTH HEREIN.

**FTA AWARD**

FTA hereby awards a Federal grant as follows:

Project No: FL-90-X758-00

Grantee: PINELLAS SUNCOAST TRANSIT AUTHORITY

Citation of Statute(s) Authorizing Project: 49 USC 5307 - Urbanized Area Formula (FY2006 forward)

Estimated Total Eligible Cost (in U.S. Dollars): \$11,538,867

Maximum FTA Amount Awarded [Including All Amendments] (in U.S. Dollars): \$11,455,033

Amount of This FTA Award (in U.S. Dollars): \$11,455,033

Maximum Percentage(s) of FTA Participation:

Percentages of Federal participation are based on amounts included in the Approved Project Budget, modified as set forth in the text following the Project Description.

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Project Certification Date: 2/17/2012

Project Description:

FTA Section 5307 Formula Funds FY 2011

The Project Description includes information describing the Project within the Project Application submitted to FTA, and the Approved Project Budget, modified by any additional statements displayed in this Grant Agreement, and, to the extent FTA concurs, statements in other documents including Attachments entered into TEAM-Web.

Letter was received and is attached from FDOT for toll revenue credits in the amount of \$2,863,758 for this

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Florida Department of Transportation**

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application, the letter was dated June 2011.

This award of Federal financial assistance is subject to the terms and conditions set forth in the U.S. Department of Labor's certification letter dated February 17, 2012, to the Federal Transit Administration with respect to this numbered grant, including any attachments to the letter, which are fully incorporated herein by reference.

Awarded By:  
Yvette Taylor  
Regional Administrator  
FEDERAL TRANSIT ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION  
02/22/2012

**EXECUTION OF GRANT AGREEMENT**

The Grantee, by executing this Grant Agreement, affirms this FTA Award; adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to FTA; consents to this FTA Award; and agrees to all terms and conditions set forth in this Grant Agreement.

By executing this Grant Agreement, I am simultaneously executing any Supplemental Agreement that may be required to effectuate this Grant Agreement.

Executed by:  
Bradford Miller  
Chief Executive Office  
PINELLAS SUNCOAST TRANSIT AUTHORITY  
02/24/2012

**Office of Inspector General  
Florida Department of Transportation**

**ATTACHMENT 3 – Summary of State Grants Awarded to PSTA (2012-2013)**

The following table contains details on state grants awarded to PSTA from 2012-2013.

	Agency Contract ID	CSFA Description	Total State Funding	Total Project Cost	Contract Execution Date	Status	Project Description	
<b>2012</b>	AQP31	CTD Trip/Equip. Grant	\$ 1,981,282	\$ 2,202,314	7/1/2012	Expired	Passenger trips & equipment for transportation disadvantaged	
	AQQ52	Public Transit Block Grant	\$ 3,917,007	\$ 7,834,014	9/18/2012	Closed	Operating assistance and to fund eligible operating costs which include the costs of operations directly incident to the provision of public transit services	
	AQQ47	Transit Corridor Program	\$ 211,000	\$ 211,000	9/18/2012	Active	To provide funds under the Transit Corridor Program for their annual operational expense for the new regional flex service route in North Pinellas County, Curlew Rd. and Hillsborough County	
	AQQ48	Transit Corridor Program	\$ 285,000	\$ 285,000	9/18/2012	Active	To provide funds under the Transit Corridor Program for their annual operational expense for the regional flex service route in North Pinellas County, East Lake and Pasco County	
	AQQ50	Transit Corridor Program	\$ 165,100	\$ 165,100	9/18/2012	Closed	To provide State funds under the Transit Corridor Program for their annual operational expense for Route 300X	
	AQQ51	Transit Corridor Program	\$ 155,100	\$ 155,100	9/18/2012	Closed	To provide State funds under the Transit Corridor Program for their operational expenses for Route 100X	
	<b>Subtotal</b>		<b>\$ 6,714,489.00</b>	<b>\$ 10,852,528.00</b>				
	<b>2013</b>	AR219	CTD Trip/Equip. Grant	\$ 2,193,876	\$ 2,438,340	7/1/2013	Active	Passenger trips & equipment for transportation disadvantaged
		AR505	Public Transit Block Grant	\$ 4,015,888	\$ 8,031,776	9/30/2013	Active	Operating assistance and to fund eligible operating costs which include the costs of operations directly incident to the provision of public transit services
AR506		Transit Corridor Program	\$ 155,100	\$ 155,100	9/30/2013	Active	To provide financial assistance for operational expenditures for Route 100X	
AR507		Transit Corridor Program	\$ 105,225	\$ 105,225	9/30/2013	Active	To provide financial assistance for operational expenditures for Route 300X	
AR508		Transit Corridor Program	\$ 9,800	\$ 9,800	9/30/2013	Active	To provide financial assistance for operational expenditures for intra-county transit service on East Lake and Pasco County	
AR509		Transit Corridor Program	\$ 211,000	\$ 211,000	9/30/2013	Active	To provide financial assistance for operational expenditures for intra-county transit service on North Pinellas County on Curlew Road and Hillsborough County	
<b>Subtotal</b>			<b>\$ 6,690,889.00</b>	<b>\$ 10,951,241.00</b>				
<b>2012-2013 Grand Total</b>			<b>\$13,405,378.00</b>	<b>\$ 21,803,769.00</b>				

**Office of Inspector General  
Florida Department of Transportation**

**ATTACHMENT 4 – FDOT Block Grant Reimbursement Summary**

<b>AQQ52 Q1 (FY 12/13) Reimbursement</b>				
	<b>October</b>	<b>November</b>	<b>December</b>	<b>Total</b>
Vehicle Operators	\$ 1,143,944.28	\$ 1,126,362.55	\$ 1,096,328.46	\$ 3,366,635.29
Diesel Fuel	\$ 683,579.50	\$ 566,196.01	\$ 582,219.09	\$ 1,831,994.60
Oil & Lube	\$ 12,211.52	\$ 10,459.15	\$ 10,841.57	\$ 33,512.24
Total Expense:				\$ 5,232,142.13
*Less Reimbursements:				\$ 482,617.52
Total Eligible:				\$ 4,749,524.61
FDOT 50%:				\$ 2,374,762.31

<b>AQQ52 Q2 (FY 12/13) Reimbursement</b>				
	<b>January</b>	<b>February</b>	<b>March</b>	<b>Total</b>
Vehicle Operators	\$ 1,173,465.67	\$ 1,090,665.14	\$ 1,152,922.97	\$ 3,417,053.78
Diesel Fuel	\$ 381,570.19	\$ 535,520.73	\$ 556,271.17	\$ 1,473,362.09
Oil & Lube	\$ 10,065.84	\$ 10,868.33	\$ 16,998.35	\$ 37,932.52
Total Expense:				\$ 4,928,348.39
Less Reimbursements:				\$ 605,802.52
**Less Adj. for Max. FDOT 50%				\$ (1,238,056.50)
Total Eligible:				\$ 3,084,489.37
FDOT 50%:				\$ 1,542,244.69

<b>AR505 Q1 (FY 13/14) Reimbursement</b>				
	<b>October</b>	<b>November</b>	<b>December</b>	<b>Total</b>
Vehicle Operators	\$ 1,192,370.73	\$ 1,111,566.59	\$ 1,141,871.44	\$ 3,445,808.76
Diesel Fuel	\$ 645,796.93	\$ 586,446.28	\$ 574,629.89	\$ 1,806,873.10
Oil & Lube	\$ 10,892.62	\$ 10,591.36	\$ 11,495.40	\$ 32,979.38
Total Expense:				\$ 5,285,661.24
Less Reimbursements:				\$ 824,822.07
Total Eligible:				\$ 4,460,839.17
FDOT 50%:				\$ 2,230,419.59

\* "Reimbursements" include expenses deducted from the total expense due to being previously paid through other revenue sources.

\*\*Adjustment for excess over FDOT maximum participation on contract AQQ52 of \$3,917,007. FDOT paid \$2,374,762.31 in Quarter 1 (\$3,917,007-\$2,374,762.31=\$1,542,244.69).

ATTACHMENT 5 – PSTA General Counsel Presentation

The following presentation dated January 22, 2014, prepared by PSTA’s General Counsel, outlines PSTA’s legal conclusions regarding advocacy.

Spending Public Funds on  
Referenda Elections

Presented by:  
Alan S. Zimmet  
Bryant Miller Olive  
One Tampa City Center, Suite 2700 Tampa,  
FL 33602  
[azimmet@bmlolaw.com](mailto:azimmet@bmlolaw.com)  
813 273 6677

Public Funds Cannot Be Spent On  
Political Advertisements

- A Public Agency or someone acting on its behalf is prohibited from spending money on a **Political Advertisement** F.S. 106.011(15); 106.113
  - A “political advertisement” is a:
    - paid expression in communication media
      - E.g., TV Stations, radio, newspapers, direct mail, internet, periodicals
    - Political ads “expressly advocate” for an issue
    - Excludes an expression by spoken word in direct conversation

Public Funds Cannot Be Spent On  
Political Advertisements

- **Expressly Advocate**
  - Intended to apply the “magic words” standard created by the U.S. Supreme Court
    - see *Buckley v. Valeo*, 424 U.S. 1 (1976); DE Opinion 05-06.
  - Communication “expressly advocates” only if magic words are included, such as
    - “vote for”
    - “support”
    - “cast your ballot for \_\_\_\_\_”
    - “elect”

Public Funds Cannot Be Spent On  
Political Advertisements

- “Communications media”
  - Includes the internet
  - An expenditure for the cost of creating or disseminating a message on the internet is a paid expression in a communications media
    - Must be a direct cost, such as paying to create a website on which the message is posted or paying for the domain name, or paying for email distribution list.
    - Internet provider fees are not direct cost if predate dissemination of message DOE 10-06

Public Funds Can Be Spent On  
Electioneering Communications

- An “Electioneering Communication” is a communication that is publicly distributed by a TV station, radio station, cable TV system, satellite system, newspaper, magazine, direct mail, or telephone
  - F.S. 106.011(8)
- F.S. 106.113 no longer prohibits electioneering communications concerning a referendum election
  - DE Opinions 10-06, 10-07, and 12-05.
    - Since the legislature has changed the definition of “electioneering communication” to only include communications concerning candidates, the restriction on the expenditure of public funds for electioneering communications in F.S. 106.113 is meaningless with respect to issues and referenda.
- How does an “electioneering communication” differ from a “political advertisement”
  - A political advertisement is paid, and
  - A political advertisement expressly advocates

Political Advertisement vs.  
Electioneering Communication

Political Advertisement	Electioneering Communication
<ul style="list-style-type: none"><li>– Expressly Advocates for or against referendum<ul style="list-style-type: none"><li>• “magic words”-vote for, I support</li></ul></li><li>– Pay to place in communications media<ul style="list-style-type: none"><li>• Includes internet</li></ul></li><li>– Public funds cannot be used for paid political ad</li></ul>	<ul style="list-style-type: none"><li>– Communications distributed by TV, radio, newspaper, magazine, direct mail, or telephone</li><li>– Communications concerning candidates</li><li>– No payment for placement in media</li><li>– Does not expressly advocate. Shows support or opposition for candidate without using magic words.</li><li>– No prohibition against public funds for electioneering communication for a referendum</li></ul>



# Office of Inspector General Florida Department of Transportation

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## Summary

- A communication prepared or funded by a public agency violates §106.113 only if it:
  - Expressly advocates for or against ballot question,  
**AND**
  - Public agency pays to distribute via media
- Public agency can prepare or fund communications about a ballot question that do not expressly advocate
- Therefore, publicly funded communications concerning a referendum are not required to be limited to factual information.

49

Board Meeting 1-10-14

## Summary

- Prior to adoption of F.S. 106.113, the Attorney General had opined that public funds could be used to support ballot questions provided that legislature made required legislative findings as to purpose of expenditure and benefits accruing to governments
- Recommendation:
  - Public Agency's legislative body adopt legislative findings before expending public funds to support ballot questions

50

Board Meeting 1-10-14

## Summary

- Public Agencies are permitted to spend funds on paid advertisements in the media that provide factual information with respect to ballot questions.
- Factual Information:
  - The information must be verifiable
  - Cannot have subjective or qualitative statements

51

Board Meeting 1-10-14

## Duty to Participate

- Public agencies have an inherent duty to say which course of action is best for an agency to follow. This is the purpose for which we elect governmental leaders.
  - People Against Tax Revenue Mismanagement, Inc. v. County of Leon, 583 So.2d 1373 (Fla. 1991).

52

Board Meeting 1-10-14

## Examples

- Statements that are Allowed in Political Advertisements
  - PSTA will use the new tax to purchase 25 new busses at a cost of \$100,000 each
- Statements that are Not Allowed in Political Advertisements
  - The new tax will improve public transportation in Pinellas County.
- Per DOE Opinion 10-06

53

Board Meeting 1-10-14

## Who can express opinions

- Elected officials
  - Permitted to use their official positions to influence another's vote with respect to a ballot proposal
    - F.S. 104.31
  - Cannot use their official authority or coercive action to influence anyone about how they vote or to contribute
    - i.e., not allowed to use threats or force to cause a person to vote in a particular manner
  - Officials are allowed to express their opinions on any matter, as long as public funds are not inappropriately used (i.e., for a Political Advertisement)
    - F.S. 106.113(3)
    - Division of Elections Opinion 10-06
    - See also F.S. 112.313(6) – Misuse of public position

54

Board Meeting 1-10-14

### Who can express opinions

- Non-Elected Board members and Government Employees
  - Allowed to express their opinion, so long as public funds are not expended on political advertisements
- Anyone may speak to the media to express their opinion on a referendum item, as long as the media is **not paid** to provide the communication
  - If public funds pay for media coverage, you cannot expressly advocate

55

Board Meeting 1-10-14

### Public Officials' Involvement in Political Action Committees

- A public official is not prohibited from participating in a PAC.
  - The involvement is limited to uncompensated participation
  - Elected officials cannot be employed by, or act as a consultant for compensation to a political committee.
    - F.S. 111.075
  - State Code of Ethics for public officers and employees is silent with respect to participation in political committees.

56

Board Meeting 1-10-14

### Political Contributions

- An agency is prohibited from making contributions to a political committee formed to support or oppose an issue.
  - F.S. 106.113
  - This prohibition also includes in-kind contributions of goods and services to a political committee.

57

Board Meeting 1-10-14

### Scenarios

- PSTA officer/employee/staff member speaks to editorial staff or other media outlet
  - This is allowed as long as the media is not being paid for the communication
  - Staff would be allowed to use public equipment to prepare for the interview
  - Officials can speak as they wish regarding an issue, but are only allowed to expressly advocate a position if no public funds are used to pay for the media coverage

58

Board Meeting 1-10-14

### Scenarios

- Employee uses PSTA copy machine to copy material which contains opinions regarding a issue or referendum
  - This is considered to be an expenditure of public funds – DOE Op. 10-06
  - This is permitted as long as the material does not meet the definition of a "political advertisement"
    - Prohibited only if the material expressly advocates and PSTA pays to distribute the information to media

59

Board Meeting 1-10-14

### Scenarios

- Use of PSTA owned computer: Can you express an opinion while using the computer?
  - An employee would be allowed to use a PSTA computer so long as they are not creating material which constitutes a political advertisement
  - Posting of opinions on the internet is allowed, as long as it is not considered an expenditure of public funds for "communications media"

60

Board Meeting 1-10-14

### Scenarios

- Internet Usage
  - Online activity is considered an expenditure if there is an actual cost associated with the activity
    - i.e., paying for the creation of a website or purchasing email lists (see DOE Opinion 10-06)
  - The cost of internet access is not deemed an expenditure if the internet access was in place prior to the dissemination of material
    - DOE Opinion 10-06

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DOE Opinion 10-06

### Scenarios

- Use of PSTA Telephone
  - The use of a telephone is considered an expenditure of public funds only if phones or equipment is purchased specifically for this use
  - The cost of pre-existing phone service is not considered an expenditure of public funds for this purpose

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DOE Opinion 10-06

### Scenarios

- Use of PSTA vehicle to commute to an event
  - If you are not the speaker, but engage in direct communication
    - This is allowed, as face to face conversations do not violate 106.113
  - If you are the guest speaker at an event
    - Typically, this is allowed.
    - Public speaking is not considered a "communications media", and thus the spoken word at a live event would not be considered a political advertisement

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DOE Opinion 10-06

**Office of Inspector General  
Florida Department of Transportation**

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**ATTACHMENT 6 – PSTA General Counsel Memo**

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The following memo, sent to the OIG by PSTA's General Counsel, summarizes PSTA's legal conclusions regarding advocacy.

**Bryant  
Miller  
Olive**

**Attorneys at Law**  
One Tampa City Center  
Suite 2700  
Tampa, FL 33602  
Tel 813.273.6677  
Fax 813.223.2705  
www.bmmlaw.com

**MEMORANDUM**

**To:** Susan O'Connell, Audit Manager  
Vanessa Spaulding, Audit Team Leader  
Monica Brown, Auditor

**From:** Alan S. Zimmet, PSTA General Counsel *ASZ*

**Re:** Brad Miller, CEO, Debbie Leous, CFO

**Date:** April 16, 2014

**Re:** PSTA Greenlight Pinellas Spending

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Debbie Leous, PSTA's CFO, has asked me to provide a memorandum outlining my legal conclusions regarding PSTA's expenditures related to Greenlight Pinellas in order to assist you in your investigation. It is my understanding that you have been provided with a powerpoint presentation that I gave to the PSTA Board of Directors as well as an outline I prepared that address Florida law related to public expenditures related to referendum items. It is my opinion that PSTA's expenditures related to Greenlight Pinellas fully comply with all applicable laws, including Chapter 106, Florida Statutes.

Under §106.113, Florida Statutes, public agencies are prohibited from expending public funds on political advertisements. A political advertisement is defined as "a paid expression in a communications medium...by means other than the spoken word in direct conversation, which *expressly advocates* the election or defeat of a candidate, or the approval or rejection of an issue." §106.011(15), Florida Statutes (emphasis added). In order for an advertisement to be a prohibited political advertisement that expressly advocates, the communication must contain the

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“magic words” as described by the Supreme Court of the United States in *Buckley v. Valeo*, 424 U.S. 1 (1976). The Supreme Court determined that language such as “vote for” “oppose” or “cast your ballot for” constitute express advocacy. The Florida Division of Elections has made clear through numerous opinions that this standard is applied in Florida as well. See *Division of Elections Advisory Opinions 05-06 & 12-05*.

Florida Statutes also prohibits spending public funds on electioneering communications. However, after a change made by the Legislature a few years ago, the definition of “electioneering communications” no longer includes a communication that relates to a referendum. Rather, this definition and the restriction on the use of public funds only relate to electioneering communications that refer to a candidate for office. §106.011(8), Florida Statutes. The Division of Elections has issued opinions that clearly state that Chapter 106 no longer, restricts spending public funds on electioneering communications relating to an issue or ballot question. *Division of Elections Advisory Opinion 10-06*.

Thus, local governments are only prohibited from spending public funds for a political advertisement that concerns an issue or referendum. *Division of Election Advisory Opinion 12-05*. “[L]ocal government expenditures for communications that do not satisfy the definition of a ‘political advertisement’ are not prohibited by section 106.113.” *Division of Election Advisory Opinion 12-05*.

While it is true that the definition and prohibition on use of funds for electioneering communications previously included communications regarding issues and referenda, this restriction was deemed unconstitutional by the United States District Court for the Northern District of Florida in *Broward Coalition of Condominiums v. Browning*, 2009 WL 1457972 (N.D. Fla. 2009). In response to this decision, which enjoined the State and Division of

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Elections from enforcing portions of the Election Code, the Legislature amended the definition of electioneering communications to the definition used today; as a communication referring to a candidate only. Thus, despite not amending §106.113 to reflect this change, the language in §106.113 relating to electioneering communications concerning an issue or referendum, which was not changed by the Legislature, is meaningless. *Division of Elections Advisory Opinion 10-07.*

When you complete your investigation, you will find that PSTA has not spent any funds on a political advertisement. There are no communications which expressly advocate for voters to “vote for” or “vote yes” in the November 2014 referendum. The information concerning Greenlight Pinellas is simply educating the electorate on what would happen in the event the referendum passes or fails and directs them to the website to be able to obtain information about the Greenlight Pinellas Plan. None of the materials urge the electorate to vote for the referendum.

Prior to the initiation of PSTA’s Greenlight Pinellas efforts, PSTA requested an opinion from the Division of Elections. PSTA has dutifully complied with the dictates of that opinion, as well as subsequent opinions issued by the Division of Elections. It is my understanding that all or a substantial portion of the funds that PSTA has used for the Greenlight Pinellas educational effort were provided to PSTA by the Federal Transit Administration through a federal grant. PSTA was authorized to use the grant funds in this manner and your investigation further will show that PSTA used the funds properly under Chapter 106 and the opinions of the Division of Elections. If you need any additional information from me, or have any questions, please do not hesitate to contact me.

Office of Inspector General  
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ATTACHMENT 7 – Department of State, Division of Elections Opinion



FLORIDA DEPARTMENT OF STATE

RICK SCOTT  
Governor

KEN DETZNER  
Secretary of State

May 24, 2012

Ms. Dorothy "Dotti" Wynn  
Chair, 2012 Orange County Charter Review Commission  
c/o Orange County Comptroller's Office  
P.O. Box 38  
Orlando, Florida 32802

RE: DB 12-05 – Advertising; Expenditures  
– Use of Local Government Funds. §  
106.113, Florida Statutes.

Dear Ms. Wynn:

This letter responds to a request for an advisory opinion submitted on behalf of the 2012 Orange County Charter Review Commission by Wade Vose, the Commission's General Counsel. Because the Commission plans to engage in political activity and has questions about compliance with Florida's election laws with respect to campaign finance law with respect to its intended actions, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2011).

By way of background, your general counsel states that the Charter Review Commission is an independent commission under Orange County government whose purpose is to review the county charter and to place proposed charter amendments on the general election ballot. Historically, the Commission has prepared a voter guide to be mailed to Orange County voters, explaining the Commission's rationale in proposing the charter amendments and educating voters as to the anticipated effects of adopting or not adopting the proposed amendments. Your attorney wants to ensure that the preparation of such a voter guide would not conflict with either section 106.113, Florida Statutes (2011), or its interpretation rendered by the Division in *Division of Elections Opinions* 10-06 and 10-07 (June 14, 2010).

Section 106.113, Florida Statutes (2011), provides:

**106.113 Expenditures by local governments.--**  
(1) As used in this section, the term:



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(a) "Local government" means:

1. A county, municipality, school district, or other political subdivision in this state; and
  2. Any department, agency, board, bureau, district, *commission*, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.
- (b) "Public funds" means all moneys under the jurisdiction or control of the local government.
- (2) A local government or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. This subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information.
- (3) With the exception of the prohibitions specified in subsection (2), this section does not preclude an elected official of the local government from expressing an opinion on any issue at any time. [*Emphasis added.*]

Based upon subsequent legislative changes to the definition of "electioneering communications," which applied the term only to communications about candidates, the Division opined that the portion of section 106.113 containing a prohibition on any activity that relates to an "electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to the vote of the electors" was superfluous. The Division adheres to this opinion. However, your attorney specifically requests further clarification of the two 2010 opinions by asking the following four questions as they relate to the Commission's intended action of issuing the voter's guide:

- (1) Does the prohibition imposed by Section 106.113, Florida Statutes, extend only to local government expenditures for communications that constitute political advertisements?
- (2) Does the definition of political advertisement extend only to communications that constitute express advocacy?
- (3) Does the Division maintain its opinion expressed in *Division of Elections Opinion 05-06* that the use of the term "expressly advocates" in the definition of "political advertisement" indicated the Legislature's intent to apply the *Buckley* "magic words" standard to political advertisements, requiring that to constitute express advocacy, the communication must contain express words of advocacy of election or defeat of a candidate or issue such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "oppose," and "reject"?

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- (4) Is it then the case that communications that do not satisfy the "magic words" express advocacy standard of *Buckley* are not prohibited under Section 106.113, Florida Statutes?

The short answer to all of these questions is "yes."

First, if one applies the Division's prior opinions regarding the superfluous "electioneering communications" language within section 106.113, the only prohibition remaining is that a local government or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds for a political advertisement concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. Thus, the Division opines that section 106.113, Florida Statutes (2011), addresses only "political advertisements."

Second, the definition of "political advertisement" requires that that advertisement expressly advocate the election and defeat of a candidate or approval or rejection of an issue.<sup>1</sup> Therefore, section 106.113's prohibition is that a local government or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds for an advertisement that expressly advocates the approval or rejection of an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors.

Third, as stated in *Division of Elections Opinion 05-06* (September 21, 2005), the use of the term "expressly advocates" is intended to apply the "magic words" standard to political advertisements as set forth by the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976). The "magic words" standard requires that the communication contain express words of advocacy for the election or defeat of a candidate or issue such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "oppose," and "reject." The Division adheres to this view; therefore, for purposes of section 106.113, for an advertisement to be a "political advertisement," it must contain language which satisfies the "magic words" standard of *Buckley v. Valeo* relating to the approval or rejection of "an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors."

Finally, as previously stated, the Division interprets section 106.113 to now only prohibit "political advertisements." Because a "political advertisement" requires the element of express advocacy, which in turn, requires the use of the "magic words" standard of *Buckley v. Valeo*, the avoidance of such words in any expression would preclude the expression or message from being in violation of section 106.113, Florida Statutes (2011). Therefore, local government

<sup>1</sup> See § 106.011(17), Fla. Stat. (2011) (To be a "political advertisement," the expression, by means other than the spoken word, must be a (1) a paid expression; (2) in a "communications media" (as defined in § 106.011(13), Fla. Stat.); and be one which (3) expressly advocates the election and defeat of a candidate or the approval or rejection of an issue.)

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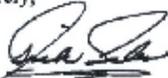
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expenditures for communications that do not satisfy the definition of a "political advertisement" are not prohibited by section 106.113.

SUMMARY

Applying the Division's prior opinions regarding the superfluous "electioneering communications" language in section 106.113, Florida Statutes (2011), the prohibition within the section now addresses only "political advertisements." A political advertisement as defined in chapter 106, Florida Statutes (2011), must contain words which expressly advocate the approval or rejection of an issue based upon the "magic words" standard found in *Buckley v. Valeo*, 424 U.S. 1 (1976). Local government expenditures for communications that do not satisfy the definition of a "political advertisement" are not prohibited by section 106.113.

Sincerely,



Dr. Gisela Salas  
Director, Division of Elections

cc: Wade Vose, Esq.

**Office of Inspector General  
Florida Department of Transportation**

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**DISTRIBUTION, PROJECT TEAM AND STATEMENT OF ACCORDANCE**

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