The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL:	CS/SB 1668
INTRODUCER:	Governmental Oversight and Accountability Committee and Senators Perry and Artiles
SUBJECT:	Use of State Funds
DATE:	April 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	**Fav/CS**
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1668 provides a limitation on certain lodging expenses that may be reimbursed for a state agency or judicial branch employee. The bill authorizes such employees to expend their own funds on lodging expenses that exceed a specified amount.

Also, the bill prohibits the use of state funds for the purchase of alcoholic beverages and the purchase of food or beverages for certain state agency appreciation events.

The bill takes effect July 1, 2017.

II. Present Situation:

Per Diem and Travel Expenses

The Legislature has established standard travel reimbursement rates applicable to all public officers,[1] public employees,[2] and other individuals[3] whose travel is authorized and paid for by a public agency.[4] Section 112.061(2)(f), F.S., defines the term "traveler" as a public officer, public employee, or authorized person, when performing authorized travel.

All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid.[5] In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency.[6] Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.7
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.8
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.9

Currently, Florida allows $80 per diem for Class A and B travel.[10] If expenses exceed $80, the state will pay a maximum of $36 ($6 for breakfast, $11 for lunch, and $19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.[11] Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.[12]

---

[1] Section 112.061(2)(c), F.S., defines officer or public officer as an individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

[2] Section 112.061(2)(d), F.S., defines employee or public employee as an individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

[3] *See* s. 112.061(2)(e), F.S., which defines authorized person as:

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties.
2. A person who is called upon by an agency to contribute time and services as consultant or adviser.
3. A person who is a candidate for an executive or professional position.

[4] Section 112.061(1), F.S. The term "public agency" is defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law. Section 112.061(2)(a), F.S.

[5] Section 112.061(3), F.S.

[6] *Id*.

[7] Section 112.061(2)(k), F.S.

[8] Section 112.061(2)(l), F.S.

[9] Section 112.061(2)(m), F.S.

[10] Section 112.061(6), F.S.

[11] *Id*.

[12] Section 112.061(5)(b), F.S.

During the 2016 legislative session, HB 5003[13] was passed that created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit expires on July 1, 2017.

State Fund Prohibitions

Section 286.27, F.S., prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

III. Effect of Proposed Changes:

Section 1 amends s. 112.061, F.S., and provides that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed $150 per day. The bill further provides that the employee may expend his or her own funds for any lodging expenses that exceed $150 per day.

Section 112.061, F.S., does not use the term "state employee" or "employee of the judicial branch". Section 112.061, F.S., uses the terms "officer or public officer," "employee or public employee," "authorized person," or "traveler."

Section 2 amends s. 286.27, F.S., to prohibit the use of state funds for the following additional purposes:

- The purchase of alcoholic beverages; and
- The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

Section 3 provides that the bill will take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

[13] *See* Ch. 2016-62, s. 120, Laws of Fla.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Financial Services (DFS) noted that it is possible state employees would be required to spend their own money for lodging expenses incurred for mandated travel to areas in the state where standard hotel rates exceed $150 a night during peak season and in areas where available lodging in safe areas is at a premium.[14] Placing employees in situations where they must use their own funds to support a state function could constitute a "taking." The Fifth Amendment to the U.S. Constitution provides "nor shall property be taken for public use, without just compensation."[15] The due process clause of the Fourteenth Amendment to the U.S. Constitution makes the takings clause applicable to the states as well as the federal government.[16] The government's duty to pay just compensation is not limited to government seizures of real property; it also applies to personal property.[17]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Under this bill, it is possible that state agency or judicial branch employees would be required to spend their own funds to pay for lodging expenses incurred for employer mandated travel. The DFS noted that the receipt of the benefit of payment of state expenses by the employee could be viewed as a gift or donation to the State of Florida, allowing a tax deduction by the employee and requiring an appropriate accounting of gift receipt by the state.[18] Florida law recognizes the authority of agency heads to receive gifts and donations. Section 20.05(1)(f), F.S., states that each head of a department must:

> Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited

[14] Florida Department of Financial Services, *2017 Legislative Bill Analysis HB 1137* (March 14, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).
[15] U.S. CONST. amend. V.
[16] U.S. CONST. amend. XIV, s. 1.
[17] *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2425 (2015).
[18] *See supra* note no. 20.

in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department.

VI. Technical Deficiencies:

The DFS notes that the bill treats state employees different from public officers and authorized persons, including volunteers, and contractors, who may also be reimbursed for their lodging cost that exceeds the $150 limitation. Changing the term "employee" in the bill to "traveler" would include a public officer, public employee or authorized person. This would ensure that public officers, public employees, and authorized persons, including volunteers and contractors, are all required to comply with the lodging limitation.[19]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 112.061 and 286.27 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 3, 2017:

- Removes section 2, pertaining to Maximum Cost Per Square Foot for New State-Funded Building Construction, and;
- Removes section 3, pertaining to State Agency Legislative Budget Requests.

B. Amendments:

None.

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

[19] *Id*.