

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1426

SPONSOR: Governmental Oversight and Productivity Committee and Senator Posey

SUBJECT: Municipal Per Diem and Travel Expenses

DATE: April 9, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute permits a municipality or agency thereof to exempt itself from the provisions of s. 112.061, F.S., which sets forth a comprehensive, uniform system for the reimbursement of public travel expenses by state and local government entities. Under the bill, s. 166.021, F.S., is amended to permit the governing board of a municipality or an agency thereof to provide its own policy regarding the per diem and travel expenses of its travelers. Further, the bill specifies that in the event such policy is provided that the municipality or agency thereof is no longer subject to s. 112.061, F.S. A municipality or agency thereof, which does not provide for a per diem and travel expense policy, remains subject to s. 112.061, F.S. The bill also states, as does s. 112.061, F.S., that fraudulent travel claim offenses are second degree misdemeanors in a municipality or agency thereof that provides its own per diem and travel expense policy.

This bill amends section 166.021 of the Florida Statutes.

II. Present Situation:

Overview of public travel reimbursement: Section 112.061(1), F.S., provides that it is the section’s legislative intent to remedy the, “. . . inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public officers, employees, and authorized persons in the state . . .,” by establishing, “. . . maximum rates, and limitations, with certain justifiable exceptions . . .,” for these public travelers.

The subsection further specifies that, in order to preserve standardization and uniformity in public travel reimbursement, the provisions of: (a) s. 112.061, F.S. prevail over any conflicting provision in general law, present or future, except that a general law will prevail to the extent of

a specific exemption from the section; and (b) any special or local law, present or future, prevail over conflicting provisions of s. 112.061, F.S., but only to the extent of the conflict.

Section 112.061, F.S., applies to all “public agencies,” which are 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.”¹

A “traveler” for a public agency is defined as, “a public officer, public employee, or authorized person, when performing authorized travel.”² The term “authorized person” is defined to mean 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;
- Who is called upon by an agency to contribute time and services as consultant or adviser; or
- Who is a candidate for an executive or professional position.³

The official headquarters for a traveler is deemed to be the city or town in which the traveler’s office is located, or if the traveler works in the field, his or her official headquarters is deemed to be the city or town nearest to the area where the majority of the traveler’s work is performed.⁴ If a state employee is stationed in any city or town for more than 30 continuous work days, such city or town is deemed to be the employee’s official headquarters.⁵

Travel by public agency travelers is categorized. “Class A” travel means continuous travel of 24 hours or more away from official headquarters. “Class B” travel means continuous travel of less than 24 hours that requires an overnight absence from official headquarters. “Class C” travel means day trips, which do not require an overnight stay.⁶

For overnight Class A or Class B travel, the traveler has the option of receiving \$50 per diem, or if actual expenses exceed \$50, the traveler may receive the actual cost for overnight lodging plus meal amounts of \$3 for breakfast, \$6 for lunch, and \$12 for dinner.⁷ For class C travel, the traveler may only receive the aforementioned meal amounts. Payments for Class C travel are taxable as income, while payments for Class A and B travel are not.⁸

¹ Section 112.061(2)(a), F.S.

² Section 112.061(2)(f), F.S.

³ Section 112.061(2)(e), F.S.

⁴ Section 112.061(4), F.S.

⁵ *Id.*

⁶ Section 112.061(5), F.S.

⁷ Section 112.061(5) and (6), F.S.

⁸ The per diem rates set forth apply only to travel within the United States. Foreign travel per diem rates are governed by the federal publication entitled, “Standardized Regulations (Government Civilians, Foreign Areas).” Section 112.061(3)(e), F.S.

Travel by privately owned vehicle is to be reimbursed at the rate of .29 per mile.⁹ Travel by common carrier is reimbursed in the amount of the common carrier fare, as determined by the agency head.¹⁰ All travel must be by the usually traveled route and mileage shall be computed based on a current Department of Transportation map.¹¹ Reimbursement for expenses related to operation, maintenance, and ownership of a privately owned vehicle are prohibited. Further, common carrier travel must be by the most economical class approved by the agency head.¹² Travelers are responsible for additional costs resulting from common carrier travel in excess of the most economical class.¹³

Section 112.061(10), F.S., provides that it is a second degree misdemeanor to willfully file or willfully assist in the filing of a fraudulent travel claim. In *State v. Maloy*, 823 So.2d 815 (1st DCA 2002), the court held that this second degree misdemeanor is the exclusive means permitted by s. 112.061, F.S., for the prosecution of such fraudulent conduct by a public traveler. The court in this case explicitly rejected the prosecution's argument that such conduct could also be prosecuted under felony statutes proscribing grand theft and official misconduct, given that s.112.061(1), F.S., provides that the section prevails over any conflicting provisions of law.

Applicability of s. 112.061, F.S., to municipalities: As discussed above, the provisions of s. 112.061, F.S., concerning travel reimbursement apply to "public agencies," which are defined as including municipalities. In 1974, Attorney General Opinion (AGO) 074-18 noted that municipalities have broad home rule authority pursuant to the Municipal Home Rule Powers Act contained in ch. 166, F.S., and were permitted, unless expressly preempted by state law, to enact legislation on any subject. The AGO then held that s. 112.061, F.S., notwithstanding its stated legislative intent to establish a uniform maximum travel reimbursement rates, did not constitute state preemption in the area of public agency travel reimbursement; thus, municipalities were permitted to enact ordinances providing for travel and subsistence allowances different from those fixed in s. 112.061, F.S.

On January 3, 2003, AGO 074-18 was effectively receded from in AGO 2003-01. In this latest AGO, it was stated that although a municipality may adopt legislation pursuant to its home rule powers, which specifies travel allowances, that given the stated legislative intent in s. 112.061(1)(a), F.S., the legislation may not provide for allowances that exceed the maximum allowances set forth in statute.

III. Effect of Proposed Changes:

The bill permits a municipality or agency thereof to exempt itself from the provisions of s. 112.061, F.S., which sets forth a comprehensive, uniform system for the reimbursement of public travel expenses by state and local government entities. Under the bill, a new subsection (10) is added to s. 166.021, F.S., to permit the governing board of a municipality or an agency thereof to provide its own policy regarding the per diem and travel expenses of its travelers.

⁹ Section 112.061(7)(d)1., F.S.

¹⁰ Section 112.061(7)(d)1., F.S.

¹¹ Section 112.061(7)(a) and (d)2., F.S.

¹² Section 112.061(7)(c), F.S.

¹³ *Id.*

Further, the bill states that any such policy provided by a municipality or agency thereof on January 1, 2003, is valid and in effect until otherwise amended.

The bill defines the following terms:

- “Authorized person” means a person:
 - other than an officer or employee, whether elected or commissioned or not, who is authorized by a municipality or agency thereof to incur travel expenses in the performance of official duties;
 - who is called upon by a municipality or an agency thereof to contribute time and services as consultant or adviser; or
 - who is a candidate for an executive or professional position with a municipality or agency thereof.
- “Employee” means an individual, whether commissioned or not, other than an officer or authorized person, who is filling a regular or full-time authorized position and is responsible to a municipality or agency thereof.
- “Officer” means 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 municipality, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.
- “Traveler” means an officer, employee, or authorized person, when performing travel authorized by a municipality or agency thereof.

The bill does not define the term “agency thereof,” nor is it defined in ch. 166, F.S. Thus, the term may be read broadly to include any entity that has an agency relationship with a municipality. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.¹⁴

The bill specifies that in the event a per diem and travel expense policy is provided that the municipality or agency thereof is no longer subject to s. 112.061, F.S. A municipality or agency thereof, which does not provide for a per diem and travel expense policy, remains subject to s. 112.061, F.S.

The bill provides that the following offenses are second degree misdemeanors for travelers in a municipality or agency thereof that is exempted from s. 112.061, F.S.:

- Willfully filing a travel claim that the person does not believe to be true and correct as to every material matter; and
- Willfully aiding or assisting in, or procuring, counseling or advising, the preparation or presentation of a travel claim that is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim.

¹⁴ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

These offenses are identical to the substance of the second degree misdemeanor offenses provided in s. 112.061(10), F.S.

The bill takes effect upon becoming a law and provides a retroactive effective date of January 1, 2003, for s. 166.021(10)(a) and (b), F.S.

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:

The bill allows the governing board of a municipality or agency thereof to enact its own policy regarding per diem and travel expenses, notwithstanding s. 112.061, F.S. Thus, under the bill, the governing board of a municipality or an agency thereof may provide any rates for travel reimbursement. Any increase in current rates will result in a negative fiscal impact to that governmental entity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
