

Finally, the bill permits a county or district school board to adopt rates that exceed those specified in s. 112.061, F.S., for per diem, meals, and mileage.

This bill substantially amends s. 112.061 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

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.⁴

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. For class C travel, the

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(k) – (m), F.S.

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.⁵

Travel by privately owned vehicle is to be reimbursed at the rate of .29 per mile.⁶ Travel by common carrier is reimbursed in the amount of the common carrier fare, as determined by the agency head.⁷

The statutory amounts for per diem and meals were last increased in 1981 by ch. 81-207, L.O.F., and the statutory amount for mileage was last increased in 1994 by ch. 94-139, L.O.F.

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 reimbursement allowances different from those fixed in s. 112.061, F.S.

In 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 amends s. 112.061, F.S., in order to specify new travel reimbursement ranges for state agencies and new maximum travel reimbursement rates for nonstate public agencies.

The new per diem, subsistence, and mileage ranges and rates provided by this bill are based on the increase reflected in the CPI for All Urban Consumers, U.S. City Average, All Items, 1982--1984 = 100 since the rates specified in s. 112.061, F.S., were last legislatively determined. The statutory amounts for per diem and meals were last increased in 1981 by ch. 81-207, L.O.F., and the statutory amount for mileage was last increased in 1994 by ch. 94-139, L.O.F.⁸

The bill specifies the following ranges and maximum rates:

⁵ 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.

⁶ Section 112.061(7)(d)1., F.S.

⁷ Section 112.061(7)(d)1., F.S.

⁸ Specifically, the current statutory rates for meals and per diem were increased to reflect the change in the CPI from July 1, 1981 until July 1, 2002, and the current statutory rate for mileage were increased to reflect the changed in the CPI from July 1, 1995 until July 1, 2002. Based on this calculation, the final figures, which are provided in the bill as the maximum rate that may be reimbursed, were obtained by rounding the figures for meal and per diem downward to the nearest dollar, and by round the figure for mileage to the nearest cent.

- State travelers may receive between \$50 and \$94 per diem, and nonstate travelers may receive up to \$94 per diem.
- State travelers may receive between \$3 and \$5 for breakfast and nonstate travelers may receive up to \$5 for breakfast.
- State travelers may receive between \$6 and \$11 for lunch and nonstate travelers may receive up to \$11 for lunch.
- State travelers may receive between \$12 and \$22 for dinner and nonstate travelers may receive up to \$11 for dinner.
- State travelers may receive between .29 and .37 per mile and nonstate travelers may receive up to .37 cents per mile for travel in a privately owned vehicle.

The bill creates a new subsection (14) to provide that:

- During FY 2002-2003, state travelers may receive no more than the section's minimum rates for per diem, subsistence, and mileage.
- On or before June 30, 2003, and annually thereafter, that the Executive Office of the Governor for executive branch agencies, the presiding officers of the Legislature for legislative branch agencies, and the Chief Justice of the State Supreme Court for judicial branch agencies must determine, based on the ranges specified in s. 112.061, F.S., the specific amount to be paid during the following fiscal year to state travelers for per diem, subsistence, and mileage.
- On June 1, 2005, and annually thereafter, the Department of Financial Services shall, by rule, adjust the section's amounts for per diem, subsistence, and mileage to reflect the percentage change in the CPI for All Urban Consumers, U.S. City Average since June 1, 2003. The annually adjusted amounts must be rounded downward to the nearest dollar and shall be effective for the following fiscal year.

The bill also creates a new subsection (15) to permit the governing body of a county to establish by ordinance or resolution, or of a district school board to establish by rule, travel reimbursement rates that exceed the maximum rates specified in s. 112.061(6)(a), F.S., for per diem, in s. 112.061(6)(b), F.S., for meals, and in s. 112.061(7)(d)1., F.S., for mileage allowances. The subsection further specifies that counties and district school boards remain subject to other requirements of the section.

The bill also:

- Changes references to the "Comptroller" to the "Chief Financial Officer."
- Changes references to the "Department of Banking and Finance" to the "Department of Financial Services."
- Strikes outdated provisions regarding FY 2002-2003 funding for Class C travel.
- Substitutes the term "traveler" for the phrase "traveler and authorized persons," as "traveler" is defined in the section to include "authorized persons."
- Makes conforming changes throughout the section.

The bill provides that it takes effect on June 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided.

In Attorney General Opinion (AGO) 2003-01, it was noted that the travel reimbursement rates established in s. 112.061, F.S., are considered, pursuant to the stated legislative intent of subsection (1), to be maximum rates. Further, this bill's amendments clarify that the amounts set forth in s. 112.061, F.S., are travel reimbursement ranges when applied to state agencies, and are travel reimbursement maximums when applied to nonstate public agencies, such as counties and municipalities. Thus, under the bill, counties and municipalities are not required by law to spend funds, and no unfunded local mandate issue is raised.

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:

County and district school board impact: The bill permits the governing body of a county to establish by ordinance or resolution, or of a district school board to establish by rule, travel reimbursement rates that exceed the maximum rates specified in s. 112.061(6)(a), F.S., for per diem, in s. 112.061(6)(b), F.S., for meals, and in s. 112.061(7)(d)1., F.S., for mileage allowances. Accordingly, there may be a fiscal impact to these entities if they choose to increase their travel reimbursement rates.

State government impact: The bill specifies that no more than the minimum travel reimbursement rates provided by the bill may be paid to state travelers during FY 2002-2003. Accordingly, this bill has no fiscal impact through June 30, 2003.

This bill's precise fiscal impact for future years, however, is indeterminate because:

- The travel reimbursement rates that will be paid in future years to state travelers are not yet known. Under the bill, the Executive Office of the Governor, the presiding officers of the Legislature, and the Chief Justice of the State Supreme Court are responsible for specifying rates, which fall within the bill's ranges, for travel reimbursement in each of their respective branches of government.
- FLAIR, the statewide accounting system, only categorizes state travel expenditures according to whether the expense is for instate travel, instate travel training, out of state travel, and out of state travel training. These four categories include not only payments for the type of travel expenditures affected by this bill, i.e., per diem, meals, and mileage, but also payments for hotel, common carrier, and registration fees. Consequently, increasing the totals in each of the four FLAIR categories by the increase in the maximum rate permitted by the bill would dramatically overstate the bill's fiscal impact.

Requests were made to state agencies to provide information on the amounts spent for per diem, meals, and mileage; however, it appears that most state agencies do not subcategorize travel expenses beyond the four FLAIR categories. The Agency for Health Care Administration (AHCA) was able to indicate that it spent an approximate total of \$2,860,109 for all agency travel in FY 2001-2002. Of this amount: (a) \$186,210 were for meals, i.e., 6.5 percent of total AHCA travel expenses;⁹ (b) \$368,851 were for per diem, i.e., 12.9 percent of total AHCA travel expenses; and (c) \$841,500 were for mileage, i.e., 29.4 percent of total AHCA travel expenses.

In FY 2001-2002, the state spent an approximate total of \$138.9 million on travel expenses.¹⁰ Using the aforementioned percentages for AHCA travel spending as a model to estimate what percentage of FY 2001-2002 state expenditures are for the reimbursement items affected by this bill, e.g., per diem, meals, and mileage, results in the following: (a) \$9.03 million for meals; (b) \$17.9 million for per diem; and (c) \$40.8 million for mileage. Further, using the assumption that government branch heads will authorize the maximum reimbursement levels permitted by the bill, the approximate increase that would have occurred in FY 2001-2002 is: (a) \$7.01 million more for meals; (b) \$15.75 million more for per diem; and (c) \$11.26 million more for

⁹ Section 112.061, F.S., provided that Class C meal payments were not authorized for FY 2001-2002. AHCA indicated that it spent \$30,480 in FY 2000-2001 for Class C meal payments. This amount was added to AHCA's FY 2001-2002 meal expenditures in order to develop the percentage model for state travel spending utilized for the projected fiscal impact of this bill.

¹⁰ Data provided by the Department of Financial Services reflects that state agencies, universities, the Legislature, and the Judiciary spent approximately the following amounts for travel during FY 2001-2002: (a) \$92.9 million for instate travel; (b) \$13.2 million for instate travel training; (c) \$30.2 million for out of state travel; and (d) \$2.6 million for out of state travel training.

mileage. Accordingly, the potential total fiscal impact of this bill may be \$34.02 million per year, which is a 24 percent increase in total annual state travel expenditures, if the maximum reimbursement levels permitted by the bill were implemented.

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.
