

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1137 Use of State Funds  
**SPONSOR(S):** Edwards  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N	Whittaker	Harrington
2) Government Operations & Technology Appropriations Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

#### Per Diem and Travel Expenses

The bill 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. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit.

#### Maximum Cost Per Square Foot for New State-funded Building Construction

The Department of Management Services is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given responsibility to manage. Current law does not establish a fixed pricing structure for the construction of new buildings.

The bill provides that a state entity that requests state funds to construct or contract for the construction of a new building must comply with maximum cost per square foot requirements provided in the bill. All new building construction must utilize the maximum cost nearest in proximity to the location of the building proposed for construction. The bill establishes the methodology that must be used to calculate the cost per square foot of a proposed new building.

#### State Fund Prohibitions

Current law prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card to convey holiday greetings. The bill prohibits 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.

The bill may have an indeterminate positive fiscal impact on the state and does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Per Diem and Travel Expenses**

###### Present Situation

The Legislature has established standard travel reimbursement rates applicable to all public officers, public employees, and other individuals whose travel is authorized and paid for by a public agency.<sup>1</sup> 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. 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.<sup>2</sup> Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.<sup>3</sup>
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.<sup>4</sup>
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.<sup>5</sup>

Currently, Florida allows \$80 per diem for Class A and B travel.<sup>6</sup> 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.<sup>7</sup> Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.<sup>8</sup>

The 2016-17 implementing bill 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 is in effect until July 1, 2017.

###### Effect of the Bill

The bill codifies the implementing bill's \$150 per day limit on lodging expenses in s. 112.061, F.S.

##### **Maximum Cost for New State-Funded Building Construction**

###### Present Situation

###### *State Agencies and the Judicial Branch*

Section 216.043, F.S., provides that each agency head and the Chief Justice of the Supreme Court, utilizing their independent judgment, may request fixed capital outlay (FCO) funding in their respective Legislative Budget Requests (LBR). The statute requires certain specific information to be provided with a request of an FCO appropriation. Specifically, the law requires an overall itemized listing of the FCO

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<sup>1</sup> 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.

<sup>2</sup> Section 112.061(3), F.S.

<sup>3</sup> Section 112.061(2)(k), F.S.

<sup>4</sup> Section 112.061(2)(l), F.S.

<sup>5</sup> Section 112.061(2)(m), F.S.

<sup>6</sup> Section 112.061(6), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 112.061(5)(b), F.S.

estimated expenditures; a detailed statement of program needs; estimated construction costs and square footage; site costs; the amount of operating capital necessary to furnish and equip a new or renovated facility; and the anticipated sources of funding to be used to construct the facility. In addition, requirements are also in place for an analysis of the continuing operating costs, as well as the availability and suitability of privately constructed and owned buildings and facilities that meet the needs and program requirements of the agency or of the judicial branch.

#### *State Universities and State Colleges*

Chapter 1013, F.S., contains various requirements for the Department of Education to follow in developing its legislative budget request for FCO funding for Florida College and State University System facilities. For example:

- Pursuant to s.1013.31, F.S., at least every five years, each institutional board must arrange for an educational plant survey of facilities of each district or campus. The survey must contain an inventory, recommendations for existing and new facilities, and include labor market data and a needs analysis. Projections of additional space needs for colleges must comply with State Board of Education rules. Projections for additional space for universities must comply with standards of the Board of Governors. This survey provides the foundation of the department's FCO legislative budget request as well as the annual Capital Improvement Plan required by s. 216.0158, F.S., for colleges and university facilities.
- Section 1013.64, F.S., requires the State Board of Education (for colleges) and the Board of Governors (for universities) to each submit three-year priority lists based on available funds as provided by the consensus estimating conference. Each project in the list must be recommended by the survey as required in s. 1013.31, F.S.

#### *School Districts*

Florida law provides certain limits for school district construction costs relating to new construction, renovation, and remodeling of educational plant space for elementary, middle, and high schools. Specifically, s. 1013.64, F.S., prescribes that no expenditures utilizing state Public Education Capital Outlay (PECO) funds or funding from the Debt Service Trust Fund may be used for any new construction of educational plant space if the costs exceed the total cost per student station established in law. The established cost per student station is adjusted annually by the PECO Revenue Estimating Conference to reflect any increase or decrease in the Consumer Price Index. Beginning July 1, 2017, the limitation on the expenditure of funds for new construction of educational plant space in excess of the established cost per student station will expand to include any funding source.

#### *Department of Management Services Report*

The General Appropriations Act for fiscal year 2015-2016 directed the Department of Management Services (DMS) to use the funds in specific appropriation 2713 to recommend a maximum square foot cost plan for new fixed capital outlay construction to include the design, construction, permitting, furniture and fixtures, and any appurtenances. The proviso required DMS to submit the plan to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than December 1, 2015.<sup>9</sup> DMS completed a report on the plan and submitted it on that date.

The report<sup>10</sup> analyzed the costs for new building construction in five cities throughout Florida: Fort Myers, Jacksonville, Miami, Tampa, and Tallahassee. The report also considered the additional costs required for developments of regional impact (DRIs), which are developments that, because of their character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.<sup>11</sup> Based on this analysis, the report provided the following rates for the cost per square foot for the five cities:

- Cost per square foot without DRI costs:

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<sup>9</sup> Chapter 2015-232, L.O.F.

<sup>10</sup> A copy of the report is on file with the Oversight, Transparency & Administration Subcommittee

<sup>11</sup> Section 380.06(1), F.S.

- Fort Myers – \$365.98
- Jacksonville – \$397.16
- Miami – \$564.55
- Tampa – \$411.59
- Tallahassee – \$395.13
- Cost per square foot with DRI costs:
  - Fort Myers – \$491.37
  - Jacksonville – \$494.84
  - Miami – \$794.82
  - Tampa – \$584.25
  - Tallahassee – \$493.06

### *Producer Price Index*

The Producer Price Index (PPI) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI's measure price changes from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index, that measure price change from the purchaser's perspective. Sellers' and purchasers' prices may differ due to government subsidies, sales and excise taxes, and distribution costs.<sup>12</sup>

### Effect of the Bill

The bill establishes a maximum cost per square foot that a state entity may request or contract to spend for new construction of a building utilizing state funds. The bill provides the following definitions:

- “Art” means the artwork for a new state-funded building as set forth in s. 255.043, F.S.
- “Building” means an office building, a courthouse, an administrative building, or a university or college classroom building or auditorium building. The term does not include a nursing, medical, laboratory, science, technology, correctional, residential, or food service facility or a facility with fewer than 10,000 total square feet.
- “Core costs” means the costs associated with providing infrastructure for the core areas of each floor of a building including potable domestic water risers, separate sanitary and storm drain systems, sanitary vents, electrical power distribution panels, circuit breakers, electrical closets, a designated connection point to the central fire alarm system, distribution backboards within wire closets, and connections to horizontal extensions within a tenant’s usable area.
- “Department” means the Department of Management Services.
- “DRI” means large projects that require a development-of-regional-impact review and permit as set forth in s. 380.06, F.S.
- “Furniture, fixtures, and equipment” means the movable furniture, fixtures, and other equipment that have no permanent connection to the structure of a building.
- “Maximum cost per square foot” means the maximum cost per square foot as determined in the bill or in the legislative budget instructions for the construction of a new building.
- “Permitting costs” means the costs or fees required to obtain relevant permission to undertake a new building construction project, including, but not limited to, environmental permits, building permits, State Fire Marshal reviews, utility connection fees, impact fees, and the department’s project management fees.
- “Professional services fees” means the fees charged by construction design professionals, including engineers, who are utilized in planning and designing an energy-efficient and sustainable building that meets the goals identified in s. 255.252, F.S.
- “Raw building construction costs” means the costs associated with the building construction contract, including the cost of materials and the cost of labor and equipment necessary to install materials. The term includes shell costs, core costs, and tenant costs.
- “Shell costs” means the costs associated with the building structure, exterior envelope physical characteristics, vertical circulation, public spaces, and physical plant support spaces of a building.

<sup>12</sup> Bureau of Labor Statistics, *Producer Price Indexes*, <https://www.bls.gov/ppi/ppiover.htm#data> (last visited March 6, 2017).

- “State entity” means a state agency or department, the judicial branch, a state university, or a state college.
- “Tenant costs” means the costs associated with the design and construction for the installation of materials; HVAC, electrical, and plumbing systems; and life safety items to meet the tenant office layout needs that are within the shell and core of a building. The term does not include the cost of furniture, fixtures, and equipment.
- “Total construction cost” means the total of the raw building construction costs; permitting costs; cost to install utility services; professional service fees; and art, furniture, fixtures, and equipment costs. The term does not include the cost for the physical property, parking areas, and parking structures.

The bill specifies different rates for the maximum cost per square foot depending on the region in which the new building will be constructed and whether the building is part of a DRI. For fiscal year 2017-2018, the maximum cost per square foot rates for each region are as follows:

- Fort Myers
  - Cost per square foot without DRI - \$365.98
  - Cost per square foot with DRI - \$491.37
- Jacksonville
  - Cost per square foot without DRI - \$397.16
  - Cost per square foot with DRI - \$494.84
- Miami
  - Cost per square foot without DRI - \$564.55
  - Cost per square foot with DRI - \$794.82
- Tallahassee
  - Cost per square foot without DRI - \$395.13
  - Cost per square foot with DRI - \$493.06
- Tampa
  - Cost per square foot without DRI - \$411.59
  - Cost per square foot with DRI - \$584.25

A state entity must apply the maximum cost per square foot amount using the region that is in closest proximity to the region in which the new building will be constructed.

Beginning July 1, 2018, and annually thereafter, DMS must review and recommend adjustments to the maximum cost per square foot rates based on the percentage change in the average of the Producer Price Index Data for New Office Building Construction published by the U.S. Department of Labor. DMS must provide such recommendations to the Executive Office of the Governor and the appropriations committees of the Legislature for review and consideration for inclusion in the legislative budget instructions utilized by agencies, as provided in s. 216.023(3), F.S.

The bill establishes the methodology that must be used to calculate the cost per square foot of a proposed new building. To determine the cost per square foot, the estimated total construction cost plus 10 percent must be divided by the total square footage of the proposed new building. For purposes of this calculation, the total square footage does not include the physical property, parking areas, and parking structures. The value derived from this calculation may not exceed the maximum cost per square foot specified in the bill or as modified in the most recent legislative budget instructions.

At the request of a state entity that may seek state funds to construct or contract for the construction of a new building, DMS must:

- Review the building construction plans and calculate the estimated cost per square foot.
- Upon completion of its review, certify the estimated cost per square foot and specify whether the cost per square foot is equal to or less than the applicable maximum cost per square foot.
- Provide recommendations for reducing the estimated cost per square foot if such cost exceeds the applicable maximum cost per square foot.

A state entity may not request state funds for new building construction if the estimated cost per square foot exceeds the applicable maximum cost per square foot, unless DMS has certified that the total estimated cost per square foot will exceed the maximum cost per square foot by no more than 10 percent and the additional cost is attributable to:

- Necessary security-related costs;
- Building material costs needed due to site limitations for construction on a specific site; or
- Extraordinary permitting costs.

The bill requires a state entity head to certify that each legislative budget request for new building construction complies with the maximum cost per square foot requirements. If the cost per square foot of the a new building exceeds the maximum cost per square foot, the state entity head must identify in writing the specific additional costs that exceed the maximum.

The bill prohibits a state entity from spending or entering into a contract to spend state funds for new building construction if the cost per square foot of a new building exceeds the applicable maximum cost per square foot, unless specifically authorized by law. A contract in violation of the maximum cost per square foot requirements is void. In addition, a person who willfully spends, or enters into a contract to spend, state funds in excess of the maximum cost per square foot, except as provided above or specifically authorized by law, is guilty of a second degree misdemeanor.

The bill also requires a legislative budget request for fixed capital outlay for new building construction to comply with the maximum cost per square foot requirements.

## **State Fund Prohibitions**

### Present Situation

Current law prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card to convey holiday greetings.<sup>13</sup>

### Effect of the Bill

The bill prohibits 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.

## **B. SECTION DIRECTORY:**

- Section 1. Amends s. 112.061, F.S., providing a limitation on actual expenses of certain lodging that may be reimbursed for a state agency or judicial branch employee; authorizing an employee to expend his or her own funds on lodging expenses that exceed a specified amount.
- Section 2. Creates s. 216.0161, F.S., establishing maximum cost per square foot guidelines for new state-funded construction.
- Section 3. Amends s. 216.023, F.S., requiring legislative budget requests for fixed capital outlay for new building construction to comply with certain requirements.
- Section 4. Amends s. 286.27, F.S., prohibiting the use of state funds to purchase alcoholic beverages and food or beverages for certain state agency appreciation or recognition events.

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<sup>13</sup> Section 286.27, F.S.

Section 5. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on the state because the bill limits the costs per square foot for new construction. In addition, the bill may have an indeterminate positive fiscal impact on state agencies and the judicial branch because it limits to \$150 the amount that may be reimbursed per day for employee travel lodging expenses under certain circumstances.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.