

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: CS/SB 1668

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Perry and others

SUBJECT: Use of State Funds

DATE: April 17, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Fav/CS
2.	Davis	Betta	AGG	Pre-meeting
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**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 \$150 per day.

In addition, 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.

Under the bill, state agencies may avoid some costs associated with the lodging expenditure limitations and state fund prohibitions established in the bill.

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, public employees, and other individuals whose travel is authorized and paid for by a public agency. Section 112.061(2)(f), F.S., defines the term "traveler" as a public officer, public employee, or authorized person, when performing authorized travel.

The head of the agency, or his or her designated representative, from whose funds the travel expenses are paid, must authorize all travel.<sup>1</sup> In addition, travel expenses must be limited to those 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>

During the 2016 legislative session, HB 5003<sup>9</sup> (Fiscal Year 2016-2017 Implementing Bill) was passed creating 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., to provide 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 the employee may expend his or her own funds for any lodging expenses that exceed \$150 per day.

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<sup>1</sup> Section 112.061(3), F.S.

<sup>2</sup> *Id.*

<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.

<sup>9</sup> *See* Ch. 2016-62, s. 120, Laws of Fla.

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 the bill will take effect on July 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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.<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup> The government’s duty to pay just compensation is not limited to government seizures of real property; it also applies to personal property.<sup>13</sup>

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<sup>10</sup> 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).

<sup>11</sup> U.S. CONST. amend. V.

<sup>12</sup> U.S. CONST. amend. XIV, s. 1.

<sup>13</sup> *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2425 (2015).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

An employee of a state agency or judicial branch may have to pay his or her own funds for any lodging expenses exceeding \$150 per day while attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or judicial branch.

**C. Government Sector Impact:**

The bill may have an indeterminate positive fiscal impact on state government and judicial branch expenditures associated with the lodging expenditures and state fund prohibitions established in the bill.

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 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.<sup>14</sup> However, the only instances when this situation would occur would be in extreme situations such as the Fish and Wildlife Conservation Commission traveling to the Florida Keys during lobster season for regulatory duties.

**VI. Technical Deficiencies:**

According to the DFS, 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 public officers, public employees, and authorized persons, including volunteers and contractors, that the state is reimbursing for travel are all required to comply with the lodging limitation.<sup>15</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

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<sup>14</sup> See *supra* note no. 10.

<sup>15</sup> *Id.*

**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.

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

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