

By the Committee on Governmental Oversight and Productivity;  
and Senators Posey and Dawson

302-2279-03

1                                   A bill to be entitled  
2           An act relating to municipal per diem and  
3           travel expenses; amending s. 166.021, F.S.;  
4           providing definitions; authorizing  
5           municipalities and agencies thereof to adopt  
6           per diem and travel expense policies for  
7           travelers, notwithstanding s. 112.061, F.S.;  
8           providing for retroactive application;  
9           providing for applicability of s. 112.061,  
10          F.S., if per diem and travel expense policies  
11          are or are not adopted; providing for offenses  
12          related to false or fraudulent travel claims;  
13          providing misdemeanor penalties; providing for  
14          civil liability; providing effective dates.

15  
16           WHEREAS, the Municipal Home Rule Powers Act, chapter  
17   166, Florida Statutes, provides that the governing body of  
18   each municipality has the power to enact legislation  
19   concerning any subject matter upon which the Legislature may  
20   act, and

21           WHEREAS, the Florida Attorney General, in AGO 1974-18,  
22   stated that municipalities, under the Municipal Home Rule  
23   Powers Act, have the home rule powers to enact per diem and  
24   travel allowances that vary from those specified in section  
25   112.061, Florida Statutes, and

26           WHEREAS, numerous municipalities in the state have  
27   relied on the grant of home rule powers and AGO 1974-18 to  
28   enact reasonable per diem and travel allowances as determined  
29   by the governing body of the municipality, and

30           WHEREAS, the Florida Attorney General, in AGO 2003-01,  
31   has essentially reversed the opinion set forth in AGO 1974-18

1 and has now stated that section 112.061, Florida Statutes,  
2 applies to municipalities and controls the maximum rate of per  
3 diem and other allowances paid to officers, employees, or  
4 others authorized to act on behalf of the municipality, and

5 WHEREAS, AGO 2003-01 clearly violates the intent of the  
6 Municipal Home Rule Powers Act, and places municipalities that  
7 have relied on AGO 1974-18 into the position of having to  
8 repeal their policies on reasonable per diem and travel  
9 allowances in order to comply with AGO 2003-01, NOW,

10 THEREFORE,

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Subsection (10) is added to section  
15 166.021, Florida Statutes, to read:

16 166.021 Powers.--

17 (10)(a) As used in this subsection, the term:

18 1. "Authorized person" means a person:

19 a. Other than an officer or employee, as defined in  
20 this paragraph, whether elected or commissioned or not, who is  
21 authorized by a municipality or agency thereof to incur travel  
22 expenses in the performance of official duties;

23 b. Who is called upon by a municipality or agency  
24 thereof to contribute time and services as consultant or  
25 advisor; or

26 c. Who is a candidate for an executive or professional  
27 position with a municipality or agency thereof.

28 2. "Employee" means an individual, whether  
29 commissioned or not, other than an officer or authorized  
30 person as defined in this paragraph, who is filling a regular

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1 or full-time authorized position and is responsible to a  
2 municipality or agency thereof.

3 3. "Officer" means an individual who, in the  
4 performance of his or her official duties, is vested by law  
5 with sovereign powers of government and who is either elected  
6 by the people, or commissioned by the Governor and who has  
7 jurisdiction extending throughout the municipality, or any  
8 person lawfully serving instead of either of the foregoing two  
9 classes of individuals as initial designee or successor.

10 4. "Traveler" means an officer, employee, or  
11 authorized person, when performing travel authorized by a  
12 municipality or agency thereof.

13 (b) Notwithstanding s. 112.061, the governing body of  
14 a municipality or an agency thereof may provide for a per diem  
15 and travel expense policy for its travelers which varies from  
16 the provisions of s. 112.061. Any such policy provided by a  
17 municipality or an agency thereof on January 1, 2003, shall be  
18 valid and in effect for that municipality or agency thereof  
19 until otherwise amended. A municipality or agency thereof that  
20 provides any per diem and travel expense policy pursuant to  
21 this subsection shall be deemed to be exempt from all  
22 provisions of s. 112.061. A municipality or agency thereof  
23 that does not provide a per diem and travel expense policy  
24 pursuant to this subsection remains subject to all provisions  
25 of s. 112.061.

26 (c) Travel claims submitted by a traveler in a  
27 municipality or agency thereof which is exempted from the  
28 provisions of s. 112.061, pursuant to paragraph (b), shall not  
29 be required to be sworn to before a notary public or other  
30 officer authorized to administer oaths, but any claim  
31 authorized or required to be made under any per diem and

1 travel expense policy of a municipality or agency thereof must  
2 contain a statement that the expenses were actually incurred  
3 by the traveler as necessary travel expenses in the  
4 performance of official duties and shall be verified by a  
5 written declaration that it is true and correct as to every  
6 material matter; and any person who willfully makes and  
7 subscribes any such claim that he or she does not believe to  
8 be true and correct as to every material matter, or who  
9 willfully aids or assists in, or procures, counsels, or  
10 advises the preparation or presentation of such a claim that  
11 is fraudulent or is false as to any material matter, whether  
12 or not such falsity or fraud is with the knowledge or consent  
13 of the person authorized or required to present such claim,  
14 commits a misdemeanor of the second degree, punishable as  
15 provided in s. 775.082 or s. 775.083. Whoever receives an  
16 allowance or reimbursement by means of a false claim is  
17 civilly liable in the amount of the overpayment for the  
18 reimbursement of the public fund from which the claim was  
19 paid.

20 Section 2. This act shall take effect upon becoming a  
21 law and section 166.021(10)(a) and (b), Florida Statutes, as  
22 created in section 1, of this act shall apply retroactively to  
23 January 1, 2003.

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25 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
26 COMMITTEE SUBSTITUTE FOR  
27 Senate Bill 1426

28

28 Provides definitions. Specifies that a municipality or agency  
29 thereof that provides a per diem and travel expense policy is  
30 exempt from s. 112.061, F.S. Provides that s. 112.061, F.S.,  
remains applicable if no policy provided. Provides for  
fraudulent travel claim misdemeanor offenses.

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