

1 A bill to be entitled
2 An act relating to governmental 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; amending s. 112.061, F.S.;
15 providing that counties, county officers,
16 district school boards, and certain special
17 districts may increase specified rates;
18 providing effective dates.

19
20 WHEREAS, the Municipal Home Rule Powers Act, chapter
21 166, Florida Statutes, provides that the governing body of
22 each municipality has the power to enact legislation
23 concerning any subject matter upon which the Legislature may
24 act, and

25 WHEREAS, the Florida Attorney General, in AGO 1974-18,
26 stated that municipalities, under the Municipal Home Rule
27 Powers Act, have the home rule powers to enact per diem and
28 travel allowances that vary from those specified in section
29 112.061, Florida Statutes, and

30 WHEREAS, numerous municipalities in the state have
31 relied on the grant of home rule powers and AGO 1974-18 to

1 enact reasonable per diem and travel allowances as determined
2 by the governing body of the municipality, and

3 WHEREAS, the Florida Attorney General, in AGO 2003-01,
4 has essentially reversed the opinion set forth in AGO 1974-18
5 and has now stated that section 112.061, Florida Statutes,
6 applies to municipalities and controls the maximum rate of per
7 diem and other allowances paid to officers, employees, or
8 others authorized to act on behalf of the municipality, and

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

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Subsection (10) is added to section
19 166.021, Florida Statutes, to read:

20 166.021 Powers.--

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

22 1. "Authorized person" means a person:

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

27 b. Who is called upon by a municipality or agency
28 thereof to contribute time and services as consultant or
29 advisor; or

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

1 2. "Employee" means an individual, whether
2 commissioned or not, other than an officer or authorized
3 person as defined in this paragraph, who is filling a regular
4 or full-time authorized position and is responsible to a
5 municipality or agency thereof.

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

13 4. "Traveler" means an officer, employee, or
14 authorized person, when performing travel authorized by a
15 municipality or agency thereof.

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

29 (c) Travel claims submitted by a traveler in a
30 municipality or agency thereof which is exempted from the
31 provisions of s. 112.061, pursuant to paragraph (b), shall not

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

23 Section 2. Subsection (14) is added to section
24 112.061, Florida Statutes, to read:

25 (14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS,
26 DISTRICT SCHOOL BOARDS, AND SPECIAL DISTRICTS.--

27 (a) Rates that exceed the maximum travel reimbursement
28 rates for nonstate travelers specified in s. 112.061(6)(a) for
29 per diem, in s. 112.061(6)(b) for subsistence, and in s.
30 112.061(7)(d)1. for mileage may be established by:
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1 1. The governing body of a county by the enactment of
2 an ordinance or resolution;

3 2. A county constitutional officer, pursuant to
4 Article VIII, s.1.(d) of the State Constitution, by the
5 establishment of written policy;

6 3. The governing body of a district school board by
7 the adoption of rules; or

8 4. The governing body of a special district, as
9 defined in s. 189.403(1), except those special districts that
10 are subject to s. 166.021(10), by the enactment of a
11 resolution.

12 (b) Rates established pursuant to paragraph (15)(a)
13 must apply uniformly to all travel by the county, county
14 constitutional officer and entity governed by that officer,
15 district school board, or special district.

16 (c) Except as otherwise provided in this subsection,
17 counties, county constitutional officers and entities governed
18 by those officers, district school boards, and special
19 districts, other than those subject to s. 166.021(10), remain
20 subject to the requirements of this section.

21 Section 3. This act shall take effect upon becoming a
22 law and section 166.021(10)(a) and (b), Florida Statutes, as
23 created in section 1, of this act shall apply retroactively to
24 January 1, 2003.

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