

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1904

SPONSOR: Governmental Oversight and Productivity Committee and Senator Lawson

SUBJECT: Per diem and travel expenses

DATE: March 4, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Wilson	GO	Fav/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, s. 112.061, F.S. specifies that public travelers shall receive the following maximum rates for travel reimbursement: (a) \$50 per diem; (b) \$3 for breakfast; (c) \$6 for lunch; (d) \$12 for dinner; and (e) 29 cents per mile for personal vehicle travel. The Legislature last increased the rates for per diem and meals in 1981, and the rate for mileage in 1994.

The proposed committee substitute increases the aforementioned rates by the percentage increase in the Consumer Price Index (CPI) since the year of the last legislative rate increase. Under the bill:

- State travelers may receive between \$50 and \$96 per diem, and nonstate travelers may receive up to \$96 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 \$23 for dinner and nonstate travelers may receive up to \$23 for dinner.
- State travelers may receive between 29 cents and 38 cents per mile and nonstate travelers may receive up to .38 cents per mile for travel in a privately owned vehicle.

The bill specifies that cabinet members and the head(s) of each branch of state government are to annually determine for his or her respective agency or branch the amount within the range to be paid to a state traveler. Further, the Department of Financial Services, beginning in 2005, is required to annually adjust the rates in rule by the percentage change in the CPI.

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 cents 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 local government entities: In 2003, the Legislature enacted ch. 2003-125, L.O.F., that amended s. 112.061, F.S., to permit the following entities to establish 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 governing body of a county by ordinance or resolution;
- A county constitutional officer by written policy;
- The governing body of a district school board by rule; or
- The governing body of a special district by resolution.

Any such rates established by the specified local government entities are required to apply uniformly to all travel conducted by the entity. Further, these entities remain subject to all other provisions of s. 112.061, F.S.⁸

Chapter 2003-125, L.O.F., also amended s. 166.021(10), F.S. to permit a municipality or agency thereof to exempt itself from all of the provisions of s. 112.061, F.S., when it creates its own per diem and travel expense policy for its travelers. Municipalities and agencies thereof that do not create such a policy remain subject to s. 112.061, F.S.

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.

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 Section 112.061(14), F.S.

⁹ The term "agency" is not defined. Thus, the term may be read broadly to include any entity that has an agency relationship with a municipality. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent. *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

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.¹⁰ The bill specifies the following ranges and maximum rates:

- State travelers may receive between \$50 and \$96 per diem, and nonstate travelers may receive up to \$96 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 \$23 for dinner and nonstate travelers may receive up to \$23 for dinner.
- State travelers may receive between 29 cents and 38 cents per mile and nonstate travelers may receive up to .38 cents per mile for travel in a privately owned vehicle.

The bill creates a new subsection (15) to provide that:

- During FY 2003-2004, state travelers may receive no more than the section's minimum rates for per diem, subsistence, and mileage.
- On or before June 30, 2004, and annually thereafter, that the Attorney General for the Department of Legal Affairs, Chief Financial Officer for the Department of Financial Services, Commissioner of Agriculture for the Department of Agriculture and Consumer Services, Governor for other executive branch agencies, presiding officers of the Legislature for legislative branch agencies, and 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 for per diem and subsistence and rounded downward to the nearest cent for mileage. The newly adjusted amounts are effective for the following fiscal year.

The bill also substitutes the term "traveler" for the phrase "traveler and authorized persons," as "traveler" is defined in the section to include "authorized persons," and makes conforming changes throughout the section.

The bill provides that it takes effect on June 1, 2004.

¹⁰ Specifically, the current statutory rates for meals and per diem were increased to reflect the change in the CPI from June 1981 until June 2003, and the current statutory rate for mileage were increased to reflect the change in the CPI from June 1995 until June 2003. 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 rounding the figure for mileage to the nearest cent.

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 applicable 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:

The bill specifies that no more than the minimum travel reimbursement rates provided by the bill may be paid to state travelers during FY 2003-2004. Accordingly, this bill has no fiscal impact through June 30, 2004.

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 Cabinet members, Governor, presiding officers of the Legislature, and Chief Justice of the State Supreme Court are responsible for specifying rates that 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 \$2,388,005¹¹ for all agency travel in FY 2002-2003. Of this amount, \$1,132,293 was for lodging, common carrier, and registration fee expenses, which are categories of travel expenses that are unaffected by this bill. The remaining expenditure was \$1,255,712, which was spent as follows on the categories that are affected by this bill: (a) \$165,694 was for meals, i.e., 6.9 percent of total AHCA travel expenses; (b) \$228,501 was for per diem, i.e., 9.6 percent of total AHCA travel expenses; and (c) \$861,517 was for mileage, i.e., 36 percent of total AHCA travel expenses.

In FY 2002-2003, the state spent an approximate total of \$93.8 million on travel expenses.¹² 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 categories affected by this bill, e.g., per diem, meals, and mileage, results in the following: (a) \$6.5 million for meals; (b) \$9 million for per diem; and (c) \$33.8 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 2002-2003 is: (a) \$5.3 million more for meals; (b) \$8.3 million more for per diem; and (c) \$10.5 million more for mileage. Accordingly, the potential total fiscal impact of this bill on the state is estimated to be \$24.1 million per year, which is a 26 percent increase in total annual state travel expenditures, if the maximum reimbursement levels permitted by the bill were implemented.

In FY 2002-2003, state universities, now statutorily considered non-state entities, spent an approximate total of \$51.5 million on travel expenses.¹³ Using the aforementioned percentages for AHCA travel spending as a model to estimate what percentage of FY 2002-2003 state university expenditures are for the reimbursement categories affected by this bill, e.g., per diem, meals, and mileage, results in the following: (a) \$3.6 million for meals; (b) \$4.9 million for per diem; and (c) \$18.5 million for mileage. Further, using

¹¹ Section 112.061, F.S., provided that Class C meal payments were not authorized for FYs 2001-2003. AHCA indicated that it spent \$30,480 in FY 2000-2001 for Class C meal payments. This amount was added to AHCA's FY 2002-2003 total travel and meal expenditures in order to develop the percentage model for state travel spending utilized for the projected fiscal impact of this bill.

¹² Data provided by the Department of Financial Services for state agencies, the Legislature, and the Judiciary.

¹³ Data provided by the Department of Financial Services.

the assumption that the boards of trustees will authorize the maximum reimbursement levels permitted by the bill, the approximate increase that would have occurred in FY 2002-2003 is: (a) \$2.9 million more for meals; (b) \$4.5 million more for per diem; and (c) \$5.7 million more for mileage. Accordingly, the potential total fiscal impact of this bill on the state universities is estimated to be \$13.1 million per year, which is a 25 percent increase in total annual state university 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.
