

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 778

SPONSOR: Governmental Oversight and Productivity Committee and Senators Lawson, Argenziano, and others

SUBJECT: Per Diem and Travel

DATE: March 23, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Legislature last increased the rates for per diem and meals in 1981, and the rate for mileage in 1994. Currently, s. 112.061, F.S., specifies that public travelers shall receive the following maximum rates for travel reimbursement: (a) \$50 per diem; or (b) \$3 for breakfast; (c) \$6 for lunch; (d) \$12 for dinner; and (e) 29 cents per mile for personal vehicle travel. Under the committee substitute, for fiscal year 2005-2006:

- The per diem rate for state and nonstate travelers will be \$90.
- State and nonstate travelers are allowed \$5 for breakfast.
- State and nonstate travelers are allowed \$11 for lunch.
- State and nonstate travelers are allowed \$23 for dinner.
- State and nonstate travelers are entitled to 38 cents per mile for travel in a privately owned vehicle.

The per diem, subsistence, and mileage rates are all subject to annual adjustment by the Chief Financial Officer. The annual adjustment is to reflect the percentage change in the Consumer Price Index for All Urban Consumers, though the per diem rate is not to exceed the standard federal per diem rate for the continental United States as published by the General Services Administration for the applicable year.

This bill amends s. 112.061 of the Florida Statutes.

II. Present Situation:

Overview of public travel reimbursement: 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.¹ 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."²

A "traveler" for a public agency is defined as, "a public officer, public employee, or authorized person, when performing authorized travel."³ 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.⁴

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.⁵

¹ 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 changed 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.

² Section 112.061(2)(a), F.S.

³ Section 112.061(2)(f), F.S.

⁴ Section 112.061(2)(e), F.S.

⁵ Section 112.061(k) – (m), F.S.

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 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.⁶

Travel by privately owned vehicle is to be reimbursed at the rate of 29 cents per mile.⁷ Travel by common carrier is reimbursed in the amount of the common carrier fare, as determined by the agency head.⁸

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.⁹

Chapter 2003-125, L.O.F., also amended s. 166.021(10), F.S., to permit a municipality or agency¹⁰ 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 committee substitute amends s. 112.061, F.S., in order to specify uniform travel reimbursement ranges for state and nonstate travelers. Under the committee substitute, for fiscal year 2005-2006:

- The per diem rate for state and nonstate travelers will be \$90.
- State and nonstate travelers are allowed \$5 for breakfast.

⁶ 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.

⁷ Section 112.061(7)(d)1., F.S.

⁸ Section 112.061(7)(d)1., F.S.

⁹ Section 112.061(14), F.S.

¹⁰ 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).

- State and nonstate travelers are allowed \$11 for lunch.
- State and nonstate travelers are allowed \$23 for dinner.
- All travelers are entitled to 38 cents per mile for travel in a privately owned vehicle.

The per diem, subsistence, and mileage rates are all subject to annual adjustment by the Chief Financial Officer. The annual adjustment is to reflect the percentage change in the Consumer Price Index for All Urban Consumers, though the per diem rate is not to exceed the standard federal per diem rate for the continental United States as published by the General Services Administration for the applicable year.

The bill takes effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Art. VII, s. 18 of the State Constitution provides that no county or municipality is bound by any general law requiring it to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that the law fulfills and important state interest and unless:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund the expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available on February 1, 1989, that can be used to generate sufficient funds for the expenditure.
- The law is approved by two-thirds of the membership in each house.
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions of counties and municipalities for compliance.

Municipalities - Chapter 2003-125, L.O.F., also amended s. 166.021(10), F.S., to permit a municipality or agency¹¹ 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. For municipalities that have exempted themselves from the requirements of s. 112.061, F.S., no mandate applies. Further, it would appear no mandate applies for a municipality that has not exempted itself from the requirements because it has the option of exempting itself under s. 116.021(10), F.S.

¹¹ 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).

Counties - Chapter 2003-125, L.O.F., 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.¹²

If a county has established reimbursement rates that *exceed* the maximum rates in current law and are also in excess of the rates in the committee substitute, the bill may not have a fiscal impact and, arguably, may not impose a mandate; however, these entities would not be able to enact an ordinance that would establish a *lower* rate than that provided in the committee substitute. Further, where a county or district has not enacted an ordinance in order to exceed current statutory rates but instead has relied on the lower, statutory rates in current law, there is likely to be a fiscal impact. Using the estimated fiscal impact on state travel as a comparison, a county or district that is using the current statutory rates may have a 15 percent increase in travel costs.

Given the potential impact on some counties, it may be appropriate to include an important state interest clause in the bill. Further, under Art. VII, s. 18 of the State Constitution, it would appear that a two-thirds vote is required.

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.

¹² Section 112.061(14), F.S.

C. Government Sector Impact:

Under the committee substitute, for fiscal year 2005-2006:

- The per diem rate for state and nonstate travelers will be \$90.
- State and nonstate travelers are allowed \$5 for breakfast.
- State and nonstate travelers are allowed \$11 for lunch.
- State and nonstate travelers are allowed \$23 for dinner.
- All travelers are entitled to 38 cents per mile for travel in a privately owned vehicle.

The per diem, subsistence, and mileage rates are all subject to annual adjustment by the Chief Financial Officer. The annual adjustment is to reflect the percentage change in the Consumer Price Index for All Urban Consumers, though the per diem rate is not to exceed the standard federal per diem rate for the continental United States as published by the General Services Administration for the applicable year.

According to information provided by the Department of Financial Services, for fiscal year 2002-2003, the state spent \$96,642,619 on travel and for fiscal year 2003-2004, the state spent \$95,303,523 on travel. Using the fiscal year 2003-2004 as a cost base, the fiscal impact of the committee substitute is estimated to increase state travel costs by 15 percent or \$14.3 million.

The fiscal impact on counties and municipalities is unknown. Under s. 166.021(10), F.S., a municipality or municipal agency¹³ is authorized 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 their agencies that do not create such a policy remain subject to s. 112.061, F.S. Thus, whether the committee substitute has a fiscal impact on municipalities and municipal agencies is contingent upon whether they have opted out under s. 166.021(10), F.S.

Under s. 112.061(14), F.S., a county or district may enact ordinances that *exceed, but not reduce*, the statutory rates. A county or district that has established rates in excess of the rates in current law and in the committee substitute will not experience a fiscal impact. If a county or district has established rates that are in excess of the current statutory rates but less than the rates in the committee substitute, then the committee substitute will have a fiscal impact.

VI. Technical Deficiencies:

None.

¹³ 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).

VII. Related Issues:

The bill does not clearly specify that the Chief Financial Officer is to promulgate the adjusted per diem, subsistence and mileage rates by rule. Clarification of this authority may be advisable given the requirements of ch. 120, F.S., the Administrative Procedure Act.

Section 287.17, F.S., regulates use on state motor vehicles. Under paragraph (a) of subsection (4) of that section, an agency head is authorized to assign a motor vehicle to a state officer or employee only if that officer or employee is projected to drive the motor vehicle a minimum 10,000 miles annually on official state business. In the alternative, written justification may be provided to justify the need of an assignment of a motor vehicle. Under subsection (5), agency heads were required to conduct a review of motor vehicle utilization that included whether it is cost-effective to provide state vehicles to employees who had been assigned them. The increase in mileage rates established in the committee substitute could impact agency decisions regarding the assignment of state motor vehicles to their employees if mileage reimbursement costs for some employees become greater than the costs associated with a state vehicle.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
