

# 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.)

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Prepared By: Ways and Means Committee

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BILL: PCS/CS/SB 428

INTRODUCER: Ways and Means Committee, Governmental Oversight and Productivity Committee and Senator Lawson

SUBJECT: Travel Expense/Per Diem

DATE: April 4, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	McVaney	Coburn	WM	Pre-meeting
3.				
4.				
5.				
6.				

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## I. Summary:

The Legislature last increased the rates for per diem and meals in 1981, and the rate for mileage in 1994. The proposed committee substitute amends s. 112.061, F.S., effective July 1, 2006, so that:

- The \$50 per diem rate for travelers would be increased to \$80.
- The \$3 breakfast rate for travelers would be increased to \$6.
- The \$6 lunch rate for travelers would be increased to \$11.
- The \$12 dinner rate for travelers would be increase to \$19.
- The 29 cents per mile rate for travelers using a privately owned vehicle would be increased to 44.5 cents per mile.

The proposed committee substitute also permits specified county-level entities to enact policies that vary from the standard rates so long as those rates are not less than the authorized rates for the 2005-2006 fiscal 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.<sup>1</sup> 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, "[a]ny 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."<sup>2</sup>

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

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.<sup>5</sup>

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.<sup>6</sup>

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<sup>1</sup> Chapter 94-139, L.O.F., increased the mileage allowance from a fixed rate of 20 cents per mile to 25 cents per mile for fiscal year 1994-1995 and 29 cents per mile thereafter.

<sup>2</sup> Section 112.061(2)(a), F.S.

<sup>3</sup> Section 112.061(2)(f), F.S.

<sup>4</sup> Section 112.061(2)(e), F.S.

<sup>5</sup> Section 112.061(k) – (m), F.S.

<sup>6</sup> 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.

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

**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<sup>9</sup> 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.<sup>10</sup>

Chapter 2003-125, L.O.F., also amended s. 166.021(10), F.S., to permit a municipality or agency<sup>11</sup> 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 proposed committee substitute amends s. 112.061, F.S., in order to specify uniform travel reimbursement ranges for state and nonstate travelers. Under the proposed committee substitute, effective July 1, 2006:

- The per diem rate for travelers will be \$80.
- Travelers are allowed \$6 for breakfast.
- Travelers are allowed \$11 for lunch.
- Travelers are allowed \$19 for dinner.

<sup>7</sup> Section 112.061(7)(d)1., F.S.

<sup>8</sup> Section 112.061(7)(d)1., F.S.

<sup>9</sup> Article VIII, s. 1 (d) of the State Constitution states: There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the offices prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

<sup>10</sup> Section 112.061(14), F.S.

<sup>11</sup> 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).

- Travelers are entitled to 44.5 cents per mile for travel in a privately owned vehicle or common carrier fare if determined by the agency head to be more economical.

The proposed committee substitute also amends subsection (14) of s. 112.061, F.S., to permit the following entities to enact policies that vary from the requirements of the section for subsistence, per diem and mileage rates so long as those rates are not less than those rates applicable for the 2005-2006 fiscal year:

- The governing body of a county by ordinance or resolution;
- A county constitutional officer<sup>12</sup> 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.<sup>13</sup>

The bill takes effect on July 1, 2006.

#### **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 an 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.

<sup>12</sup> Article VIII, s. 1 (d) of the State Constitution states: There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the offices prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

<sup>13</sup> Section 112.061(14), F.S.

**Municipalities** - Chapter 2003-125, L.O.F., amended s. 166.021(10), F.S., to permit a municipality or agency<sup>14</sup> thereof to exempt itself from all of the provisions of s. 112.061, F.S., by creating 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.

**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.<sup>15</sup>

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 bill, the bill may not have a fiscal impact and, arguably, may not impose a mandate. 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. However, under the bill, the affected county entities, like their municipal counterparts, are authorized to enact a policy that varies from the standard rates. This policies authorized by the variance may not establish rates that are lower than those authorized for the 2005-2006 fiscal year but it appears that all county entities currently authorize higher reimbursement rates. Thus, the bill does not appear to impose higher costs than those currently being paid. Further, as these county entities are authorized to establish lower or higher rates by policy, it does not appear that the bill is a mandate requiring an important state interest clause or a two-thirds vote under Art. VII, s. 18 of the State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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<sup>14</sup> 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).

<sup>15</sup> Section 112.061(14), F.S.

D. Other Constitutional Issues:

The separation of powers is expressly enshrined in the Florida Constitution. Article II, s. 5 of the State Constitution provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The bill requires the Chief Financial Officer, on or before June 30, 2007, and annually thereafter, to establish and publish the uniform subsistence amounts and per diem rates applicable for the next fiscal year, adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average since June 1, 2005. The bill provides that the per diem rate may not exceed the standard federal per diem rate for the continental United States as published by the General Services Administration for the applicable year.

The nondelegation doctrine requires that

“. . . fundamental and primary policy decisions . . . be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program. . . In other words, statutes granting power to the executive branch “must clearly announce adequate standards to guide . . . in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion. . . We have recognized that the specificity of the guidelines [set forth in the legislation] will depend on the complexity of the subject and the degree of difficulty involved in articulating finite standards. . . . However, we have also made clear that ‘[e]ven where a general approach would be more practical than a detailed scheme of legislation, enactments may not be drafted in terms so general and unrestrictive that administrators are left without standards for the guidance of their official acts.’”<sup>16</sup>

The bill does provide a standard for implementation by the Chief Financial Officer, stating that the rate is to be “. . . adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average since June 1, 2005.” The bill also sets a ceiling outside of which the Chief Financial Officer cannot set the rate (the per diem rate may not exceed the standard federal per diem rate for the continental United States as published by the General Services Administration for the applicable year).

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<sup>16</sup> *Bush v. Schiavo*, 885 So.2d 321 at 332-333 (Fla. 2004).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Based on state agency expenditure data through March 31, 2006, the net cost of the proposed increases on state agencies is estimated to be \$22.1 million for fiscal year 2006-07.

The costs in the subsequent years will continue to increase because the levels of payment for per diem, subsistence, and mileage are 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 fiscal impact on counties, municipalities, school boards, state universities and community colleges is unknown. Under s. 166.021(10), F.S., a municipality or municipal agency<sup>17</sup> 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 bill 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 the amendment to s. 112.061(14), F.S., made by the bill, a county or district may enact ordinances that vary from the statutory rates, so long as those rates are not set below the applicable statutory rates for the 2005-2006 fiscal year. A county or district that has established rates in excess of the rates in current law and in the bill 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 bill, then the bill will have a fiscal impact unless that entity establishes a policy that sets lower rates.

**VI. Technical Deficiencies:**

None.

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<sup>17</sup> 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:**

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 bill 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.

According to the U.S. General Services Administration (GSA) website, the privately-owned vehicle mileage rate as of January 1, 2006, is 44.5 cents per mile.

The GSA establishes the maximum CONUS (Continental United States) Per Diem rates for federal travel customers. These rates are reviewed annually. The current maximum CONUS rates are provided as part of Appendix A of Chapter 301 of the Federal Travel Regulation (FTR). The rates are contingent upon geographical location and vary from state to state and within a single state. For example, this is the range for meals and incidental expenses effective October 1, 2005:

M&IE	\$39	\$44	\$49	\$54	\$59	\$64
Breakfast	\$ 7	\$ 8	\$ 9	\$10	\$11	\$12
Lunch	\$11	\$12	\$13	\$15	\$16	\$18
Dinner	\$18	\$21	\$24	\$26	\$29	\$31
Incidentals	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3

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

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## **VIII. Summary of Amendments:**

None.

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