

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1668

INTRODUCER: Senator Perry

SUBJECT: Use of State Funds

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 1668 provides a limitation on certain lodging expenses that may be reimbursed for a state agency or judicial branch employee. The bill authorizes such employees to expend their own funds on lodging expenses that exceed a specified amount.

The bill also requires a state entity that requests state funds for the construction of a new building to comply with maximum cost per square foot requirements. The bill provides definitions and establishes maximum cost per square foot guidelines.

The Department of Management Services must annually review the maximum cost per square foot guidelines and recommend adjustments based on a specified federal index to the Executive Office of the Governor and the appropriations committees of the Legislature for review and consideration for inclusion in the legislative budget instructions. Legislative budget requests for fixed capital outlay for new building construction must comply with certain requirements.

Additionally, the bill prohibits the use of state funds for the purchase of alcoholic beverages and the purchase of food or beverages for certain state agency appreciation events.

The bill takes effect July 1, 2017.

II. Present Situation:

Per Diem and Travel Expenses

The Legislature has established standard travel reimbursement rates applicable to all public officers,¹ public employees,² and other individuals³ whose travel is authorized and paid for by a public agency.⁴ Section 112.061(2)(f), F.S., defines the term “traveler” as a public officer, public employee, or authorized person, when performing authorized travel.

All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid.⁵ In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency.⁶ Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.⁷
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.⁸
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.⁹

Currently, Florida allows \$80 per diem for Class A and B travel.¹⁰ If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.¹¹ Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.¹²

¹ Section 112.061(2)(c), F.S., defines officer or public officer as an individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

² Section 112.061(2)(d), F.S., defines employee or public employee as an individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

³ See s. 112.061(2)(e), F.S., which defines authorized person as:

1. 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.
2. A person who is called upon by an agency to contribute time and services as consultant or adviser.
3. A person who is a candidate for an executive or professional position.

⁴ Section 112.061(1), F.S. The term “public agency” is 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. Section 112.061(2)(a), F.S.

⁵ Section 112.061(3), F.S.

⁶ *Id.*

⁷ Section 112.061(2)(k), F.S.

⁸ Section 112.061(2)(l), F.S.

⁹ Section 112.061(2)(m), F.S.

¹⁰ Section 112.061(6), F.S.

¹¹ *Id.*

¹² Section 112.061(5)(b), F.S.

During the 2016 legislative session, HB 5003¹³ was passed that created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit expires on July 1, 2017.

Maximum Cost for New State-Funded Building Construction

State Agencies and the Judicial Branch

Section 216.043, F.S., provides that each agency head and the Chief Justice of the Supreme Court, utilizing their independent judgment, may request fixed capital outlay (FCO) funding in their respective Legislative Budget Requests (LBR). The statute requires certain specific information to be provided with a request of an FCO appropriation. Specifically, the law requires an overall itemized listing of the FCO estimated expenditures; a detailed statement of program needs; estimated construction costs and square footage; site costs; the amount of operating capital necessary to furnish and equip a new or renovated facility; and the anticipated sources of funding to be used to construct the facility. In addition, requirements are also in place for an analysis of the continuing operating costs, as well as the availability and suitability of privately constructed and owned buildings and facilities that meet the needs and program requirements of the agency or of the judicial branch.

State Universities and State Colleges

Chapter 1013, F.S., contains various requirements for the Department of Education to follow in developing its legislative budget request for FCO funding for Florida College and State University System facilities. For example:

- Pursuant to s.1013.31, F.S., at least every five years, each institutional board must arrange for an educational plant survey of facilities of each district or campus. The survey must contain an inventory, recommendations for existing and new facilities, and include labor market data and a needs analysis. Projections of additional space needs for colleges must comply with State Board of Education rules. Projections for additional space for universities must comply with standards of the Board of Governors. This survey provides the foundation of the department's FCO legislative budget request as well as the annual Capital Improvement Plan required by s. 216.0158, F.S., for colleges and university facilities.
- Section 1013.64, F.S., requires the State Board of Education (for colleges) and the Board of Governors (for universities) to each submit three-year priority lists based on available funds as provided by the consensus estimating conference. Each project in the list must be recommended by the survey as required in s. 1013.31, F.S.

School Districts

Florida law provides certain limits for school district construction costs relating to new construction, renovation, and remodeling of educational plant space for elementary, middle, and high schools. Specifically, s. 1013.64, F.S., prescribes that no expenditures utilizing state Public

¹³ See Ch. 2016-62, s. 120, Laws of Fla.

Education Capital Outlay (PECO) funds or funding from the Debt Service Trust Fund may be used for any new construction of educational plant space if the costs exceed the total cost per student station established in law. The established cost per student station is adjusted annually by the PECO Revenue Estimating Conference to reflect any increase or decrease in the Consumer Price Index. Beginning July 1, 2017, the limitation on the expenditure of funds for new construction of educational plant space in excess of the established cost per student station will expand to include any funding source.

Department of Management Services Report

The General Appropriations Act for fiscal year 2015-2016 directed the Department of Management Services (DMS) to use the funds in specific appropriation 2713 to recommend a maximum square foot cost plan for new fixed capital outlay construction to include the design, construction, permitting, furniture and fixtures, and any appurtenances. The proviso required DMS to submit the plan to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than December 1, 2015.¹⁴ DMS completed a report on the plan and submitted it on that date.

The report¹⁵ analyzed the costs for new building construction in five cities throughout Florida: Fort Myers, Jacksonville, Miami, Tampa, and Tallahassee. The report also considered the additional costs required for developments of regional impact (DRIs), which are developments that, because of their character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.¹⁶ Based on this analysis, the report provided the following rates for the cost per square foot for the five cities:

- Cost per square foot without DRI costs:
 - Fort Myers – \$365.98
 - Jacksonville – \$397.16
 - Miami – \$564.55
 - Tampa – \$411.59
 - Tallahassee – \$395.13
- Cost per square foot with DRI costs:
 - Fort Myers – \$491.37
 - Jacksonville – \$494.84
 - Miami – \$794.82
 - Tampa – \$584.25
 - Tallahassee – \$493.06

Producer Price Index

The Producer Price Index (PPI) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI's measure price changes from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index, that measure price change from the purchaser's perspective. Sellers' and

¹⁴ Chapter 2015-232, L.O.F.

¹⁵ A copy of the report is on file with the Senate Governmental Oversight and Accountability Committee

¹⁶ Section 380.06(1), F.S.

purchasers' prices may differ due to government subsidies, sales and excise taxes, and distribution costs.¹⁷

State Agency Legislative Budget Requests

Section 216.023(1), F.S., requires the head of each state agency to submit a final legislative budget request to the Legislature and to the Governor based on the agency's independent judgment of its needs by October 15 of each year. The legislative budget request must contain specified information for each program, such as authority for the program, details on trust funds and fees, and total number of positions.¹⁸

State Fund Prohibitions

Section 286.27, F.S., prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

III. Effect of Proposed Changes:

Section 1 amends s. 112.061, F.S., and provides that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. The bill further provides that the employee may expend his or her own funds for any lodging expenses that exceed \$150 per day.

Section 112.061, F.S., does not use the term "state employee" or "employee of the judicial branch". Section 112.061, F.S., uses the terms "officer or public officer," "employee or public employee," "authorized person," or "traveler."

Section 2 creates s. 216.0161, F.S., and establishes a maximum cost per square foot that a state entity may request or contract to spend for new construction of a building utilizing state funds. The bill provides the following definitions:

- "Art" means the artwork for a new state-funded building as set forth in s. 255.043, F.S.¹⁹
- "Building" means an office building, a courthouse, an administrative building, or a university or college classroom building or auditorium building. The term does not include a nursing, medical, laboratory, science, technology, correctional, residential, or food service facility or a facility with less than 10,000 total square feet.
- "Core costs" means the costs associated with providing infrastructure for the core areas of each floor of a building, including potable domestic water risers, separate sanitary and storm drain systems, sanitary vents, electrical power distribution panels, circuit breakers, electrical closets, a designated connection point to the central fire alarm system, distribution

¹⁷ Bureau of Labor Statistics, *Producer Price Indexes*, <https://www.bls.gov/ppi/ppiover.htm#data> (last visited March 6, 2017).

¹⁸ Section 216.023(4)(a), F.S.

¹⁹ Section 255.043(1), F.S., provides that "[e]ach appropriation for the original construction of a state building which provides public access shall include an amount of up to 0.5 percent of the total appropriation for the construction of the building, not to exceed \$100,000, to be used for the acquisition of works of art produced by, but not limited to, Florida artists or craftspersons. Those works of art acquired shall be displayed for viewing in public areas in the interior or on the grounds or the exterior of the building and not in private offices or areas with limited public access."

backboards within wire closets, and connections to horizontal extensions within a tenant's usable area.

- “Department” means the Department of Management Services (DMS).
- “DRI” means large projects that require a development-of-regional-impact review and permit as set forth in s. 380.06, F.S.
- “Furniture, fixtures, and equipment” means the movable furniture, fixtures, and other equipment that have no permanent connection to the structure of a building.
- “Maximum cost per square foot” means the maximum cost per square foot as determined in the bill or in the legislative budget instructions for the construction of a new building.
- “Permitting costs” means the costs or fees required to obtain relevant permission to undertake a new building construction project, including, but not limited to, environmental permits, building permits, State Fire Marshal reviews, utility connection fees, impact fees, and the department's project management fees.
- “Professional services fees” means the fees charged by construction design professionals, including engineers, who are utilized in planning and designing an energy-efficient and sustainable building that meets the goals identified in s. 255.252, F.S.²⁰
- “Raw building construction costs” means the costs associated with the building construction contract, including the cost of materials and the cost of labor and equipment necessary to install materials. The term includes shell costs, core costs, and tenant costs.
- “Shell costs” means the costs associated with the building structure, exterior envelope physical characteristics, vertical circulation, public spaces, and physical plant support spaces of a building.
- “State entity” means a state agency or department, the judicial branch, a state university, or a state college.
- “Tenant costs” means the costs associated with the design and construction for the installation of materials; HVAC, electrical, and plumbing systems; and lifesafety items to meet the tenant office layout needs that are within the shell and core of a building. The term does not include the cost of furniture, fixtures, and equipment.
- “Total construction cost” means the total of the raw building construction costs; permitting costs; cost to install utility services; professional service fees; and art, furniture, fixtures, and equipment costs. The term does not include the cost for the real property, parking areas, and parking structures.

A state entity that requests state funds to construct or contract for the construction of a new building must comply with the maximum cost per square foot requirements. The state entity must apply the maximum cost per square foot amount using the region that is in closest proximity to the region in which the new building will be constructed, taking into consideration whether the building is part of a DRI.

The bill specifies different rates for the maximum cost per square foot depending on the region in which the new building will be constructed and whether the building is part of a DRI. For fiscal year 2017-2018, the maximum cost per square foot rates for each region are as follows:

²⁰ Section 255.252(3), F.S., provides, in part, that “[I]n order for energy-efficiency and sustainable materials considerations to become a function of building design and a model for future application in the private sector, it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code.”

- Fort Myers
 - Cost per square foot without DRI - \$365.98
 - Cost per square foot with DRI - \$491.37
- Jacksonville
 - Cost per square foot without DRI - \$397.16
 - Cost per square foot with DRI - \$494.84
- Miami
 - Cost per square foot without DRI - \$564.55
 - Cost per square foot with DRI - \$794.82
- Tallahassee
 - Cost per square foot without DRI - \$395.13
 - Cost per square foot with DRI - \$493.06
- Tampa
 - Cost per square foot without DRI - \$411.59
 - Cost per square foot with DRI - \$584.25

Beginning July 1, 2018, and annually thereafter, the DMS must review the maximum cost per square foot and recommend adjustments, based on the percentage change in the average of the Producer Price Index Data for New Office Building Construction published by the U.S. Department of Labor. DMS must provide such recommendations to the Executive Office of the Governor and the appropriations committees of the Legislature for review and consideration for inclusion in the legislative budget instructions utilized by agencies, as provided in s. 216.023(3), F.S.²¹

The bill establishes the methodology that must be used to calculate the cost per square foot of a proposed new building. To determine the cost per square foot, the estimated total construction cost plus 10 percent must be divided by the total square footage of the proposed new building. For purposes of this calculation, the total square footage of the proposed new building does not include the real property, parking areas, and parking structures. The value derived from this calculation may not exceed the maximum cost per square foot.

At the request of a state entity that seeks state funds to construct or contract for the construction of a new building, the DMS must:

- Review the building construction plans and calculate the estimated cost per square foot.
- After completing of its review, certify the estimated cost per square foot and specify whether the cost per square foot is equal to or less than the maximum cost per square foot.
- Provide recommendations for reducing the estimated cost per square foot if such cost exceeds the maximum cost per square foot.

²¹ Section 216.023(3), F.S., provides that the “Executive Office of the Governor and the appropriations committees of the Legislature shall jointly develop legislative budget instructions for preparing the exhibits and schedules that make up the agency budget from which each agency and the judicial branch shall prepare their budget request. The budget instructions shall be consistent with s. 216.141[. F.S.,] and shall be transmitted to each agency and to the judicial branch no later than July 15 of each year unless an alternative date is agreed to be in the best interest of the state by the Governor and the chairs of the legislative appropriations committees. In the event that agreement cannot be reached between the Executive Office of the Governor and the appropriations committees of the Legislature regarding legislative budget instructions, the issue shall be resolved by the Governor, the President of the Senate, and the Speaker of the House of Representatives

A state entity may not request state funds for new building construction if the estimated cost per square foot exceeds the maximum cost per square foot, unless the DMS has certified that the total estimated cost per square foot will exceed the maximum cost per square foot by no more than 10 percent and the additional cost is attributable to:

- Necessary security-related costs;
- Building material costs needed due to site limitations for construction on a specific site; or
- Extraordinary permitting costs.

The bill requires a state entity head to certify that each legislative budget request submitted under s. 216.023, F.S., for new building construction complies with the maximum cost per square foot requirements. If the cost per square foot of the a new building exceeds the maximum cost per square foot, the state entity head must identify in writing the specific additional costs that exceed the maximum cost per square foot as noted above.

The bill prohibits a state entity from spending or entering into a contract to spend state funds for new building construction if the cost per square foot of a new building exceeds the maximum cost per square foot in accordance with bill requirements, unless specifically authorized by law. A contract in violation of the maximum cost per square foot requirements is void. In addition, a person who willfully spends or enters into a contract to spend state funds that exceed the maximum cost per square foot, except as provided above or specifically authorized by law, commits a second degree misdemeanor as provided in s. 775.082, F.S.,²² or s. 775.083, F.S.²³

Section 3 amends s. 216.023, F.S., by requiring a legislative budget request for fixed capital outlay for new building construction to adhere to the maximum cost per square foot requirements set forth in s. 216.0161, F.S., as proposed by the bill.

Section 4 amends s. 286.27, F.S., to prohibit the use of state funds for the following additional purposes:

- The purchase of alcoholic beverages; and
- The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

Section 5 provides that the bill will take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

²² Section 775.082(4)(b), F.S., provides that a person convicted of a second degree misdemeanor may be sentenced to a definite term of imprisonment not exceeding 60 days.

²³ Section 775.083(1)(e), F.S., provides that a person convicted of a second degree misdemeanor may be fined up to \$500.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Financial Services (DFS) noted that it is possible state employees would be required to spend their own money for lodging expenses incurred for mandated travel to areas in the state where standard hotel rates exceed \$150 a night during peak season and in areas where available lodging in safe areas is at a premium.²⁴ Placing employees in situations where they must use their own funds to support a state function could constitute a “taking.” The Fifth Amendment to the U.S. Constitution provides “nor shall property be taken for public use, without just compensation.”²⁵ The due process clause of the Fourteenth Amendment to the U.S. Constitution makes the takings clause applicable to the states as well as the federal government.²⁶ The government’s duty to pay just compensation is not limited to government seizures of real property; it also applies to personal property.²⁷

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Under this bill, it is possible that state agency or judicial branch employees would be required to spend their own funds to pay for lodging expenses incurred for employer mandated travel. The DFS noted that the receipt of the benefit of payment of state expenses by the employee could be viewed as a gift or donation to the State of Florida, allowing a tax deduction by the employee and requiring an appropriate accounting of gift receipt by the state.²⁸ Florida law recognizes the authority of agency heads to receive gifts and donations. Section 20.05(1)(f), F.S., states that each head of a department must:

²⁴ Florida Department of Financial Services, *2017 Legislative Bill Analysis HB 1137* (March 14, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

²⁵ U.S. CONST. amend. V.

²⁶ U.S. CONST. amend. XIV, s. 1.

²⁷ *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2425 (2015).

²⁸ See *supra* note no. 20.

Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department.

VI. Technical Deficiencies:

The DFS notes that the bill treats state employees different from public officers and authorized persons, including volunteers, and contractors, who may also be reimbursed for their lodging cost that exceeds the \$150 limitation. Changing the term “employee” in the bill to “traveler” would include a public officer, public employee or authorized person. This would ensure that public officers, public employees, and authorized persons, including volunteers and contractors, are all required to comply with the lodging limitation.²⁹

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 112.061, 216.023, and 286.27 of the Florida Statutes.

This bill creates section 216.0161 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁹ *Id.*