

Committee Substitute for Senate Bill No. 1426

An act relating to governmental per diem and travel expenses; amending s. 166.021, F.S.; providing definitions; authorizing municipalities and agencies thereof to adopt per diem and travel expense policies for travelers, notwithstanding s. 112.061, F.S.; providing for retroactive application; providing for applicability of s. 112.061, F.S., if per diem and travel expense policies are or are not adopted; providing for offenses related to false or fraudulent travel claims; providing misdemeanor penalties; providing for civil liability; amending s. 112.061, F.S.; providing that counties, county officers, district school boards, and certain special districts may increase specified rates; providing effective dates.

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

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

WHEREAS, numerous municipalities in the state have relied on the grant of home rule powers and AGO 1974-18 to enact reasonable per diem and travel allowances as determined by the governing body of the municipality, and

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

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

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

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

166.021 Powers.—

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

1. “Authorized person” means a person:

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

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

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

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

3. "Officer" means 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 who has jurisdiction extending throughout the municipality, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

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

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

(c) Travel claims submitted by a traveler in a municipality or agency thereof which is exempted from the provisions of s. 112.061, pursuant to paragraph (b), shall not be required to be sworn to before a notary public or other officer authorized to administer oaths, but any claim authorized or required to be made under any per diem and travel expense policy of a municipality or agency thereof must contain a statement that the expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who willfully makes and subscribes any such claim that he or she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation of such a claim that is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083. Whoever receives an allowance or reimbursement by means of a false claim is civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

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

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

(a) Rates that exceed the maximum travel reimbursement rates for non-state travelers specified in s. 112.061(6)(a) for per diem, in s. 112.061(6)(b) for subsistence, and in s. 112.061(7)(d)1. for mileage may be established by:

1. The governing body of a county by the enactment of an ordinance or resolution;

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

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

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

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

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

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

Approved by the Governor June 10, 2003.

Filed in Office Secretary of State June 10, 2003.