

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current Law

The Municipal Home Rule Powers Act, chapter 166, F.S., gives broad home rule powers to municipalities. Pursuant to s. 166.021(3), F.S., the legislative body of a municipality has the power to enact legislation concerning any subject upon which the state Legislature may act except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; and
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6 (e), Art. VIII of the State Constitution.

Reimbursement rates and methods of calculation for travel and per diem expenses of public officers, employees and authorized persons in Florida are governed by s. 112.061, F.S. This section was enacted to establish uniformity, allowing certain justifiable exceptions, for the payment of travel expenses by a public agency.

A “public agency” is defined, for purposes of this section, 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.” S. 112.061(2)(a), F.S.

S. 112.061(1)(b)1., F.S. provides that the uniform rate established in that section shall prevail over any present or future general law with conflicting provisions. However, a general law containing a specific exemption from s. 112.061, F.S., and including a specific reference to this section, shall prevail, but only to the extent of the exemption. Further, any special or local law, present or future, shall prevail over s. 112.061, F.S., but only to the extent of the conflict.

In 1974, an opinion from the Office of the Attorney General examined the effect of the Municipal Home Rule Powers Act as it relates to a municipality enacting per diem and travel expenses that differ those established by s. 112.061, F.S. In this particular case, there was no provision in the city charter establishing per diem or travel allowances and the city wished to enact an ordinance increasing the travel expenses for its officers and employees from those fixed by s. 112.061, F.S. The Attorney General’s office opined that, with certain exceptions, municipalities can enact any legislation concerning any subject matter upon which the state legislature may act. As there was no express preemption of this subject matter to the state in s. 112.061, F.S. (even though the desire for a “uniform

system” is articulated as the legislative intent), a municipality could enact an ordinance providing for travel and subsistence allowances different from those fixed in s. 112.061. OAG 74-18.

Present Situation

Based on the opinion of the Attorney General issued in 1974, some municipalities may have adopted ordinances that provide per diem and subsistence allowances that exceed the s.112.061, F.S., rates. In a recent opinion (January 3, 2003), the Attorney General’s office concluded that s. 112.061, F.S., establishes the maximum rates of per diem and subsistence allowances for government employees and is applicable to a municipality.

In reaching this conclusion, the Attorney General’s office relies on the stated goal in s. 112.061, F.S., of establishing uniform maximum rates and limitations on travel expenses. The opinion recognizes the extensiveness of the Municipal Home Rule Powers Act and agrees that the Legislature had not preempted the area of travel reimbursement by enacting s. 112.061, F.S. However, the opinion concludes that while a municipality may enact ordinances on the subject of per diem and subsistence allowances, the rates cannot exceed those provided in s. 112.061, F.S.

The opinion also notes that a municipal ordinance or local code does not constitute a “local law” and, thus, does not prevail over the provisions of s. 112.061, F.S. AGO 2003-01.

C. SECTION DIRECTORY:

Section 1: Amends s. 166.021, F.S., referring to municipal powers, to provide that the governing body of a municipality or an agency of a municipality may reimburse public officers, employees, and authorized persons for per diem and travel expenses at rates the governing body determines are reasonable, notwithstanding the maximum rates established in s. 112.061, F.S.

Provides that any policy on per diem and travel expenses provided by a municipality or agencies of a municipality on January 1, 2002, shall be valid and remain in effect until amended.

Section 2: Provides an effective date of upon becoming law, and states the law applies retroactively to January 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Not applicable.
2. Expenditures: Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Not applicable.
2. Expenditures: The bill allows a municipality or an agency of a municipality to reimburse its officials, officers, employees and authorized persons for per diem and travel expenses at rates that its governing body determines are reasonable, notwithstanding the limits in s. 112.061, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Not applicable.

- D. FISCAL COMMENTS: Any fiscal impact on municipalities or the agencies of municipalities depends on the rate of reimbursement determined by their governing body.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: Not applicable.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Issuing legal opinions to governmental agencies has long been a function of the Office of the Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation and can provide guidance to public bodies as an alternative to costly litigation. Opinions of the Attorney General, however, are not law. They are advisory only and are not binding in a court of law. Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy.

The Sponsor has indicated that he filed this bill because he believes that AGO 2003-01 violates the intent of the Municipal Home Rule Powers Act. He states that he believes that AGO 2003-01 reverses AGO 1974-18 and would control the maximum rate of per diem and other allowances paid to officers and employees of municipalities, and this bill will correct that situation.

He states that the bill ensures that a municipality's policy on per diem and travel expenses in existence prior to January 1, 2003, remains valid and in effect for the municipality until otherwise amended. However, if a municipality does not provide for per diem and travel expenses, the provisions of s. 112.061, F.S., shall govern.

When AGO 2003-01 was issued, the League of Cities was contacted by numerous municipalities that had enacted per diem and travel allowance rates varying from those specified in s. 112.061, F.S., based on AGO 1974-18 and the Municipal Home Rule Powers Act. These cities became even more concerned when the Auditor General's Office indicated that they would rely on the later AGO opinion in conducting their audits.¹

Drafting Issues

An-established rule of statutory construction is that, in the absence of clear legislative intent to the contrary, a law is presumed to act prospectively. Although there is no constitutional prohibition against retrospective noncriminal legislation, retroactive statutes are held invalid where vested rights are

¹ Kraig A. Conn, Legislative Counsel for the Florida (March 24, 2003).

adversely affected. In this case, there is no issue related to the retroactive application of the bill as the legislative intent is clearly expressed and there is no prohibited impact.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Local Government & Veterans' Affairs Committee adopted an amendment at its meeting on April 1, 2003, which extends the authority to provide for per diem and travel expenses that vary from s. 112.061, F.S. to an agency of a municipality.