

1 SENATE BILL 65

2 54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

3 INTRODUCED BY

4 Pat Woods and Ron Griggs

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10 AN ACT

11 RELATING TO PER DIEM; INCREASING THE IN-STATE PER DIEM RATE FOR
12 PUBLIC OFFICERS AND EMPLOYEES; EXPANDING AGENCIES AUTHORIZED TO
13 PROMULGATE RULES PURSUANT TO THE PER DIEM AND MILEAGE ACT;
14 EXCLUDING ALCOHOL AND ENTERTAINMENT FROM REIMBURSEMENT OF
15 ACTUAL EXPENSES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 10-8-3 NMSA 1978 (being Laws 1971,
19 Chapter 116, Section 2, as amended) is amended to read:

20 "10-8-3. DEFINITIONS.--As used in the Per Diem and
21 Mileage Act:

22 [~~A. "secretary" means the secretary of finance and~~
23 ~~administration;~~]

24 A. "appropriate agency" means:

25 (1) in the case of an employee of an executive

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1 agency or a local public body or a public officer of an
2 executive agency or a local public body, the department of
3 finance and administration;

4 (2) in the case of an employee or a public
5 officer of the legislature, the New Mexico legislative council;

6 (3) in the case of an employee or a public
7 officer of the judicial branch, the administrative office of
8 the courts; and

9 (4) in the case of a public officer or an
10 employee of a public post-secondary educational institution,
11 the governing board;

12 B. "employee" means any person who is in the employ
13 of any [~~state~~] executive agency, legislative agency, judicial
14 agency, local public body or public post-secondary educational
15 institution and whose salary is paid either completely or in
16 part from public money, but does not include jurors or jury
17 commissioners;

18 C. "executive agency" means agencies, departments,
19 boards, instrumentalities or institutions of or created by the
20 state, except those of the legislative branch, the judicial
21 branch or a public post-secondary educational institution;

22 [~~G-~~] D. "governing board" means the board of
23 regents of any institution designated in Article 12, Section 11
24 of the constitution of New Mexico or designated in Chapter 21,
25 Article 14 NMSA 1978 or the board of any institution designated

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1 in Chapter 21, Articles 13, 16 and 17 NMSA 1978;

2 [D-] E. "local public body" means all political
3 subdivisions of the state and their agencies, instrumentalities
4 and institutions, except public post-secondary educational
5 institutions;

6 ~~[E. "state agency" means the state or any of its
7 branches, agencies, departments, boards, instrumentalities or
8 institutions, except public post-secondary educational
9 institutions;~~

10 ~~F. "public post-secondary educational institution"
11 means any institution designated in Article 12, Section 11 of
12 the constitution of New Mexico and any institution designated
13 in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978; and]~~

14 F. "per diem" means the allowance for lodging,
15 meals and incidental expenses when traveling on official
16 business;

17 G. "public officer" [~~or "public official"~~] means
18 every elected or appointed officer of the state, a local public
19 body or any public post-secondary educational institution.
20 "Public officer" includes members of advisory boards appointed
21 by [~~any state~~] an executive agency, a legislative agency, a
22 judicial agency, a local public body or a public post-secondary
23 educational institution unless otherwise provided by law;

24 H. "public post-secondary educational institution"
25 means any institution designated in Article 12, Section 11 of

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1 the constitution of New Mexico and any institution designated
2 in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978; and

3 I. "secretary" means the secretary of finance and
4 administration."

5 SECTION 2. Section 10-8-4 NMSA 1978 (being Laws 1963,
6 Chapter 31, Section 3, as amended) is amended to read:

7 "10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF
8 PAYMENT.--

9 ~~[A. Notwithstanding any other specific law to the~~
10 ~~contrary, and except as provided in Subsection I of this~~
11 ~~section, every nonsalaried public officer shall receive either~~
12 ~~reimbursement pursuant to the provisions of Subsection K or L~~
13 ~~of this section or up to ninety-five dollars (\$95.00) per diem~~
14 ~~expenses:~~

15 ~~(1) for each board or committee meeting~~
16 ~~attended; or~~

17 ~~(2) for each day spent in discharge of~~
18 ~~official duties for travel within the state but away from the~~
19 ~~officer's home.~~

20 ~~Nonsalaried public officers who travel to attend a board~~
21 ~~or committee meeting may elect to be reimbursed per diem under~~
22 ~~either Paragraph (1) or (2) of this subsection.~~

23 ~~B.] A.~~ Every [salaried] public officer or employee
24 who is traveling [within the state but] away from the public
25 officer's or employee's home and designated post of duty on

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1 official business [~~shall~~] may receive either reimbursement
2 pursuant to the provisions of Subsection [~~K or L~~] B of this
3 section or

4 [~~(1) up to eighty-five dollars (\$85.00) per~~
5 ~~diem expenses for each day spent in the discharge of official~~
6 ~~duties for a salaried public officer or employee of a local~~
7 ~~public body or state agency. If the secretary finds that a per~~
8 ~~diem allowance of eighty-five dollars (\$85.00) is inadequate~~
9 ~~for reimbursement of expenses in any municipality of this~~
10 ~~state, the secretary may authorize the reimbursement of per~~
11 ~~diem for travel to the municipality not to exceed one hundred~~
12 ~~thirty-five dollars (\$135); or~~

13 [~~(2) up to eighty-five dollars (\$85.00) per~~
14 ~~diem expenses for each day spent in the discharge of official~~
15 ~~duties for a salaried public officer or employee of a public~~
16 ~~post-secondary educational institution. If the governing board~~
17 ~~finds that a per diem allowance of eighty-five dollars (\$85.00)~~
18 ~~is inadequate for reimbursement of expenses in any municipality~~
19 ~~of this state, the governing board may authorize the~~
20 ~~reimbursement of per diem for travel to the municipality not to~~
21 ~~exceed one hundred thirty-five dollars (\$135).~~

22 G. Every public officer or employee shall receive
23 either reimbursement pursuant to the provisions of Subsection ~~K~~
24 ~~or L~~ of this section or:

25 [~~(1) for public officers or employees of a~~

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1 ~~state agency or local public body, up to one hundred fifteen~~
2 ~~dollars (\$115) per diem expenses for each day of travel outside~~
3 ~~the state on official business. If the secretary finds that a~~
4 ~~per diem allowance of one hundred fifteen dollars (\$115) is~~
5 ~~inadequate for out-of-state travel to a geographical area, the~~
6 ~~secretary may authorize per diem not to exceed two hundred~~
7 ~~fifteen dollars (\$215) for out-of-state travel to that~~
8 ~~geographical area; provided that the secretary may authorize~~
9 ~~per diem for travel to a locality inside or outside the~~
10 ~~continental United States for a public officer or employee who~~
11 ~~is reimbursed solely from federal funds in accordance with the~~
12 ~~rate allowed by the federal government for travel to that~~
13 ~~locality. In lieu of per diem, a person trained in the field~~
14 ~~of accountancy and performing duties in that field of training~~
15 ~~as an employee while assigned for periods exceeding three weeks~~
16 ~~per assignment to travel out of state on official business may~~
17 ~~receive either reimbursement pursuant to the provisions of~~
18 ~~Subsection K of this section or actual expenses not to exceed~~
19 ~~two hundred fifteen dollars (\$215) per day. Expenses shall be~~
20 ~~substantiated in accordance with rules promulgated by the~~
21 ~~department of finance and administration. The secretary may~~
22 ~~promulgate rules defining what constitutes out-of-state travel~~
23 ~~for purposes of the Per Diem and Mileage Act; or~~

24 ~~(2) for public officers or employees of a~~
25 ~~public post-secondary educational institution, up to one~~

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1 ~~hundred fifteen dollars (\$115) per diem expenses for each day~~
2 ~~of travel outside the state on official business. If the~~
3 ~~governing board finds that a per diem allowance of one hundred~~
4 ~~fifteen dollars (\$115) is inadequate for out-of-state travel to~~
5 ~~a geographical area, the governing board may authorize per diem~~
6 ~~not to exceed two hundred fifteen dollars (\$215) for out-of-~~
7 ~~state travel to that geographical area; provided that the~~
8 ~~governing board may authorize per diem for travel to a locality~~
9 ~~inside or outside the continental United States for a public~~
10 ~~officer or employee who is reimbursed solely from federal funds~~
11 ~~in accordance with the rate allowed by the federal government~~
12 ~~for travel to that locality. Expenses shall be substantiated~~
13 ~~in accordance with rules promulgated by the governing board.~~
14 ~~The governing board may promulgate rules defining what~~
15 ~~constitutes out-of-state travel for purposes of the Per Diem~~
16 ~~and Mileage Act] per diem not to exceed one hundred thirty-one~~
17 ~~dollars (\$131) for each day spent in the discharge of official~~
18 ~~duties, except as provided in Subsection C of this section.~~

19 B. With written approval of the appropriate agency,
20 a public officer or an employee may elect to receive
21 reimbursement for actual expenses in lieu of per diem for:

22 (1) lodging;

23 (2) meals, not including alcoholic beverages,
24 not to exceed fifty dollars (\$50.00) per day; and

25 (3) other incidentals, including parking fees

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1 and other transportation costs as determined by rule of the
2 appropriate agency, and excluding entertainment.

3 C. For a public officer or an employee who travels
4 to a locality inside or outside the continental United States
5 and is reimbursed solely from federal funds, the appropriate
6 agency may authorize per diem at the rate allowed by the
7 federal government for travel to that locality.

8 D. In addition to per diem or reimbursement, every
9 public officer [~~or~~] and employee [~~shall~~] may receive up to the
10 internal revenue service standard mileage rate set January 1 of
11 the previous year for each mile traveled in a privately owned
12 vehicle or eighty-eight cents (\$.88) a mile for each mile
13 traveled in a privately owned airplane if the travel is
14 necessary to the discharge of the public officer's or
15 employee's official duties and if the private conveyance is not
16 a common carrier; provided, however, that only one person shall
17 receive mileage for each mile traveled in a single privately
18 owned vehicle or airplane [~~except in the case of common~~
19 ~~carriers, in which case the person~~]. A public officer or
20 employee shall receive the cost of the ticket in lieu of the
21 mileage allowance when traveling by common carrier.

22 [~~E. The per diem and mileage or per diem and cost~~
23 ~~of tickets for common carriers paid to salaried public officers~~
24 ~~or employees is in lieu of actual expenses for transportation,~~
25 ~~lodging and subsistence.~~

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1 ~~F.~~ E. In addition to the in-state per diem set
2 forth in this section, the department of finance and
3 administration, by rule, may authorize a flat subsistence rate
4 in the amount set by the legislature in the general
5 appropriation act for commissioned officers of the New Mexico
6 state police in accordance with rules promulgated by the
7 department of finance and administration. ~~[G.]~~ In lieu of the
8 in-state per diem set in Subsection ~~[B]~~ A of this section, the
9 department of finance and administration may, by rule,
10 authorize a flat monthly subsistence rate for certain employees
11 of the department of transportation ~~[provided that]~~ or the
12 taxation and revenue department who are required to live for an
13 extended time away from their home or regular duty station.
14 The payments made under this subsection shall not exceed the
15 maximum amount that would be paid under Subsection ~~[B]~~ A of
16 this section.

17 ~~[H.]~~ F. Per diem received by nonsalaried public
18 officers for travel on official business or in the discharge of
19 their official duties, other than attending a board or
20 committee meeting, and per diem received by salaried public
21 officers and employees for travel on official business shall be
22 prorated in accordance with rules of the ~~[department of finance~~
23 ~~and administration or the governing board.~~

24 ~~I.~~ The provisions of Subsection A of this section
25 do not apply to payment of per diem expense to a nonsalaried

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1 ~~public official of a municipality for attendance at board or~~
2 ~~committee meetings held within the boundaries of the~~
3 ~~municipality] appropriate agency for travel less than a full~~
4 ~~day.~~

5 G. Every public officer or employee who is
6 traveling out of state on official business may receive:

7 (1) per diem not to exceed one hundred thirty-
8 one dollars (\$131) per day for each day spent in the discharge
9 of official duties;

10 (2) reimbursement for actual expenses not to
11 exceed two hundred fifteen dollars (\$215) per day; or

12 (3) a flat subsistence rate for taxation and
13 revenue auditors who are performing audits out of state as
14 determined by rule of the department of finance and
15 administration.

16 [~~J.~~] H. In addition to any other penalties
17 prescribed by law, [~~for~~] false swearing on an official voucher
18 [~~it~~] shall be cause for removal or dismissal from office.

19 [~~K. With prior written approval of the secretary or~~
20 ~~the secretary's designee or the local public body, a~~
21 ~~nonsalaried public officer of a state agency or local public~~
22 ~~body, a salaried public officer of a state agency or local~~
23 ~~public body or a salaried employee of a state agency or local~~
24 ~~public body is entitled to per diem expenses under this~~
25 ~~subsection and shall receive:~~

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1 ~~(1) reimbursement for actual expenses for~~
2 ~~lodging; and~~

3 ~~(2) reimbursement for actual expenses for~~
4 ~~meals not to exceed thirty dollars (\$30.00) per day for in-~~
5 ~~state travel and forty-five dollars (\$45.00) per day for out-~~
6 ~~of-state travel.~~

7 ~~L. With prior written approval of the governing~~
8 ~~board or its designee, a nonsalaried public officer of a public~~
9 ~~post-secondary educational institution, a salaried public~~
10 ~~officer of a public post-secondary educational institution or a~~
11 ~~salaried employee of a public post-secondary educational~~
12 ~~institution is entitled to per diem expenses under this~~
13 ~~subsection and shall receive:~~

14 ~~(1) reimbursement for actual expenses for~~
15 ~~lodging; and~~

16 ~~(2) reimbursement for actual expenses for~~
17 ~~meals not to exceed thirty dollars (\$30.00) per day for in-~~
18 ~~state travel and forty-five dollars (\$45.00) per day for out-~~
19 ~~of-state travel.]"~~

20 SECTION 3. Section 10-8-5 NMSA 1978 (being Laws 1978,
21 Chapter 184, Section 4, as amended) is amended to read:

22 "10-8-5. RESTRICTIONS--RULES.--

23 A. ~~[The secretary]~~ Each appropriate agency may
24 promulgate rules ~~[for state agencies and local public bodies~~
25 ~~for the purpose of carrying]~~ to carry out the provisions of the

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1 Per Diem and Mileage Act [~~Public officials of public post-~~
2 ~~secondary educational institutions and employees of public~~
3 ~~post-secondary educational institutions shall be subject to the~~
4 ~~rules of their governing boards~~] for public officers and
5 employees under the appropriate agency's authority.

6 B. Public funds may be advanced to [~~any~~] a public
7 officer or employee before the travel occurs only with prior
8 written approval of the [~~secretary, the secretary's designee,~~
9 ~~the local public body or the governing board, or its designee~~]
10 appropriate agency. This restriction shall not prohibit the
11 use of authorized credit cards in connection with:

12 (1) purchases necessary to the use of vehicles
13 owned by the state, a local public body or a public post-
14 secondary educational institution; or [~~for~~]

15 (2) food, lodging or transportation as
16 permitted by the [~~department of finance and administration or~~
17 ~~the governing board~~] appropriate agency.

18 C. Public funds shall be paid out under the Per
19 Diem and Mileage Act only upon vouchers duly presented with any
20 required receipts attached thereto. For employees authorized
21 to receive public funds in advance of travel, payment shall be
22 received only upon vouchers submitted with attached
23 authorization for each travel period. For public officers or
24 employees using authorized credit cards, vouchers with required
25 receipts for each month's travel expenses shall be submitted as

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1 a condition to receiving authorization to use the credit card
2 for the next month's travel. Travel expenses may also be
3 advanced if the travel is to be performed under provisions of
4 federal or private contracts and the funds used are not derived
5 from taxes or revenues paid to the state or any of its
6 political subdivisions.

7 ~~[G.]~~ D. The ~~[secretary]~~ appropriate agency may
8 reduce the rates set for the per diem and mileage for ~~[any~~
9 ~~class of]~~ public ~~[officials]~~ officers and ~~[for]~~ employees of
10 ~~[state agencies, except public officials of public~~
11 ~~post-secondary educational institutions]~~ the appropriate agency
12 at any time the ~~[secretary]~~ appropriate agency deems it to be
13 in the public interest, and such reduction shall not be
14 construed to permit payment of any other compensation,
15 perquisite or allowance other than a public officer's or
16 employee's regular salary. The ~~[secretary]~~ appropriate agency
17 shall exercise this power of reduction in a reasonable manner
18 and shall ~~[attempt to achieve]~~ set a standard rate for all
19 public officers and employees ~~[of the same classification]~~
20 under its authority. The ~~[secretary]~~ appropriate agency may,
21 at the request of any ~~[state]~~ agency under the appropriate
22 agency's authority and for good cause shown, reduce the rates
23 of per diem and mileage for that ~~[state]~~ agency.

24 E. The governing body of ~~[any]~~ a local public body
25 ~~[may eliminate or may reduce]~~ shall notify the department of

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1 finance and administration that it has eliminated or reduced
2 the rates set for the per diem and mileage for all or any class
3 of public [~~officials~~] officers and employees of the local
4 public body at any time the local public body deems it to be in
5 the public interest, and such elimination or reduction shall
6 not be construed to permit payment of any other compensation,
7 perquisite or allowance other than a public officer's or
8 employee's regular salary. The local public body shall
9 exercise this power of reduction in a reasonable manner and
10 shall attempt to achieve a standard rate for all public
11 officers and employees of the same classification. [~~The~~
12 ~~secretary may in extraordinary circumstances and with the prior~~
13 ~~approval of the state board of finance in public meeting, allow~~
14 ~~actual expenses rather than the per diem rates set in the Per~~
15 ~~Diem and Mileage Act.~~

16 D. ~~The governing board or its designee may reduce~~
17 ~~the rates set for the per diem and mileage for public officials~~
18 ~~of public post-secondary educational institutions and for~~
19 ~~employees of public post-secondary educational institutions at~~
20 ~~any time the governing board deems it to be in the public~~
21 ~~interest, and such reduction shall not be construed to permit~~
22 ~~payment of any other compensation, perquisite or allowance.~~
23 ~~The governing board shall exercise this power of reduction in a~~
24 ~~reasonable manner and shall attempt to achieve a standard rate~~
25 ~~for public officers and employees of public post-secondary~~

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1 ~~educational institutions. The governing board may reduce the~~
2 ~~rates of per diem and mileage for its public post-secondary~~
3 ~~educational institution and may, in extraordinary circumstances~~
4 ~~and in public meeting, allow actual expenses rather than the~~
5 ~~per diem rates set in the Per Diem and Mileage Act.~~

6 E.] F. No reimbursement for out-of-state travel
7 shall be paid to any elected public officer, including any
8 member of the legislature, if, after the last day to do so,
9 that officer has not filed a declaration of candidacy for
10 reelection to the public officer's currently held office or has
11 been defeated for reelection to the public officer's currently
12 held office in a primary election or [~~any~~] general election.

13 [~~F. Subsection E of this section does not apply to~~
14 ~~any elected public officer who is ineligible to serve another~~
15 ~~term after serving the public officer's term in office.]~~

16 G. Subsection [~~E~~] F of this section does not apply
17 to legislators whose travel has been approved by a three-
18 fourths' vote of the New Mexico legislative council at a
19 regularly called meeting.

20 H. [~~Any~~] A person who is not an employee, appointee
21 or elected [~~official~~] officer of a county or municipality and
22 who is reimbursed under the provisions of the Per Diem and
23 Mileage Act in an amount that singly or in the aggregate
24 exceeds one thousand five hundred dollars (\$1,500) in any one
25 year shall not be entitled to further reimbursement under the

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1 provisions of that act until the person furnishes in writing to
2 the ~~[person's department head or, in the case of a department~~
3 ~~head or board or commission member, to the governor or, in the~~
4 ~~case of a member of the legislature, to the New Mexico~~
5 ~~legislative council]~~ appropriate agency an itemized statement
6 on each separate instance of travel covered within the
7 reimbursement, the place to which traveled and the executive,
8 judicial or legislative purpose served by the travel."

9 SECTION 4. Section 10-8-8 NMSA 1978 (being Laws 1979,
10 Chapter 273, Section 5, as amended) is amended to read:

11 "10-8-8. OTHER REIMBURSEMENTS.--

12 A. ~~[The secretary]~~ An appropriate agency may
13 authorize by ~~[regulation]~~ rule reimbursement for the following
14 actual expenses incurred by public officers and employees ~~[of~~
15 ~~state agencies]~~:

- 16 (1) moving expenses;
17 (2) professional fees or dues;
18 (3) tuition and fees for attending educational
19 programs or classes ~~[approved by the secretary]~~; and
20 (4) registration fees for attending seminars,
21 educational programs or classes.

22 ~~[B. The governing body of any local public body~~
23 ~~may, by resolution, authorize the reimbursement of public~~
24 ~~officers and employees for any of the actual expenses set forth~~
25 ~~in Subsection A of this section. No resolution adopted~~

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1 ~~pursuant to this subsection shall authorize the reimbursement~~
2 ~~for any expense not authorized by regulation of the secretary~~
3 ~~pursuant to Subsection A of this section.~~

4 ~~C. The governing board may, by regulation,~~
5 ~~authorize the reimbursement of public officers of public post-~~
6 ~~secondary educational institutions and employees of public~~
7 ~~post-secondary educational institutions for any of the actual~~
8 ~~expenses set forth in Subsection A of this section.~~

9 ~~D.]~~ B. No reimbursement shall be made for any
10 expenses unless receipts for all such expenses are attached to
11 the reimbursement voucher."

12 SECTION 5. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2020.