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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 02/20/01 HB 577
 SHORT TITLE: Per Diem for Parole Board SB _____
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$ 23.4			Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act, HB578, HB844, HB843, and SB534. Duplicates SB535.

SOURCES OF INFORMATION

LFC Files
 Attorney General (AG)
 Children Youth and Families Department (CYFD)

No Response
 Parole Board

SUMMARY

Synopsis of Bill

HB577 amends Section 31-21-24 NMSA 1978 to provide per diem and mileage for members of the parole board for all official duties performed by the Board as set forth in Section 31-21-24 NMSA 1978, including one day of per diem for the review of case files. The bill appropriates \$23,400 from the general fund for expenditure in fiscal year 2002.

Significant Issues

The bill conflicts with Section 10-8-4 of the Per Diem and Mileage Act. (See Substantive Issues)

FISCAL IMPLICATIONS

Parole Board members are nonsalaried public officers appointed by the Governor. There are nine parole board members and they receive \$75.0 per day per hearing date. The total appropriation contained in the General Appropriations Act includes \$50.6 for this purpose. (See Substantive Issues)

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The appropriation of \$23.4 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

The Adult Parole Board (ABA) did not respond to staff request for analysis, and has not provided any information to substantiate the need for additional funding. Staff is unable to identify the need for additional funding and considers the request more of a management issue in which the APB should work within its resources.

ADMINISTRATIVE IMPLICATIONS

Since the appropriation is specific, there is a possibility that separate accounting would be required by APB staff to ensure the funding is only used to reimburse board members for per diem for one extra day for each scheduled hearing.

RELATIONSHIP

Relates to House Bill 578 that appropriates \$35,000 and provides for a \$10 payment to parole board members for each file reviewed in preparation for parole hearings. This bill would also amend current Section 31-21-24 NMSA 1978.

Relates to HB844 and HB843 relate to the Juvenile Parole Board and SB534 which would provide compensation based on the number required to be prepared for hearings.

TECHNICAL ISSUES

The language in Section E is not clear. Does the new language include review of case files at one day per month? or for every meeting? and does it provide affect all nine members at one time?

OTHER SUBSTANTIVE ISSUES

The bill attempts to pay Parole Board members compensation for performing their duties by reference to the provisions of the Per Diem and Mileage Act that apply to nonsalaried public officers. The bill is inconsistent with those provisions because payment under the Per Diem and Mileage Act is intended to defray costs incurred in travel associated with the performance of public business rather than serve as a salary for services performed. See, NMSA 1978, Sec. 10-8-4; 1977 Op. Att'y Gen. No. 77-20.

The Act is cited as follows:

10-8-4. Per diem and mileage rates; in lieu of payment.

Statute text

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or up to seventy-five dollars (\$75.00) per diem expenses:

(1) for each board or committee meeting attended; or

(2) for each day spent in discharge of official duties for travel within the state but away from his home.

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

B. Every salaried public officer or employee who is traveling within the state but away from his home and away from his designated post of duty on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) up to sixty-five dollars (\$65.00) per diem expenses for each day spent in the discharge of his official duties for a salaried public officer or employee of a local public body or state agency. If the secretary finds that a per diem allowance of sixty-five dollars (\$65.00) is inadequate for reimbursement of expenses in any municipality of this state, the secretary may authorize the reimbursement of per diem for travel to such municipality not to exceed seventy-five dollars (\$75.00); or

(2) up to sixty-five dollars (\$65.00) per diem expenses for each day spent in the discharge of his official duties for a salaried public officer or employee of a public post-secondary educational institution. If the governing board finds that a per diem allowance of sixty-five dollars (\$65.00) is inadequate for reimbursement of expenses in any municipality of this state, the governing board may authorize the reimbursement of per diem for travel to such municipality not to exceed seventy-five dollars (\$75.00).

C. Every public officer or employee shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) for public officers or employees of a state agency or local public body, up to seventy-five dollars (\$75.00) per diem expenses for each day of travel outside the state on official business. If the secretary finds that a per diem allowance of seventy-five dollars (\$75.00) is inadequate for out-of-state travel to a geographical area, the secretary may authorize per diem not to exceed ninety-five dollars (\$95.00) for out-of-state travel to such geographical area; provided that the secretary may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. In lieu of per diem, persons trained in the field of accountancy and performing duties in that field of training as an employee while assigned for periods exceeding three weeks per assignment to travel out-of-state on official business may receive either reimbursement pursuant to the provisions of Subsection L of this section or actual expenses not to exceed ninety-five dollars (\$95.00) per day. Expenses shall be substantiated in accordance with rules promulgated by the department of finance and administration. The secretary may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]; or

(2) for public officers or employees of a public post-secondary educational institution, up to seventy-five dollars (\$75.00) per diem expenses for each day of travel outside the state on official business. If the governing board finds that a per diem allowance of seventy-five dollars (\$75.00) is inadequate for out-of-state travel to a geographical area, the governing board may authorize per diem not to exceed ninety-five dollars (\$95.00) for out-of-state travel to such geographical area; provided that the governing board may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. Expenses shall be substantiated in accordance with rules promulgated by the governing board. The governing board may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act.

D. Every public officer or employee shall receive twenty-five cents (\$.25) a mile for each mile traveled in a privately owned vehicle or forty cents (\$.40) a mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of his official duties and if the private conveyance is not a common carrier. Provided, however, that only one person shall receive mileage for each mile traveled in a single privately owned vehicle or airplane except in the case of common carriers, in which case the person shall receive the cost of the ticket in lieu of the mileage allowance.

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

F. In addition to the in-state per diem set forth in this section, the department of finance and administration, by regulation, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriations act for commissioned officers of the New Mexico state police in accordance with rules and regulations promulgated by the department of finance and administration.

G. In lieu of the in-state per diem set in Subsection B of this section, the department of finance and administration may, by regulation, authorize a flat monthly subsistence rate for certain employees of the

state highway and transportation department, provided that the payments made under this subsection shall not exceed the maximum amount that would be paid under Subsection B of this section.

H. Per diem received by nonsalaried public officers for travel on official business or in the discharge of their official duties, other than attending a board or committee meeting, and per diem received by public officers and employees for travel on official business shall be prorated in accordance with regulations of the department of finance and administration or the governing board.

I. The provisions of Subsection A of this section do not apply to payment of per diem expense to a nonsalaried public official of a municipality for attendance at board or committee meetings held within the boundaries of the municipality.

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

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

- (1) reimbursement for actual expenses for lodging; and
- (2) reimbursement for actual expenses for meals not to exceed twenty-two dollars fifty cents (\$22.50) per day.

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

- (1) reimbursement for actual expenses for lodging; and
- (2) reimbursement for actual expenses for meals not to exceed twenty-two dollars fifty cents (\$22.50) per day.

Possible Questions

1. How many cases are being heard at the institutions?
2. Are parole board members spending full days at the institutions? If not, why can't the review of files be managed within the workday?

LAT/njw