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FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/21
 SPONSOR Gonzales LAST UPDATED 03/18/21 HB 345/aSHPAC/aHSEIC/
 SHORT TITLE Per Diem & Mileage Act Changes SB ec
 ANALYST Nichols

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but likely negligible (see fiscal impact)	Indeterminate but likely negligible (see fiscal impact)	Indeterminate but likely negligible (see fiscal impact)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 United States General Services Administration (GSA)

Responses Received From

Department of Finance and Administration (DFA)
 New Mexico Tourism Department (NMTD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs amendment to Senate Bill 345 directs DFA to establish reimbursement rates by May 1 of each year, to be used for the next fiscal year, instead of by July 1. The amendment also adds an emergency clause to the bill. The bill would take effect immediately upon signature by the governor.

Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 345 removes the provision in the Per Diem and Mileage Act setting reimbursement for actual meal expenses at \$30 per day for in-state travel and \$45 per day for out-of-state travel and replaces it with language providing that reimbursement for actual expenses for meals and incidental should not exceed maximum amounts established by DFA and that DFA should establish maximum rates by July 1 of each fiscal year. DFA would, thus, have discretion to set maximum reimbursement rates to better align with per diem rates set by the federal General Services Department and adopted by the state.

Synopsis of Original Bill

Senate Bill 345 amends the Per Diem and Mileage Act to define “attend” as the act of being present, either physically or through a virtual platform.

The bill also updates per diem amounts for nonsalaried public officers at \$45 for physical attendance at a meeting of less than four hours or for virtual attendance at a meeting or \$95 for physical attendance at a meeting of four hours or more.

Salaried public officers and employees of state agencies or local public bodies who are traveling within the state but away from home will receive a per diem rate set by the Department of Finance and Administration (DFA), taking into account rates set by the U.S. General Services Administration (GSA). Similarly, public officers or employees traveling outside the state will receive a per diem established by DFA, taking into account rates set by the U.S. GSA. Public officers or employees traveling out of state must also substantiate their expenses according to DFA rules.

Public officers or employees of public postsecondary educational institutions traveling out of state must substantiate their expenses in accordance with rules promulgated by the governing board of the institution.

Salaried public officers and employees may receive reimbursement for actual expenses for lodging and actual expenses of meals up to \$30 per day for in-state travel and \$45 for out-of-state travel, instead of a per diem reimbursement, with written approval of the DFA secretary, the local public body, or the governing board of a public postsecondary educational institution, as applicable.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SB345 would likely result in a modest decrease in meeting reimbursement costs for nonsalaried public officers. Currently, all meetings are reimbursed at a rate of \$95, and the bill would allow for shorter meetings and virtual meetings to be reimbursed at a rate of \$45. According to DFA, the state spent \$300 thousand on per diem reimbursements for nonsalaried public officers in FY19.

Based on the work of a 2019 task force convened by DFA (see “Other Substantive Issues.”), the fiscal impact to the state from a change in per diem rates for salaried public officers and employees is likely to be negligible. Rates for travel to New Mexico destinations are higher under the GSA rates than the current base rate of \$85 set by statute (but with the exception of Carlsbad and Eddy County, lower than the maximum rate of \$135 set by statute). However, most employees already opt for actual cost reimbursements, given the inadequacy of current per diem rates.

According to DFA, reimbursement costs for employee meals and lodging was approximately \$11.3 million in FY19.

See GSA rates for New Mexico locations below.

U.S. GSA Per Diem Rates

Primary Destination	County	Jan-21	Jul-21
Standard Rate	Applies for all locations without specified rates	\$96	\$96
Albuquerque	Bernalillo	\$111	\$111
Carlsbad	Eddy	\$212	\$212
Santa Fe	Santa Fe	\$104	\$133
Taos	Taos	\$103	\$103

Source: United States General Services Administration

Going forward, rates would no longer be fixed, but adjusted each year. However, rates should only rise modestly each year to align with actual cost increases.

SIGNIFICANT ISSUES

Under current law, standard per diem rates are set by the legislature and have not changed since 2003, meaning that per diem rates often do not align with actual costs of travel. Public officers and employees traveling within the state receive \$85 per day, or up to \$135 with approval of the DFA secretary, and those traveling outside of the state receive \$115 or up to \$215 with approval of the DFA secretary, or can opt to be reimbursed for actual expenses.

DFA indicates that setting per diem rates for each fiscal year in consultation with federal GSA rates will allow for greater efficiency and alignment of year-to-year changes in travel costs. Basing per diem rates on GSA rates will also better align rates with actual costs in local markets where public officers and employees may travel. For example, based on data published by the New Mexico Hospitality Association, the average lodging rate for the Albuquerque area in December 2018 was \$93.19, the average lodging rate in Santa Fe was \$146.17, and the average statewide rate was \$109.7, all above the standard per diem rate of \$85.

The New Mexico Tourism Department notes that it is industry best practice to allow for per diem rates to be set annually based on available federal data, including room rates, typical meal rates, and rates for incidentals.

Allowing public officers and employees to claim a per diem rate that is better aligned with actual travel costs could reduce the number of employees claiming actual expense reimbursements, which would also reduce the administrative burden on both the employee and the agency, as processing actual expenses can be time-consuming.

However, DFA notes that the bill does not allow the agency to adjust the actual maximum reimbursement rates for meals of \$30 for in-state travel and \$45 for out-of-state travel, which could lead to a misalignment between per diem rates and actual reimbursement limits.

Currently, the Per Diem and Mileage Act does not address virtual attendance at meetings, so adding this provision will update the act to reflect increasing virtual attendance.

ADMINISTRATIVE IMPLICATIONS

DFA notes that reimbursement review work would be streamlined for the agency’s pre-audit staff, as staff would likely not have to process as many requests for actual reimbursements,

which must currently be processed on an individual receipts level.

Administrative staff within state agencies, local public bodies, and higher education institutions would also likely see a modest decrease in time spent processing travel reimbursement requests.

OTHER SUBSTANTIVE ISSUES

Per Senate Memorial 100 in 2019, DFA was charged with convening a Per Diem Task Force and providing recommendations to the New Mexico Legislature related to the reimbursement of travel costs for public officers and employees. The task force included representatives from New Mexico Counties, the Legislative Finance Committee and the New Mexico Municipal League.

Based on the work of the task force, DFA recommended aligning the Per Diem and Mileage Act with published federal per diem rates, reducing the need for future rule and law changes.

Federal per diem rates change year to year, depending on IRS Publication 1542. New rates go into effect on October 1 each year. Rates vary by location and generally increase in high-cost cities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Per diem rates would be fixed and would require legislative action to increase rates to align with increasing travel costs.

AN/al/rl