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SENATE BILL 302

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO PER DIEM; SETTING THE PER DIEM RATE FOR PUBLIC OFFICERS AND EMPLOYEES TO THE RATE ESTABLISHED BY THE FEDERAL GOVERNMENT FOR THE CITY OF SANTA FE; EXPANDING AGENCIES AUTHORIZED TO PROMULGATE RULES PURSUANT TO THE PER DIEM AND MILEAGE ACT.

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

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

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

A. [~~"secretary" means the secretary of finance and administration~~] "appropriate agency" means:

(1) in the case of an employee of a state agency or a local public body or a public officer of the state

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1 or a local public body, the department of finance and
2 administration or the secretary;

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

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

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

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

17 C. "governing board" means the board of regents of
18 any institution designated in Article 12, Section 11 of the
19 constitution of New Mexico or designated in Chapter 21, Article
20 14 NMSA 1978, or the board of any institution designated in
21 Chapter 21, Articles 13, 16 and 17 NMSA 1978;

22 D. "local public body" means all political
23 subdivisions of the state and their agencies, instrumentalities
24 and institutions, except public post-secondary educational
25 institutions;

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1 ~~[E. "state agency" means the state or any of its~~
2 ~~branches, agencies, departments, boards, instrumentalities or~~
3 ~~institutions, except public post-secondary educational~~
4 ~~institutions;~~

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

9 E. "per diem" means the allowance for lodging,
10 meals and incidental expenses established by the federal
11 government for the city of Santa Fe;

12 ~~[G.]~~ F. "public officer" [or "public official"]
13 means every elected or appointed officer of the state, local
14 public body or any public post-secondary educational
15 institution. "Public officer" includes members of advisory
16 boards appointed by any state agency, legislative agency,
17 judicial agency, local public body or public post-secondary
18 educational institution;

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

23 H. "secretary" means the secretary of finance and
24 administration; and

25 I. "state agency" means agencies, departments,

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1 boards, instrumentalities or institutions of or created by the
2 state, except those of the legislative branch, the judicial
3 branch or a public post-secondary educational institution."

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

6 "10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF
7 PAYMENT.--

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

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

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

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

22 ~~B.]~~ A. Every [salaried] public officer or employee
23 who is traveling [within the state but] away from the officer's
24 or employee's home and designated post of duty on official
25 business shall receive either reimbursement pursuant to the

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1 provisions of Subsection [~~K or L~~] B of this section or

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

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

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

23 ~~(1) for public officers or employees of a~~
24 ~~state agency or local public body, up to one hundred fifteen~~
25 ~~dollars (\$115) per diem expenses for each day of travel outside~~

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

22 ~~(2) for public officers or employees of a~~
23 ~~public post-secondary educational institution, up to one~~
24 ~~hundred fifteen dollars (\$115) per diem expenses for each day~~
25 ~~of travel outside the state on official business. If the~~

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

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

20 (1) lodging;

21 (2) meals not to exceed the rate for meals and
22 incidental expenses established by the federal government for
23 the city of Santa Fe; and

24 (3) other incidentals, including gratuities,
25 parking fees and other transportation costs as determined by

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1 rule of the appropriate agency.

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

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

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

25 ~~F.]~~ E. In addition to the in-state per diem set

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1 forth in this section, the department of finance and
2 administration, by rule, may authorize a flat subsistence rate
3 in the amount set by the legislature in the general
4 appropriation act for commissioned officers of the New Mexico
5 state police in accordance with rules promulgated by the
6 department of finance and administration.

7 ~~[G. In lieu of the in-state per diem set in~~
8 ~~Subsection B of this section, the department of finance and~~
9 ~~administration may, by rule, authorize a flat monthly~~
10 ~~subsistence rate for certain employees of the department of~~
11 ~~transportation, provided that the payments made under this~~
12 ~~subsection shall not exceed the maximum amount that would be~~
13 ~~paid under Subsection B of this section.~~

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

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

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

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

11 ~~(1) reimbursement for actual expenses for~~
12 ~~lodging; and~~

13 ~~(2) reimbursement for actual expenses for~~
14 ~~meals not to exceed thirty dollars (\$30.00) per day for in-~~
15 ~~state travel and forty-five dollars (\$45.00) per day for out-~~
16 ~~of-state travel.~~

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

24 ~~(1) reimbursement for actual expenses for~~
25 ~~lodging; and~~

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

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

7 "10-8-5. RESTRICTIONS--RULES.--

8 A. The ~~[secretary]~~ appropriate agency may
9 promulgate rules for ~~[state agencies and local public bodies~~
10 ~~for]~~ the purpose of carrying out the provisions of the Per Diem
11 and Mileage Act ~~[Public officials of public post-secondary~~
12 ~~educational institutions and employees of public post-secondary~~
13 ~~educational institutions shall be subject to the rules of their~~
14 ~~governing boards]~~ for public officers and employees under the
15 appropriate agency's authority.

16 B. Public funds may be advanced to any public
17 officer or employee before the travel occurs only with prior
18 written approval of the ~~[secretary, the secretary's designee,~~
19 ~~the local public body or the governing board, or its designee]~~
20 appropriate agency. This restriction shall not prohibit the
21 use of authorized credit cards in connection with purchases
22 necessary to the use of vehicles owned by the state, a local
23 public body or a public post-secondary educational institution
24 or for food, lodging or transportation as permitted by the
25 ~~[department of finance and administration or the governing~~

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1 ~~board]~~ appropriate agency. Public funds shall be paid out
2 under the Per Diem and Mileage Act only upon vouchers duly
3 presented with any required receipts attached thereto. For
4 employees authorized to receive public funds in advance of
5 travel, payment shall be received only upon vouchers submitted
6 with attached authorization for each travel period. For public
7 officers or employees using authorized credit cards, vouchers
8 with required receipts for each month's travel expenses shall
9 be submitted as a condition to receiving authorization to use
10 the credit card for the next month's travel. Travel expenses
11 may also be advanced if the travel is to be performed under
12 provisions of federal or private contracts and the funds used
13 are not derived from taxes or revenues paid to the state or any
14 of its political subdivisions.

15 C. The [~~secretary~~] appropriate agency may reduce
16 the rates set for the per diem and mileage for [~~any class of~~]
17 public [~~officials~~] officers and [~~for~~] employees of [~~state~~
18 ~~agencies, except public officials of public post-secondary~~
19 ~~educational institutions~~] the appropriate agency at any time
20 the [~~secretary~~] appropriate agency 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 [~~secretary~~] appropriate agency shall exercise this power of
24 reduction in a reasonable manner and shall [~~attempt to achieve~~]
25 set a standard rate for all public officers and employees [~~of~~

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

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

25 ~~The governing board shall exercise this power of reduction in a~~

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1 ~~reasonable manner and shall attempt to achieve a standard rate~~
2 ~~for public officers and employees of public post-secondary~~
3 ~~educational institutions. The governing board may reduce the~~
4 ~~rates of per diem and mileage for its public post-secondary~~
5 ~~educational institution and may, in extraordinary circumstances~~
6 ~~and in public meeting, allow actual expenses rather than the~~
7 ~~per diem rates set in the Per Diem and Mileage Act.~~

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

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

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

22 ~~[H.]~~ G. Any person who is not an employee,
23 appointee or elected official of a county or municipality and
24 who is reimbursed under the provisions of the Per Diem and
25 Mileage Act in an amount that singly or in the aggregate

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1 exceeds one thousand five hundred dollars (\$1,500) in any one
2 year shall not be entitled to further reimbursement under the
3 provisions of that act until the person furnishes in writing to
4 the person's department head or, in the case of a department
5 head or board or commission member, to the governor or, in the
6 case of a member of the legislature, to the New Mexico
7 legislative council an itemized statement on each separate
8 instance of travel covered within the reimbursement, the place
9 to which traveled and the executive, judicial or legislative
10 purpose served by the travel."

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

13 "10-8-8. OTHER REIMBURSEMENTS.--

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

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

24 ~~[B. The governing body of any local public body~~
25 ~~may, by resolution, authorize the reimbursement of public~~

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1 ~~officers and employees for any of the actual expenses set forth~~
2 ~~in Subsection A of this section. No resolution adopted~~
3 ~~pursuant to this subsection shall authorize the reimbursement~~
4 ~~for any expense not authorized by regulation of the secretary~~
5 ~~pursuant to Subsection A of this section.~~

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

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

14 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2019.