

1 SENATE BILL 345

2 55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO PUBLIC OFFICERS; CLARIFYING ATTENDANCE PURSUANT TO
12 THE PER DIEM AND MILEAGE ACT; CHANGING THE RATES OF PER DIEM
13 REIMBURSEMENT FOR IN-STATE AND OUT-OF-STATE TRAVEL FOR CERTAIN
14 PUBLIC OFFICERS AND EMPLOYEES.

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

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

19 "10-8-3. DEFINITIONS.--As used in the Per Diem and
20 Mileage Act:

21 A. "attend" means the act of being present, either
22 physically or through a virtual platform that is approved by
23 the entity responsible for determining attendance;

24 ~~[A.]~~ B. "secretary" means the secretary of finance
25 and administration;

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1 ~~[B.]~~ C. "employee" means any person who is in the
2 employ of any state agency, local public body or public post-
3 secondary educational institution and whose salary is paid
4 either completely or in part from public money, but does not
5 include jurors or jury commissioners;

6 ~~[C.]~~ D. "governing board" means the board of
7 regents of any institution designated in Article 12, Section 11
8 of the constitution of New Mexico or designated in Chapter 21,
9 Article 14 NMSA 1978, or the board of any institution
10 designated in Chapter 21, Articles 13, 16 and 17 NMSA 1978;

11 ~~[D.]~~ E. "local public body" means all political
12 subdivisions of the state and their agencies, instrumentalities
13 and institutions, except public post-secondary educational
14 institutions;

15 ~~[E.]~~ F. "state agency" means the state or any of
16 its branches, agencies, departments, boards, instrumentalities
17 or institutions, except public post-secondary educational
18 institutions;

19 ~~[F.]~~ G. "public post-secondary educational
20 institution" means any institution designated in Article 12,
21 Section 11 of the constitution of New Mexico and any
22 institution designated in Chapter 21, Articles 13, 14, 16 and
23 17 NMSA 1978; and

24 ~~[G.]~~ H. "public officer" or "public official" means
25 every elected or appointed officer of the state, local public

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1 body or any public post-secondary educational institution.
2 "Public officer" or "public official" includes members of
3 advisory boards appointed by any state agency, local public
4 body or public post-secondary educational institution."

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
14 diem expenses [~~(+)~~] in the following amounts for [~~each~~] a board
15 or committee meeting attended; provided that the officer shall
16 not receive per diem expenses for more than one board or
17 committee meeting that occurs on the same day; or [~~(2)~~] for
18 each day spent in discharge of official duties for travel
19 within the state but away from the 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 (1) forty-five dollars (\$45.00) if the officer
24 physically attends the board or committee meeting for less than
25 four hours or the officer attends a virtual meeting of any

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1 duration during a single calendar day; or

2 (2) ninety-five dollars (\$95.00) if the
3 officer physically attends the board or committee meeting for
4 four hours or more during a single calendar day.

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

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

19 ~~(2) up to eighty-five dollars (\$85.00) per~~
20 ~~diem expenses for each day spent in the discharge of official~~
21 ~~duties for a salaried public officer or employee of a public~~
22 ~~post-secondary educational institution. If the governing board~~
23 ~~finds that a per diem allowance of eighty-five dollars (\$85.00)~~
24 ~~is inadequate for reimbursement of expenses in any municipality~~
25 ~~of this state, the governing board may authorize the~~

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1 ~~reimbursement of per diem for travel to the municipality not to~~
2 ~~exceed one hundred thirty five dollars (\$135)]~~ for each day
3 spent in the discharge of official duties, the amount
4 established by the department of finance and administration for
5 the fiscal year in which the travel occurs. The department of
6 finance and administration shall establish the reimbursement
7 rate by July 1 of each fiscal year; provided that such rate
8 shall take into consideration the rates available for lodging,
9 meals and incidentals as determined by the United States
10 general services administration for that period of time.

11 C. Every public officer or employee who is
12 traveling outside of the state on official business shall
13 receive either reimbursement pursuant to the provisions of
14 Subsection K or L of this section or

15 ~~[(1) for public officers or employees of a~~
16 ~~state agency or local public body, up to one hundred fifteen~~
17 ~~dollars (\$115) per diem expenses for each day of travel outside~~
18 ~~the state on official business. If the secretary finds that a~~
19 ~~per diem allowance of one hundred fifteen dollars (\$115) is~~
20 ~~inadequate for out-of-state travel to a geographical area, the~~
21 ~~secretary may authorize per diem not to exceed two hundred~~
22 ~~fifteen dollars (\$215) for out-of-state travel to that~~
23 ~~geographical area; provided that the secretary may authorize~~
24 ~~per diem for travel to a locality inside or outside the~~
25 ~~continental United States for a public officer or employee who~~

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

14 ~~(2) for public officers or employees of a~~
15 ~~public post-secondary educational institution, up to one~~
16 ~~hundred fifteen dollars (\$115) per diem expenses for each day~~
17 ~~of travel outside the state on official business. If the~~
18 ~~governing board finds that a per diem allowance of one hundred~~
19 ~~fifteen dollars (\$115) is inadequate for out-of-state travel to~~
20 ~~a geographical area, the governing board may authorize per diem~~
21 ~~not to exceed two hundred fifteen dollars (\$215) for out-of-~~
22 ~~state travel to that geographical area; provided that the~~
23 ~~governing board may authorize per diem for travel to a locality~~
24 ~~inside or outside the continental United States for a public~~
25 ~~officer or employee who is reimbursed solely from federal funds~~

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1 ~~in accordance with the rate allowed by the federal government~~
2 ~~for travel to that locality. Expenses shall be substantiated~~
3 ~~in accordance with rules promulgated by the governing board.~~
4 ~~The governing board may promulgate rules defining what~~
5 ~~constitutes out-of-state travel for purposes of the Per Diem~~
6 ~~and Mileage Act] for each day spent in the discharge of~~
7 official duties, the amount established by the department of
8 finance and administration for the fiscal year in which the
9 travel occurs. The department of finance and administration
10 shall establish the reimbursement rate by July 1 of each fiscal
11 year; provided that such rate shall take into consideration the
12 rates available for lodging, meals and incidentals as
13 determined by the United States general services administration
14 for that period of time. For a salaried public officer or
15 employee of a local public body or state agency, expenses shall
16 be substantiated in accordance with rules promulgated by the
17 secretary of finance and administration, and the secretary may
18 promulgate rules defining what constitutes out-of-state travel
19 for the purposes of the Per Diem and Mileage Act. For a public
20 officer or employee of a public post-secondary educational
21 institution, expenses shall be substantiated in accordance with
22 rules promulgated by the governing board of that public post-
23 secondary educational institution, and the governing board may
24 promulgate rules defining what constitutes out-of-state travel
25 for the purposes of the Per Diem and Mileage Act.

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1 D. Every public officer or employee shall receive
2 up to the internal revenue service standard mileage rate set
3 January 1 of the previous year for each mile traveled in a
4 privately owned vehicle or eighty-eight cents (\$.88) a mile for
5 each mile traveled in a privately owned airplane if the travel
6 is necessary to the discharge of the officer's or employee's
7 official duties and if the private conveyance is not a common
8 carrier; provided, however, that only one person shall receive
9 mileage for each mile traveled in a single privately owned
10 vehicle or airplane, except in the case of common carriers, in
11 which case the person shall receive the cost of the ticket in
12 lieu of the mileage allowance.

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

17 F. In addition to the in-state per diem set forth
18 in this section, the department of finance and administration,
19 by rule, may authorize a flat subsistence rate in the amount
20 set by the legislature in the general appropriation act for
21 commissioned officers of the New Mexico state police in
22 accordance with rules promulgated by the department of finance
23 and administration.

24 G. In lieu of the in-state per diem set in
25 Subsection B of this section, the department of finance and

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1 administration may, by rule, authorize a flat monthly
2 subsistence rate for certain employees of the department of
3 transportation, provided that the payments made under this
4 subsection shall not exceed the maximum amount that would be
5 paid under Subsection B of this section.

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

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

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

21 K. With prior written approval of the secretary or
22 the secretary's designee or the local public body, a
23 nonsalaried public officer of a state agency or local public
24 body, a salaried public officer of a state agency or local
25 public body or a salaried employee of a state agency or local

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1 public body is entitled to per diem expenses under this
2 subsection and shall receive:

3 (1) reimbursement for actual expenses for
4 lodging; and

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

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

16 (1) reimbursement for actual expenses for
17 lodging; and

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