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SENATE BILL 107

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Tim Eichenberg

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO GOVERNMENT ADMINISTRATION; MAKING THE PER DIEM AND  
MILEAGE RATE UNIFORM FOR ALL PUBLIC OFFICERS AND EMPLOYEES;  
MAKING OTHER CHANGES TO THE PER DIEM AND MILEAGE ACT.

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

**SECTION 1.** Section 10-8-1 NMSA 1978 (being Laws 1963,  
Chapter 31, Section 1, as amended) is amended to read:

"10-8-1. SHORT TITLE.--~~[Sections 10-8-1 through 10-8-8]~~  
Chapter 10, Article 8 NMSA 1978 may be cited as the "Per Diem  
and Mileage Act"."

**SECTION 2.** 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

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1 administration;

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

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

13 D. "local public body" means all political  
14 subdivisions of the state and their agencies, instrumentalities  
15 and institutions, except public post-secondary educational  
16 institutions;

17 E. "state agency" means the state or any of its  
18 branches, agencies, departments, boards, instrumentalities or  
19 institutions, except public post-secondary educational  
20 institutions;

21 F. "public post-secondary educational institution"  
22 means [~~any~~] an institution designated in Article 12, Section 11  
23 of the constitution of New Mexico and [~~any~~] an institution  
24 designated in Chapter 21, [~~Articles~~] Article 13, 14 or 16 [~~and~~  
25 17] NMSA 1978; and

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1           G. "public officer" or "public official" means  
2 every elected or appointed salaried or nonsalaried officer of  
3 the state, local public body or any public post-secondary  
4 educational institution; provided that "public officer" or  
5 "public official" includes members of advisory boards appointed  
6 by any state agency, local public body or public post-secondary  
7 educational institution; and provided further that "public  
8 officer" or "public official" does not include a member of the  
9 legislature unless specifically included."

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

12           "10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF  
13 PAYMENT.--

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

20                           ~~(1) for each board or committee meeting~~  
21 ~~attended; or~~

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

25           ~~Nonsalaried public officers who travel to attend a board~~

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1 ~~or committee meeting may elect to be reimbursed per diem under~~  
2 ~~either Paragraph (1) or (2) of this subsection.~~

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

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

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

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1 exceed one hundred thirty-five dollars (\$135).

2 [G-] B. Every public officer or employee [~~shall~~]  
3 who is traveling out of state and away from the officer's or  
4 employee's home and designated post of duty on official  
5 business is entitled to receive either reimbursement pursuant  
6 to the provisions of Subsection [K] J or [L] K of this section  
7 or:

8 (1) for public officers or employees of a  
9 state agency or local public body, up to one hundred fifteen  
10 dollars (\$115) per diem expenses for each day of travel outside  
11 the state on official business. If the secretary finds that a  
12 per diem allowance of one hundred fifteen dollars (\$115) is  
13 inadequate for out-of-state travel to a geographical area, the  
14 secretary may authorize per diem not to exceed two hundred  
15 fifteen dollars (\$215) for out-of-state travel to that  
16 geographical area; provided that the secretary may authorize  
17 per diem for travel to a locality inside or outside the  
18 continental United States for a public officer or employee who  
19 is reimbursed solely from federal funds in accordance with the  
20 rate allowed by the federal government for travel to that  
21 locality. In lieu of per diem, a person trained in the field  
22 of accountancy and performing duties in that field of training  
23 as an employee while assigned for periods exceeding three weeks  
24 per assignment to travel out of state on official business may  
25 receive either reimbursement pursuant to the provisions of

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1 Subsection J or K of this section or actual expenses not to  
2 exceed two hundred fifteen dollars (\$215) per day. Expenses  
3 shall be substantiated in accordance with rules promulgated by  
4 the department of finance and administration. The secretary  
5 may promulgate rules defining what constitutes out-of-state  
6 travel for purposes of the Per Diem and Mileage Act; or

7 (2) for public officers or employees of a  
8 public post-secondary educational institution, up to one  
9 hundred fifteen dollars (\$115) per diem expenses for each day  
10 of travel outside the state on official business. If the  
11 governing board finds that a per diem allowance of one hundred  
12 fifteen dollars (\$115) is inadequate for out-of-state travel to  
13 a geographical area, the governing board may authorize per diem  
14 not to exceed two hundred fifteen dollars (\$215) for out-of-  
15 state travel to that geographical area; provided that the  
16 governing board may authorize per diem for travel to a locality  
17 inside or outside the continental United States for a public  
18 officer or employee who is reimbursed solely from federal funds  
19 in accordance with the rate allowed by the federal government  
20 for travel to that locality. Expenses shall be substantiated  
21 in accordance with rules promulgated by the governing board.  
22 The governing board may promulgate rules defining what  
23 constitutes out-of-state travel for purposes of the Per Diem  
24 and Mileage Act.

25 [~~D.~~] C. Every public officer or employee [~~shall~~] is

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

12 [~~E-~~] D. The per diem and mileage or per diem and  
13 cost of tickets for common carriers paid to [~~salari-~~] public  
14 officers or employees is in lieu of actual expenses for  
15 transportation, lodging and subsistence.

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

23 [~~G-~~] F. In lieu of the in-state per diem set in  
24 Subsection [~~B~~] A of this section, the department of finance and  
25 administration may, by rule, authorize a flat monthly

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1 subsistence rate for certain employees of the department of  
2 transportation, provided that the payments made under this  
3 subsection shall not exceed the maximum amount that would be  
4 paid under Subsection [B] A of this section.

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

12 [~~I.~~ ~~The provisions of Subsection A of this section~~  
13 ~~do not apply to payment of per diem expense to a nonsalaried]~~

14 H. A public official of the state or a  
15 [~~municipality]~~ local public body or public post-educational  
16 institution shall not receive per diem and mileage for  
17 attendance at board or committee meetings held within [~~the~~  
18 ~~boundaries of the municipality]~~ a thirty-five-mile radius of  
19 the official's home or other radius as provided by rule of the  
20 secretary.

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

24 [~~K.~~] J. With prior written approval of the  
25 secretary or the secretary's designee or the local public body,



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1 a ~~[nonsalaried public officer of a state agency or local public~~  
2 ~~body, a salaried]~~ public officer ~~[of a state agency or local~~  
3 ~~public body]~~ or ~~[a salaried]~~ employee of a state agency or  
4 local public body is entitled to per diem expenses under this  
5 subsection and ~~[shall]~~ may receive:

6 (1) reimbursement for actual expenses for  
7 lodging; and

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

12 ~~[L.]~~ K. With prior written approval of the  
13 governing board or its designee, a ~~[nonsalaried public officer~~  
14 ~~of a public post-secondary educational institution, a salaried]~~  
15 public officer or employee of a public post-secondary  
16 educational institution ~~[or a salaried employee of a public~~  
17 ~~post-secondary educational institution]~~ is entitled to per diem  
18 expenses under this subsection and ~~[shall]~~ may receive:

19 (1) reimbursement for actual expenses for  
20 lodging; and

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

25 SECTION 4. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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