

**STATE OF NEW MEXICO, PER DIEM AND MILEAGE ACT**  
**NMSA 1978 §10-8-1 thru §10-8-8**

**10-8-1. Short title.**

[Sections 10-8-1](#) through [10-8-8](#) NMSA 1978 may be cited as the "Per Diem and Mileage Act".

**History:** 1953 Comp., § 5-10-1, enacted by Laws 1963, ch. 31, § 1; 1978, ch. 184, § 1; 1979, ch. 273, § 2.

**10-8-2. Purpose of act.**

The purpose of the Per Diem and Mileage Act is to establish standard rates for reimbursement for travel for public officers and employees coming under the Per Diem and Mileage Act. The act is designed to be referred to where applicable in statutes setting compensation of public officers and employees.

**History:** 1953 Comp., § 5-10-2, enacted by Laws 1963, ch. 31, § 2; 1971, ch. 116, § 1.

**10-8-3. Definitions.**

As used in the Per Diem and Mileage Act:

- A. "secretary" means the secretary of finance and administration;
- B. "employee" means any person who is in the employ of any state agency, local public body or public post-secondary educational institution and whose salary is paid either completely or in part from public money, but does not include jurors or jury commissioners;
- C. "governing board" means the board of regents of any institution designated in [Article 12, Section 11](#) of the constitution of New Mexico or designated in [Chapter 21, Article 14](#) NMSA 1978, or the board of any institution designated in [Chapter 21, Articles 13, 16](#) and [17](#) NMSA 1978;
- D. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions, except public post-secondary educational institutions;
- E. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions, except public post-secondary educational institutions;
- F. "public post-secondary educational institution" means any institution designated in [Article 12, Section 11](#) of the constitution of New Mexico and any institution designated in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978; and
- G. "public officer" or "public official" means every elected or appointed officer of the state, local public body or any public post-secondary educational institution. Public officer includes members of advisory boards appointed by any state agency, local public body or public post-secondary educational institution.

**History:** 1953 Comp., § 5-10-2.1, enacted by Laws 1971, ch. 116, § 2; 1977, ch. 247, § 49; 1978, ch. 184, § 2; 1979, ch. 273, § 3; 1989, ch. 338, § 1.

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

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 ninety-five dollars (\$95.00) 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 the officer's 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 the officer's or employee's home and 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 eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of 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 eighty-five dollars (\$85.00) is inadequate for reimbursement of expenses in any municipality of this state, the secretary may authorize the reimbursement of per diem for travel to the municipality not to exceed one hundred thirty-five dollars (\$135); or

(2) up to eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of 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 eighty-five dollars (\$85.00) 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 the municipality not to exceed one hundred thirty-five dollars (\$135).

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 one hundred fifteen dollars (\$115) per diem expenses for each day of travel outside the state on official business. If the secretary finds that a per diem allowance of one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the secretary may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that 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, a person 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 K of this section or actual expenses not to exceed two hundred fifteen dollars (\$215) 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; or

(2) for public officers or employees of a public post-secondary educational institution, up to one hundred fifteen dollars (\$115) 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 one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the governing board may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that 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 up to the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle or eighty-eight cents (\$.88) a mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of the officer's or employee's 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 rule, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriation act for commissioned officers of the New Mexico state police in accordance with rules 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 rule, authorize a flat monthly subsistence rate for certain employees of the department of transportation, 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 rules 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, a salaried public officer of a state agency or local public body or a 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 thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel.

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 thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel.

History: 1953 Comp., § 5-10-3, enacted by Laws 1963, ch. 31, § 3; 1971, ch. 116, § 3; 1974, ch. 26, § 1; 1975, ch. 106, § 1; 1977, ch. 194, § 1; 1978, ch. 184, § 3; 1979, ch. 38, § 1; 1980, ch. 9, § 1; 1980, ch. 32, § 1; 1981, ch. 109, § 1; 1984, ch. 29, § 2; 1987, ch. 129, 1 § 1; 1989, ch. 338, § 2; 2003, ch. 215, § 1; 2009, ch. 170, § 1.

#### **10-8-5. Restrictions; rules.**

A. The secretary may promulgate rules for state agencies and local public bodies for the purpose of carrying out the provisions of the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978]. Public officials of public post-secondary educational institutions and employees of public post-secondary educational institutions shall be subject to the rules of their governing boards.

B. Public funds may be advanced to any public officer or employee before the travel occurs only with prior written approval of the secretary, the secretary's designee, the local public body or the governing board or its designee. This restriction shall not prohibit the use of authorized credit cards in connection with purchases necessary to the use of vehicles owned by the state, a local public body or a public post-secondary educational institution or for food, lodging or transportation as permitted by the department of finance and administration or the governing board. Public funds shall be paid out under the Per Diem and Mileage Act only upon vouchers duly presented with any required receipts attached thereto. For employees authorized to receive public funds in advance of travel, payment shall be received only upon vouchers submitted with attached authorization for each travel period. For public officers or employees using authorized credit cards, vouchers with required receipts for each month's travel expenses shall be submitted as a condition to receiving authorization to use the credit card for the next month's travel. Travel expenses may also be advanced if the travel is to be performed under provisions of federal or private contracts and the funds used are not derived from taxes or revenues paid to the state or any of its political subdivisions.

C. The secretary may reduce the rates set for the per diem and mileage for any class of public officials and for employees of state agencies, except public officials of public post-secondary educational institutions, at any time the secretary deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The secretary shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, at the request of any state agency and for good cause shown, reduce the rates of per diem and mileage for that state agency. The governing body of any local public body may eliminate or may reduce the rates set for the per diem and mileage for all or any class of public officials and employees of the local public body at any time the local public body deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The local public body shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, in extraordinary circumstances and with the prior approval of the state board of finance in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

D. The governing board or its designee may reduce the rates set for the per diem and mileage for public officials of public post-secondary educational institutions and for employees of public post-secondary educational institutions at any time the governing board deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The governing board shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for public officers and employees of public post-secondary educational institutions. The governing board may reduce the rates of per diem and mileage for its public post-secondary educational institution and may, in

extraordinary circumstances and in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

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

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

G. Subsection E of this section does not apply to legislators whose travel has been approved by a three-fourths' vote of the New Mexico legislative council at a regularly called meeting.

H. Any person who is not an employee, appointee or elected official of a county or municipality and who is reimbursed under the provisions of the Per Diem and Mileage Act in an amount that singly or in the aggregate exceeds one thousand five hundred dollars (\$1,500) in any one year shall not be entitled to further reimbursement under the provisions of that act until the person furnishes in writing to the person's department head or, in the case of a department head or board or commission member, to the governor or, in the case of a member of the legislature, to the New Mexico legislative council an itemized statement on each separate instance of travel covered within the reimbursement, the place to which traveled and the executive, judicial or legislative purpose served by the travel.

**History:** 1953 Comp., § 5-10-3.1, enacted by Laws 1978, ch. 184, § 4; 1979, ch. 273, § 4; 1984, ch. 29, § 3; 1989, ch. 338, § 3; 1990, ch. 67, § 1; 1995, ch. 209, § 1; 2018, ch. 27, § 2.

#### **10-8-6. Application of act.**

A. The Per Diem and Mileage Act shall not apply to the members of the legislature unless the legislature by specific reference to the act makes it applicable to the members and such application does not thereby exceed the per diem and mileage rates fixed in the constitution of New Mexico.

B. The provisions of Subsection D of [Section 10-8-4](#) NMSA 1978 pertaining to the mileage reimbursement rate for travel in a privately owned vehicle shall not apply to employees of a hospital facility under the control of the board of trustees of a special hospital district created pursuant to the provisions of the Special Hospital District Act [Chapter [4](#), Article [48A](#) NMSA 1978], if the board of trustees has fixed a mileage reimbursement rate for those employees.

**History:** 1953 Comp., § 5-10-3.2, enacted by Laws 1971, ch. 116, § 5; 2003, ch. 21, § 2.

#### **10-8-7. Penalty.**

Any public officer or employee covered by the Per Diem and Mileage Act who knowingly authorizes or who knowingly accepts payment in excess of the amount allowed by the Per Diem and Mileage Act or in excess of the amount authorized by the secretary or the governing board pursuant to [Section 10-8-5](#) NMSA 1978 is liable to the state in an amount that is twice the excess payment.

**History:** 1953 Comp., § 5-10-4, enacted by Laws 1963, ch. 31, § 4; 1971, ch. 116, § 6; 1977, ch. 247, § 51; 1989, ch. 338, § 4.

#### **10-8-8. Other reimbursements.**

A. The secretary may authorize by regulation reimbursement for the following actual expenses incurred by public officers and employees of state agencies:

- (1) moving expenses;
- (2) professional fees or dues;

(3) tuition and fees for attending educational programs or classes approved by the secretary; and

(4) registration fees for attending seminars, educational programs or classes.

B. The governing body of any local public body may, by resolution, authorize the reimbursement of public officers and employees for any of the actual expenses set forth in Subsection A of this section. No resolution adopted pursuant to this subsection shall authorize the reimbursement for any expense not authorized by regulation of the secretary pursuant to Subsection A of this section.

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

D. No reimbursement shall be made for any expenses unless receipts for all such expenses are attached to the reimbursement voucher.

**History:** 1978 Comp., § 10-8-8, enacted by Laws 1979, ch. 273, § 5; 1989, ch. 338, § 5.