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# Montana Association of Counties

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April 20, 2018

## Members of the Legislative Council - **Subcommittee on Legislator Compensation**

I am writing to request you consider supporting a committee bill to amend current law establishing allowable lodging and mileage rates for certain public employees that has been in place since 1997. Current law sets those rates in 2-18-501 at \$35/day for lodging and \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal. Those rates are unarguably obsolete.

I will apologize for the length of this message but this is my last opportunity to advocate for legislation as a lobbyist since I am retiring April 30<sup>th</sup> so I want to be thorough.

### **GENERAL DISCUSSION**

In 2009 Legislative Council requested Senate Bill 30, which was carried by Senator Kelly Gebhardt following the Council's interim study of meal and lodging rates allowed to state employees. Senate Bill 30 set meal reimbursement rates at 72% of the federal rates for a biennium, rounded to the nearest dollar. After the bill was introduced, it was discovered that there was what was considered to be a fatal flaw and it was tabled by the State Administration Committee on January 9, 2009 after being heard on January 7, 2009. The fatal flaw was tying meal reimbursement rates to federal rates, which was mis-perceived to be an unlawful delegation of legislative authority. I say mis-perceived because mileage reimbursement rates are directly tied to Federal GSA rates in the same section of law, 2-18-501. It is irrational to argue that tying mileage reimbursement rates to IRS mileage rates is OK but that tying lodging and meal reimbursement rates to Federal General Services Rates is not.

Following SB 30 being tabled, the State Administration Committee then requested a committee bill to address the then-current deficiency in the reimbursement rates. That became Senate Bill 309 and was carried by Committee Chair Jim Shockley. That bill set the lodging rate at \$70 per day and nominally increased meal rates. The bill passed out of committee on a 9-2 vote and passed 2<sup>nd</sup> reading 37-13, following which it was rereferred to Senate Finance and Claims where it died.

In 2017, Representative Mary Ann Dunwell sponsored House Bill 341, which again addressed meal and lodging reimbursement rates. That bill proposed to increase reimbursement rates to the federal rates and in order to address the fiscal implications also increased the accommodations tax by 1%. The bill was tabled in House State Administration but was taken from the table and amended to remove the accommodations tax and to add a \$1 appropriation to make it an appropriations bill because of the later transmittal deadline. It then passed out of committee and went to the floor on 2<sup>nd</sup> reading, where it was further amended to reduce the reimbursement rates to 75% of the federal rates. At 75% of the federal rates, the result was that those rates nearly matched in 1997 rates when adjusted for inflation. Untimely it died on the floor on a 44-56 vote.

MACo worked with the sponsor and bill drafter to add some clarity to statute about the applicability for out of state and out of country travel, which were less than clear. Additional

amendments were drafted but never amended into the bill to define “public” and to provide a delayed effective date in order to eliminate any fiscal impact this biennium.

A more in-depth discussion follows.

## LODGING

Section 2-18-501 sets the reimbursement rates allowed state employees at \$35/day.

**2-18-501. Meals, lodging, and transportation of persons in state service.** *All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:*

*(1) **Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal except as provided in subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.***

The statutory rate of \$35/day for lodging is obsolete and needs to be removed from law because of the exception granted in subsection (3):

*(3) **Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:***

*(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and*

*(b) lodging when the actual cost exceeds the maximum established in subsection (1), (2)(a), or (4)(a).*

Using that authority, the Department of Administration sets the allowable rate by policy through the Montana Operations Manual (MOM) at the Federal GSA Rates.

Link to Montana Rates set by DOA:

<https://montana.policytech.com/docview/?docid=729&public=true&fileonly=true>

Link to GSA Rates for Montana:

[https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems\\_report&state=MT&fiscal\\_year=2018&zip=&city=](https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=MT&fiscal_year=2018&zip=&city=)

Section 2-18-501 needs to be amended to tie to the Federal Rates because that is what is already taking place by policy as “State Rates”.

## MEALS

The current meal rates of \$5 for breakfast, \$6 for lunch and \$12 for dinner set by statute (2-18-501(1)) have not changed since 1997.

Had the rates in 2009 been indexed to inflation, it would only have increased today's rates to approximately 75% of the current standard GSA rates. Not only have the meal rates not changed since 2009, the purchasing power of those rates have further diminished an employee's ability to purchase meals when traveling.

When rates are tied to an index, such as the federal GSA rates, they move with the index, which can be both up and down, as evidenced by the decrease in the IRS mileage rates the past three years due to reduced fuel prices. Admittedly the prospect of meal rate reductions is less likely.

The word “state” needs to be changed to “public”. Current laws does not provide a direct connection for other public employees. However, in some specific situations statute does tie back to the state rates but not all by any means. A current definition of public that would apply does not exist.

I thought it might be interesting to compare some real life restaurant prices between 1997 and 2017, a span of 20 years but was unable to find a menu that old. I was able to obtain a menu from Jorgensons that is about 10 years old. The prices below reflect increases for about the past ten years. Meal prices have increased, but employee reimbursements have not changed in 20 years. Compare just the past ten years.

<b>Menu Item</b>	<b>circa 2007</b>	<b>2017</b>
Chicken Caesar salad	\$7.50	\$10.95
Spinach salad	\$6.50	\$10.25
Garden salad (sm)	\$2.75	\$5.50
Garden salad (lg)	\$5.75	\$9.50
Roast Turkey sandwich	\$5.75	\$8.95
Cold roast beef sandwich	\$5.75	\$8.95
Hamburger	\$5.75	\$9.75
Mushroom burger	\$6.50	\$10.75
Steak sandwich	\$9.75	\$14.25
Reuben	\$6.75	\$10.25
Chicken fried steak	\$6.95	\$16.95
Pan fried liver	\$6.25	\$14.25

<b>Menu Item</b>	<b>circa 2007</b>	<b>2017</b>
Slice of pie	\$3.25	\$4.50
Dish of ice cream or sherbet	\$2.25	\$3.75
Coffee	\$1.00	\$1.95
Assorted soda	\$1.25	\$1.95

Under current law, we are expecting officers and employees to purchase meals at today’s prices with 1997 dollars. The prices above only reflect changes in the past ten years so the increases over 20 years could reasonably be expected to be twice as much difference.

If meal rates were increased to 75% of the standard GSA rate, rounded up to the closest half-dollar, they would be very close to what the rates would be today if indexed to inflation since 1997. I feel it is important to have the rates tied to the most widely used index available so would discourage just putting new specific dollar amounts into statute. That would not be a long-term fix. A bill that ties meal rates to the GSA rates would be a long-term fix that would work the same as lodging and mileage reimbursement rates are being done currently by policy.

I have attached a rough bill draft that amends 2-18-501 as follows:

- Changes applicability from state employees to public employees. Page 1 Line 15-19 and other various locations in the bill draft.
- Provided and exemptions for statutes that already require reimbursements at actual costs. Page 1 Line 20
- Ties in-state lodging to the prescribed federal rate Page 1 Lines 22-23
- Ties meal reimbursement rates to STANDARD (not maximum) prescribed federal rates Page 1 Line 24 through Page 2 Line 4
- Ties foreign reimbursement rates to Department of State Published rates Page 2 Line 24 through Page 3 Line 5
- Adds a definition of Public" officers, employees and agents of local government entities as defined in 2-7-501(7)(b)that refers to local governments
- Establishes ab effective date of July 1, 2019 (could consider changing to 2021 to avoid a fiscal impact during the biennium)

I have also attached a spreadsheet I prepared for HB 341 that:

- Contains a summary of the current reimbursement rates.
- Demonstrates that the standard rates should be used, rather than the maximum rates because the maximum rates vary by location in the state. Using the maximum would create confusion.
- Shows what the rates would be using the full allowable federal rates.
- Demonstrates the comparison between 1997 and 2017 rates as well as demonstrating that 75% of the federal rates would nearly match what rates would be today, adjusted for inflation at various percentages of the federal rates.

In closing, I would ask that you consider the situation of two public employees. They have the same exact job duties and earn the same wages. Both live in Helena. One employee performs their job duties in Helena. The other leaves home Monday morning and returns Friday evening. The employee that lives in Helena has breakfast at home and is free to take lunch from home each day or to return home for lunch and to have dinner at home. The employee that travels is forced to eat in restaurants with no opportunity to eat at home. The employee that travels incurs costs of meals far exceeding the cost of eating at home. In reality, quite often the traveling employee eats breakfast that is included in the price of lodging but that depends on the lodging facility's practices. That employee then often skips lunch or grabs some junk food at a gas station. They would then have \$23 to buy a decent dinner, which often is insufficient. Those employees are being treated disparately.

Not increasing meal reimbursement rates is an egregious wrong that needs to be corrected.

Sincerely,



L Harold Blattie  
Executive Director

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2019 Montana Legislature

LC No. \_\_\_\_\_

AT THE REQUEST OF (Legislative Council)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REIMBURSEMENT RATE FOR MEALS FOR PUBLIC EMPLOYEES TO 75 PERCENT OF THE STANDARD FEDERAL RATE; CLARIFYING TO WHOM THE RATES APPLY; CLARIFYING LODGING AND FOREIGN TRAVEL RATES TO MATCH CURRENT POLICY; AMENDING SECTION 2-18-501 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-18-501, MCA, is amended to read:

**"2-18-501. Meals, lodging, and transportation of persons in state public service.** All elected state public officials, appointed members of boards, commissions, or councils, department directors, and all other state public employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state public business in accordance with the following provisions:

(1) Except as provided under in 7-5-2142 through 7-5-2145, 7-5-4141, 7-5-4142, and subsection (3) of this section, for travel within the state of Montana;

(a) lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, the prescribed standard federal rate per day and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for

1 ~~the evening meal. All claims for lodging expense reimbursement allowed under this section must~~  
2 ~~be documented by an appropriate receipt.~~

3 ~~\_\_\_(b) except as provided in subsection (10), meal reimbursement may not exceed 75% of the~~  
4 ~~prescribed standard federal rate for the state per meal. All claims for lodging expense~~  
5 ~~reimbursement allowed under this section must be documented by an appropriate receipt.~~

6 (2) Except as provided in subsection (3), for travel outside the state of Montana and within  
7 the United States, the following provisions apply:

8 (a) Lodging must be reimbursed at actual cost, not to exceed the prescribed ~~maximum~~  
9 standard federal rate per day for the location involved plus taxes on the allowable cost.

10 (b) Meal reimbursement may not exceed the prescribed ~~maximum~~ standard federal rate per  
11 meal for the location involved.

12 (3) Except as provided in subsection (10), the department of administration shall designate  
13 the locations and circumstances under which the governor, other elected state officials, appointed  
14 members of boards, commissions, or councils, department directors, and all other state  
15 employees may be authorized the actual cost of the following:

16 (a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum  
17 established in subsection (4)(a); and

18 (b) lodging when the actual cost exceeds the maximum established in subsection (1)(a),  
19 (2)(a), or (4)(a).

20 (4) Except as provided in subsection (3), for travel to a foreign country, ~~the following~~  
21 ~~provisions apply:~~

22 ~~—(a) All all elected state public officials, all appointed members of boards, commissions, and~~  
23 ~~councils, all department directors, and all other state employees must be reimbursed as follows:~~

24 ~~—(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and~~

1    ~~—(ii) \$155 per night for lodging.~~

2    ~~—(b) for meals and lodging at the applicable meal or lodging rate for the foreign country and~~  
3    ~~location involved as published by the United States department of state.~~ All claims for meal and  
4    lodging reimbursement allowed under this subsection (4) must be documented by an appropriate  
5    receipt.

6       (5) When other than commercial, nonreceiptable lodging facilities are used by a state public  
7    official or employee while conducting official state public business in a travel status, the amount  
8    of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay  
9    in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight  
10   accommodations are provided at the expense of a government entity, reimbursement may not be  
11   claimed for lodging.

12       (6) The actual cost of reasonable transportation expenses and other necessary business  
13   expenses incurred by a state public official or employee while in an official travel status is  
14   subject to reimbursement.

15       (7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

16       (8) The department of administration shall establish policies necessary to effectively  
17   administer this section for state government.

18       (9) All commercial air travel must be by the least expensive class service available.

19       (10) When the actual cost of meals exceeds the maximum standard allowed pursuant to  
20   subsection (1), the department of administration may authorize the actual cost of meals for  
21   firefighters.

22       (11) For the purposes of implementing subsection (10), the following definitions apply:

23       (a) "Firefighter" means a firefighter who is employed by the department of natural resources  
24   and conservation and who is directly involved in the suppression of a wildfire in Montana.

1 (b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming  
2 vegetative fuels."

3 (12) For purposes of this section "public" means officers, employees and agents of the state or  
4 local government entities as defined in 2-7-501(7)(b) MCA

5 NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1,  
6 2019.

7 - END -

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<b>Current Law - Meals, lodging, and transportation of persons in state service.</b>				
Current Meal Allowance 2-18-501	Total	Breakfast	Lunch	Dinner
In State 2-18-501(1)	\$23	\$5	\$6	\$12
Out of state 2-18-501(2) 2-18-501(3)		Prescribed Maximum Federal Rate		
		DOA - Designated locations at Actual Cost		
Foreign Country 2-18-501(4)	\$36	\$7	\$11	\$18

<b>House Bill 341 - Meals, lodging, and transportation of persons in public service.</b>				
IN STATE TRAVEL	Total	Breakfast	Lunch	Dinner
All Locations w/o specific rates (Standard Rate)	\$46	\$11	\$12	\$23
<b>Maximum rates for specific locations (NOT included in HB 341 For Demonstration and Example Purposes ONLY</b>				
Gallatin	\$49	\$12	\$13	\$24
Silver Bow	\$54	\$13	\$15	\$26
Dawson/Richland	\$59	\$15	\$16	\$28
Lewis and Clark	\$64	\$16	\$17	\$31
Missoula/Lake/Flathead	\$69	\$17	\$18	\$34

<b>Current Law - Meals, lodging, and transportation of persons in state service.</b>				
Current Meal Allowance 2-18-501	Total	Breakfast	Lunch	Dinner
In State 2-18-501(1)	\$23	\$5	\$6	\$12
Out of state 2-18-501(2) 2-18-501(3)		Prescribed Maximum Federal Rate		
		DOA - Designated locations at Actual Cost		
Foreign Country 2-18-501(4)	\$36	\$7	\$11	\$18

<b>House Bill 341 - Meals, lodging, and transportation of persons in public service.</b>				
IN STATE TRAVEL	Total	Breakfast	Lunch	Dinner
All Locations w/o specific rates (Standard Rate)	\$46	\$11	\$12	\$23
In State	\$23	\$5	\$6	\$12
Change	\$23	\$6	\$6	\$11

<b>In State - Standard Federal Rate at Various Percentages Rounded to Closest Dollar</b>				
50%	\$24	\$6	\$6	\$12
60%	\$28	\$7	\$7	\$14

70%	\$32	\$8	\$8	\$16
80%	\$37	\$9	\$10	\$18
90%	\$42	\$10	\$11	\$21
100%	\$46	\$11	\$12	\$23

<b>House Bill 341 - Meals, lodging, and transportation of persons in public service.</b>				
<b>OUT of STATE TRAVEL Example Locations</b>	<b>Total</b>	<b>Breakfast</b>	<b>Lunch</b>	<b>Dinner</b>
Salt Lake	\$54	\$13	\$15	\$26
Denver	\$64	\$16	\$17	\$31
Washington DC	\$64	\$16	\$17	\$31
Fargo	\$46	\$11	\$12	\$23
Williston	\$64	\$16	\$17	\$31
Portland	\$59	\$15	\$16	\$28
Seattle	\$69	\$17	\$18	\$34
Spokane	\$59	\$15	\$16	\$28