

# LEGISLATOR COMPENSATION AND REIMBURSEMENT

Prepared for the Legislative Council

by Susan Byorth Fox, Executive Director, Legislative Services Division

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## ISSUES, BACKGROUND, AND OPTIONS

In its strategic planning session, the Legislative Council identified a potential increase in legislator pay or stipends as an agenda item. Questions have also been raised about legislator claims for reimbursement and what is allowed, etc. This document provides information on recent and past legislative attempts to change compensation or reimbursement, options, and the laws and policies that guide legislator compensation and reimbursement.

### Legislation

The legislature did consider changes to legislator compensation and reimbursement during the 2007 session. House Bill No. 13 (Chapter 81, L. 2007) changed the language for legislator salary because of the change to a broadband system for state employees. However, the amount was equivalent to the past system and did not substantively change, and neither did the process by which the amount is determined.

House Bill No. 462 (Chapter 487, L. 2007) providing for constituency accounts was passed in 2007. It allows the creation of constituency accounts for constituent services. However, it prohibits use for personal benefit defined as a direct or indirect benefit to a candidate or member of a candidate's family. The Commissioner of Political Practices will be adopting rules regarding constituency accounts but has issued interim guidance. This guidance raises the issue of attendance at conferences for legislative work and the acceptance of scholarships and plane fare. The Commissioner will be defining the activities that fall within "constituent services" and it would not be surprising if conference travel was not considered a constituent service. However, the Commissioner also makes a reference to the gift ban under section 2-2-102(3), MCA. A legal opinion rendered by the legislature's chief counsel and current practice have considered payment of travel expenses for a legislator to an out-of-state conference to be exempt as an educational activity. The Council may wish to monitor the Commissioner's rulemaking process in consideration of any changes regarding legislator compensation or reimbursement.

Senator Gallus sponsored Senate Bill No. 509, which included a section on legislator reimbursement.

**Legislator interim expense reimbursement account.** (1) There is a legislator interim expense reimbursement account in the state special revenue fund. Money in the account may be used to reimburse legislators for education, communication, or travel expenses incurred in representing constituents during the interim.

(2) (a) Subject to subsection (2)(b), a representative may be reimbursed

for up to \$2,000 of expenses during an interim and a senator may be reimbursed for up to \$4,000 during an interim.

(b) A legislator may not be reimbursed from the account provided for in subsection (1) for expenses incurred during a regular session, special session, or within 1 month of a primary or general election at which the legislator is a candidate.

(3) A legislator is responsible for maintaining expense records and submitting receipts for reimbursable costs.

The legislation was tabled in the house state administration committee after it had been passed in an amended form by the senate. The amendments reduced the amount to \$1,500 for a representative and \$2,500 for a senator, and the prohibition for use was amended to within 60 days of a primary or general election.

### Options

The Council may wish to consider changes to legislator compensation or reimbursement. Unless applied specifically to legislators, changes to reimbursement *for per diem rates* may affect all state employees' reimbursement. Other forms of reimbursement could include additional pay for presiding officers or leaders or stipends for particular goods or services, such as the technology allowance, phone allowance, etc. It may be possible to put these changes into effect for the 2009 session. Changes to salary could be made in statute, but those changes would not apply until the 2011 session in accordance with the constitution.

*Montana Constitution. Article V, section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.*

### **SALARY**

For 2007 and 2008, Montana legislators are paid a salary of \$82.67 for each legislative day. The amount is recalculated every 2 years. A "legislative day" is referred to in statute as: "those days during which the legislature is in session" (5-2-301, MCA) or "each 24-hour period of time (from midnight to midnight), or portion of a 24-hour period, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, the legislator may not be compensated for the additional day" (5-2-302, MCA).

Salary During Session: Legislators are entitled to a salary commensurate to that of the daily rate for an employee earning \$10.33 an hour when the regular session of the legislature in which they serve is convened under section 5-2-103, MCA, for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional \$5 a day in salary for those days during which the legislature is in session. Legislators may serve for

no salary (5-2-301, MCA).

**Salary During Interim:** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to a salary equal to one full day's pay at the rate described in section 5-2-301, MCA, for each 24-hour period of time (from midnight to midnight), or portion of a 24-hour period, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, the legislator may not be compensated for the additional day (5-2-302, MCA).

## **PER DIEM**

### **Per Diem During Session:**

**Lodging and Meals** - After November 15, and prior to December 15 of each even-numbered year, the *department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho*. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to section 15-6-134, MCA, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under section 5-2-103, MCA.

**Mileage** - (1) Legislators are entitled to a mileage allowance as provided in section 2-18-503, MCA, for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(2) In addition to the mileage allowance provided for above, legislators, upon *submittal of an appropriate claim* for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session;  
and

(b) additional round trips as authorized by the legislature during special session.

(3) Legislators are not entitled to any additional mileage allowance under subsection (1) for a special session if it is convened within 7 days of a regular session (5-2-301, MCA).

**Per Diem During Interim:** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in section 2-18-503, MCA;

(2) expenses as provided in sections 2-18-501 and 2-18-502, MCA (5-2-302, MCA).

These sections referred to in subsection (2) (and included in the appendices in their entirety) contain specific timeframes for what is considered "travel time." This may be an area that needs to be addressed in some manner with legislator reimbursement to the extent that we may need to provide more information to the legislators or solicit more information from them in order to comply with the law and reimburse legislators fairly.

## **STIPENDS**

During the 2007 legislature, legislators were able to access a "technology allowance" of up to \$1,500 through an appropriation in the feed bill. Parameters placed on the stipend were (1) that qualifying purchases included a computer and other hardware, software and operating systems, or an internet allowance and warranty and that (2) the equipment would be used for the conduct of legislative business. A total of 43 senators (86%) and 81 house members (81%) applied for and received the allowance for a total of \$173,742. An appropriation of \$75,000 was also included in the Legislative Services Division budget for the next session. This was developed as a stipend so that the legislator made the purchase and owned the computer and is responsible for maintenance, and also any tax ramifications were left up to the legislators. The technology allowance may provide a model for other forms of stipend.

## **GUIDANCE IN LAW OR POLICY**

Sections 2-18-501 through 2-18-503, MCA, are the same statutes that apply to all state employees. (See appendices for sections in full. They also contain specific provisions for legislators that are summarized on the back of the Statement of Expense for Montana Legislators:

### Summary of Statutes Governing Travel Reimbursement

Section **2-18-501** governs the reimbursement to persons in state service for the cost of meals, lodging and transportation. It establishes the limits listed on the front of the form and authorizes reimbursement of reasonable transportation costs and other necessary business expenses subject to proper documentation. All commercial air travel must be by the least expensive class service available. Tips are not reimbursable expenses. (NOTE: This is the statute that specifies specific amounts for lodging and meals and also provides for actual cost, not to exceed the prescribed maximum standard federal rate per day for the location plus taxes, and that allows the department of administration to adopt policies. This is the statute that contains the amount for the nonreceiptable lodging facilities at \$12.)

Section **2-18-502** governs computation of meal allowance. Meal reimbursements are limited to the amounts shown on the form. A legislator attending an interim meeting is entitled to a midday meal allowance for that day regardless of the proximity of the meeting to home. Otherwise, members should be in a travel status to claim meals.

Section **2-18-503** governs the mileage allowance. Reimbursement is made for miles traveled in the performance of official duties. The rate is based on the current mileage

allotment, as allowed by the IRS, for the first 1,000 miles and 3 cents per mile less for all miles thereafter traveled within a given calendar month. Members who use their own airplanes in the performance of official duties are entitled to collect mileage only for the nautical air miles actually traveled, at a rate of twice the mileage allotment for automobile travel.

The statutes discussed above authorize the Department of Administration to adopt rules governing travel expenses. Those rules are found in Title 2, Chapter 4, Sub-Chapter 1, Administrative Rules of Montana.

Travel authorizations and claims may be reviewed by appropriate legislative leaders and committee chairmen.

#### Guidelines for Evaluating Reasonableness of Claims

These guidelines are used to determine if time spent away from home reasonably falls within the context of authorized legislative business:

(1) Overnight lodging is reasonable when the member would be required to leave home earlier than 6:30 a.m. or arrive home later than 9:30 p.m. in order to have attended all of the meeting or have conducted all of the authorized legislative business. To compute whether this would be required, an average travel speed (overall, including incidental stops) of 50 miles an hour is used.

(2) A legislator is entitled to a day's salary when necessarily away from home for authorized legislative business. A member is considered necessarily away from home on the day of a meeting or other authorized legislative activity and on any other day when travel qualified under (1) above is required.

(3) A meal falling within reasonable travel times may be claimed.

The following mitigating factors will be applied in interpreting these guidelines:

(1) The welfare of the legislator will be considered. Weather and health issues are key considerations.

(2) If a member flies instead of drives, variations are considered.

(3) At times, members may choose a more expensive mode of travel if schedule conflicts make it otherwise impossible to conduct authorized legislative business. These cases will be considered in establishing reasonableness.

#### **LEGISLATIVE COUNCIL RULE:**

C-10. The Executive Director shall administer the fiscal affairs of the Senate, House, and Legislative Services Division in accordance with budgets and allocations adopted by the responsible approving authority. The Executive Director shall provide financial reports and information to the approving authorities from time to time showing expenditures and expenditure plans as requested by the approving authority or a representative of the approving authority. Claims against the Senate, House, and Legislative Services Division appropriations for legislator travel reimbursement are subject to approval based upon legal eligibility and *conformance with guidelines adopted by the Legislative Council*. (Formerly RULE VIII; amended 10/5/96; amended 9/22/03). (Note: No other guidelines adopted by the Legislative Council can be found.)

## **RULES, PROCEDURES, AND GUIDELINES FOR INTERIM COMMITTEES (last amended 1/16/2004):**

### IX. Travel and Expense Reimbursement

A. The chairman or chairwoman is responsible for authorizing out-of-state travel by committee members that will result in a request for reimbursement from the committee's budget.

B. Committee members shall receive salary and be reimbursed for meals, lodging, mileage, and miscellaneous expenses as provided by law and *the travel policy established by the Legislative Council*. (Note: No other travel policy adopted by the Legislative Council can be found.)

## **COMPARISON TO OTHER STATES**

Salary and per diem rates for other states with biennial legislatures that are more traditional, citizen legislatures like Montana are North Dakota (blue)<sup>1</sup> and Nevada (blue lite):

- North Dakota - \$125 each calendar day (session) and a per diem of up to \$900/month (vouchered).
- Nevada - \$137.90 each day and the federal rate for the capitol area (unvouchered). Lodging will be paid HUD single-room rate for Carson City area for each month of session.

Salary and per diem rates for other states that are more traditional, citizen legislatures (blue) that meet annually:

- New Hampshire \$200/two-year term. No per diem.
- South Dakota - \$12,000/two-year term. Per diem is \$110/legislative day (unvouchered) set by the legislature.
- Utah - \$130/calendar day and \$90/day (unvouchered) lodging for each calendar day tied to the federal rate and \$54/day (unvouchered) for meals (\$144 total).
- Wyoming - \$150/legislative day and \$85 day vouchered includes travel days for those outside Cheyenne.

Approximately 35 other states provide a phone card or phone allowance ranging from \$55 a month in Minnesota to \$2,800 in Nevada for each regular session. There is a \$2,275 allowance in North Carolina for postage, stationery, and telephone. South Dakota gives \$600 for 6 months for legislators and \$900 for 6 months for leadership. Montana provides phone cards for leadership positions only. Some other states provide access to state automobiles or credit cards. Montana can provide access to state automobiles, yet most are housed in Helena and it is not really a viable solution.

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<sup>1</sup>The categorization and designations of "blue" and "blue lite" states are from the National Conference of State Legislatures.

**Table 1. Average Job Time, Compensation and Staff Size by Category of Legislature**

<b>1. Category of Legislature</b>	<b>Time on the Job (1)</b>	<b>Compensation (2)</b>	<b>Staff per Member (3)</b>
Red	80%	\$68,599	8.9
White	70%	\$35,326	3.1
Blue	54%	\$15,984	1.2

**Notes:**

1. Estimated proportion of a full-time job spent on legislative work including time in session, constituent service, interim committee work, and election campaigns.
2. Estimated annual compensation of an average legislator including salary, per diem, and any other unvouchered expense payments.
3. Ratio of total legislative staff to number of legislators.

*Source: NCSL, 2004*

## APPENDICES

### MONTANA CODE ANNOTATED

**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. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

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

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

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) The department 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 lodging when the actual cost exceeds the maximum established in subsection (1) or (2)(a).

(4) For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.

(b) All claims for lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

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

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

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



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

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

**2-18-502. Computation of meal allowance.** (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

(a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

**2-18-503. Mileage -- allowance.** (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue

service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate for an employee earning \$10.33 an hour when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session;  
and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5)

for a special session if it is convened within 7 days of a regular session.

**5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

- (1) a mileage allowance as provided in 2-18-503;
- (2) expenses as provided in 2-18-501 and 2-18-502; and
- (3) a salary equal to one full day's pay at the rate described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion of a 24-hour period, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, the legislator may not be compensated for the additional day.

### **MONTANA OPERATIONAL MANUAL POLICY FOR MILEAGE**

Reimbursement for personal car mileage driven in connection with State business is increased to 50.5 cents per mile as of **January 1, 2008**. In order to claim reimbursement at 50.5 cents, the State employee must qualify according to Section 1-0310.30 of the Employee Travel Policy in the Montana Operations Manual. An eligible employee that drives in excess of 1000 miles in a month will be reimbursed at 47.5 cents per mile for the remainder of that month.

The reimbursement rate for private airplane usage will be \$1.01 per nautical mile (see MCA 2-18-503(4)) effective **January 1, 2008**.

NOTE: The following section does not apply to legislators, but applies to state employees, including legislative staff: If qualification is not met according to the above section, **and** approval is obtained from the Director of your Department to use your personal car, the new rate is **24.5** cents per mile (as opposed to the old rate of 23.5 cents per mile). The effective date for this new rate is **January 1, 2008**.

### **DEPARTMENT OF ADMINISTRATION LODGING RATE INCREASE: September 7, 2007 Memo**

As of October 1, 2007 the standard federal lodging rate will increase to \$70.00 a night.<sup>2</sup> This rate will be effective for all cities and counties within Montana except for the high cost areas listed on the federal GSA website and presented in the table below:

<b>Primary Destination</b>	<b>County</b>	<b>Maximum Lodging</b>
Big Sky / West Yellowstone (October 1 - June 30)	Gallatin	\$76

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<sup>2</sup>See 2-18-501(1) through (3) for rate in statute (\$35) and authority to adopt a different rate.

Big Sky / West Yellowstone (July 1 - August 31)	Gallatin	\$101
Big Sky / West Yellowstone (September 1 - September 30)	Gallatin	\$76
Butte	Silver Bow	\$72
Helena	Lewis and Clark	\$73
Missoula / Polson / Kalispell (October 1 - May 31)	Missoula / Lake / Flathead	\$78
Missoula / Polson / Kalispell (June 1 - August 31)	Missoula / Lake / Flathead	\$96
Missoula / Polson / Kalispell (September 1 - September 30)	Missoula / Lake / Flathead	\$78

This rate also applies to out-of-state lodging with the high cost areas available on the federal GSA website. Please visit the Department of Administration’s website [www.doa.mt.gov](http://www.doa.mt.gov), and click on the “State Travel Information” then click on the “Federal Lodging Rate Guidelines” and then click on the state you will be visiting. Or go directly to the GSA website

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