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HOUSE BILL 211

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Paul A. Pacheco

AN ACT

RELATING TO PENSIONS; ENACTING THE LINE OF DUTY INJURY ACT;  
ENCOURAGING AND PROVIDING A PROCESS THROUGH WHICH A PUBLIC  
SAFETY EMPLOYEE INJURED IN THE LINE OF DUTY WHILE PERFORMING A  
NON-ADMINISTRATIVE PUBLIC SAFETY FUNCTION OR DUTY MAY BE  
GRANTED DUTY INJURY LEAVE AND CONTINUE TO ACCRUE SERVICE CREDIT  
FOR THE DURATION OF THE DUTY INJURY LEAVE.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Line of Duty Injury Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the  
Line of Duty Injury Act is to provide guidelines for, and  
encourage state, local and municipal public safety employers to  
develop, policies and procedures to grant duty injury leave to  
public safety employees who, while on duty and as a result of

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1 performing non-administrative public safety functions or  
2 duties, sustain a serious bodily injury or disfigurement that  
3 is a direct result of an aggressive action taken toward the  
4 public safety employee by another person or was sustained in an  
5 inherently dangerous situation or location and which injury  
6 renders the public safety employee absent from work on injury-  
7 related department leave or workers' compensation leave.

8 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
9 Line of Duty Injury Act:

10 A. "committee" means the duty injury review  
11 committee for a department;

12 B. "department" means any affiliated public  
13 employer as defined pursuant to the Public Employees Retirement  
14 Act that employs a public safety employee, including:

15 (1) a police, sheriff's or fire department  
16 administered by a county or a municipality;

17 (2) the corrections department;

18 (3) the children, youth and families  
19 department;

20 (4) the department of public safety; and

21 (5) the department of game and fish;

22 C. "department chief" means the head of a  
23 department or the department chief's designee;

24 D. "duty injury" means a serious bodily injury or  
25 disfigurement, as determined by a department chief, that is

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1 sustained by a public safety employee while the employee is on  
2 duty and is the direct result of an aggressive action taken  
3 toward the public safety employee by another person or was  
4 sustained while the public safety function or duty performed by  
5 the employee occurred in an inherently dangerous situation;

6 E. "duty injury leave" means paid leave, granted at  
7 the discretion of a department chief, and awarded to a public  
8 safety employee who has sustained a duty injury;

9 F. "enact" means the action by a governing body to  
10 pass a resolution or otherwise legally approve a policy or  
11 procedure for a department and, through such action by the  
12 governing body, obligates the department;

13 G. "governing body" means a body authorized to  
14 enact policies and procedures on behalf of the state, a county  
15 or a municipality and includes a city council or city  
16 commission of a city, the board of trustees of a town or  
17 village, the council of an incorporated county and the board of  
18 county commissioners of an H class county; and

19 H. "public safety employee" means a full-time and  
20 salaried employee of a department who is employed as:

21 (1) a commissioned or certified law  
22 enforcement officer;

23 (2) a firefighter;

24 (3) an adult correctional officer;

25 (4) a juvenile correctional officer; or

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1 (5) a municipal detention officer.

2 SECTION 4. [NEW MATERIAL] AUTHORITY TO IMPLEMENT DUTY  
3 INJURY LEAVE POLICIES.--A governing body may enact policies  
4 under which a department may grant duty injury leave to public  
5 safety employees who sustain a duty injury.

6 SECTION 5. [NEW MATERIAL] POLICIES AND PROCEDURES  
7 CRITERIA.--

8 A. Once policies to grant duty injury leave are  
9 enacted by the governing body of a department, if such leave is  
10 approved by the department chief, a public safety employee may  
11 be granted duty injury leave for a duty injury. At the  
12 department chief's discretion, duty injury leave may be awarded  
13 to a public safety employee for a duty injury sustained before  
14 the effective date of the provisions of the Line of Duty Injury  
15 Act; provided, however, that any duty injury leave awarded  
16 shall be applicable only to leave dates occurring on or after  
17 July 1, 2014.

18 B. A governing body shall direct the applicable  
19 department to establish procedures, including duty injury leave  
20 application and duty injury leave granting procedures  
21 consistent with the Line of Duty Injury Act and in compliance  
22 with the department's applicable workers' compensation  
23 administration policy. At a minimum, the procedures shall  
24 establish that:

25 (1) the award of duty injury leave shall

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1 replace or supplement the public safety employee's workers'  
2 compensation income benefit;

3 (2) the maximum allowable hours of duty injury  
4 leave awarded to a public safety employee shall not exceed one  
5 thousand five hundred hours in any twelve-month period or  
6 thirty-two hours in any seven-day period;

7 (3) if a physician provides the department a  
8 signed release indicating that it is medically appropriate for  
9 a public safety employee awarded duty injury leave to return to  
10 work in a limited capacity, the department chief may require  
11 the employee to perform modified or limited-duty assignments.  
12 Refusal by the employee to accept the required modified or  
13 limited-duty assignment may result in termination of duty  
14 injury leave;

15 (4) leave taken by a public safety employee  
16 who returns to work on a modified or limited-duty assignment  
17 and who uses leave for a purpose unrelated to the sustained  
18 duty injury shall be subject to the department's leave policies  
19 and procedures in effect for all such non-duty injury leave;

20 (5) upon a public safety employee's return to  
21 work after medical release to full duty, any unused duty injury  
22 leave awarded shall be forfeited;

23 (6) there shall be established a reasonable  
24 period of time within which the department chief shall be  
25 required to respond to an application for duty injury leave,

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1 and such period of time shall not exceed twenty-eight calendar  
2 days;

3 (7) within the period of time established  
4 pursuant to Paragraph (6) of this subsection, a public safety  
5 employee who applies for duty injury leave shall be notified in  
6 writing of the final decision of the department chief; and

7 (8) a review process through which a public  
8 safety employee whose application for duty injury leave is  
9 denied by the department chief may appeal the denial. The  
10 approval or denial of an application shall be in writing and  
11 shall include instructions and an explanation of the procedure  
12 and time line for appeal.

13 SECTION 6. [NEW MATERIAL] DUTY INJURY REVIEW COMMITTEE.--

14 A. A department administering a duty injury leave  
15 policy pursuant to the provisions of the Line of Duty Injury  
16 Act shall establish a duty injury review committee. The  
17 committee shall consist of an odd number of members who are  
18 appointed by the department chief. Member vacancies shall be  
19 filled by appointments made by the department chief.

20 B. The committee shall meet on a regular basis as  
21 necessary to timely review the eligibility of a public safety  
22 employee's application for duty injury leave.

23 C. On a case-by-case basis, the committee shall  
24 review duty injury applications and consider pertinent  
25 information to determine if an injury sustained by a public

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1 safety employee qualifies as a duty injury. Such review shall  
2 be consistent with the eligibility procedures provided pursuant  
3 to Section 5 of the Line of Duty Injury Act. If the committee  
4 determines that a public safety employee's sustained injury is  
5 a duty injury, prior to making any recommendation to the  
6 department chief, the committee shall also consider whether, in  
7 the employee's performance of duties in which the injury was  
8 sustained, the employee:

9 (1) may have caused the injury by violating  
10 any law, policy or procedure; or

11 (2) may be guilty of misconduct directly  
12 associated with the injury.

13 D. Any determination made by the committee pursuant  
14 to Paragraph (1) or (2) of Subsection C of this section shall  
15 not be considered as evidence in any administrative or legal  
16 proceeding.

17 E. After reviewing the application for duty injury  
18 leave, the committee shall provide a written recommendation for  
19 approval or denial of the application to the department chief.

20 SECTION 7. [NEW MATERIAL] APPROVAL OR DENIAL BY  
21 DEPARTMENT CHIEF.--The department chief shall approve or deny  
22 each application for duty injury leave. In deciding whether to  
23 approve or deny the application, the department chief shall  
24 take into consideration any recommendations of the committee  
25 along with any other information that, in the department

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1 chief's discretion, is deemed pertinent to the determination.

2 SECTION 8. [NEW MATERIAL] FALSE CLAIMS FOR OR MISUSE OF  
3 DUTY INJURY LEAVE APPLICATION.--Public safety employees who  
4 apply for duty injury leave and who are found to have falsely  
5 claimed a duty injury or to have misused duty injury leave may  
6 be subject to disciplinary action pursuant to department  
7 policy.

8 SECTION 9. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2014.

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