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HOUSE BILL 31

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Paul A. Pacheco and Daniel A. Ivey-Soto

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  
NONADMINISTRATIVE 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 for granting duty injury leave  
to public safety employees who, while on duty and as a result

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1 of performing nonadministrative 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 that was sustained  
5 in an inherently dangerous situation or location and which  
6 injury renders the public safety employee absent from work on  
7 injury-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 employee by another person or that was sustained by  
4 a public safety employee while performing a public safety  
5 function or duty 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;

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- 1 (5) an adult probation or parole officer;
- 2 (6) a juvenile probation or parole officer;
- 3 (7) an emergency medical technician;
- 4 (8) a children, youth and families
- 5 investigator; or
- 6 (9) a detention officer.

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

11 SECTION 5. [NEW MATERIAL] POLICIES AND PROCEDURES  
12 CRITERIA.--

13 A. Once policies to grant duty injury leave are  
14 enacted by the governing body of a department, if such leave is  
15 approved by the department chief, a public safety employee may  
16 be granted duty injury leave for a duty injury. At the  
17 department chief's discretion, duty injury leave may be awarded  
18 to a public safety employee for a duty injury sustained before  
19 the effective date of the provisions of the Line of Duty Injury  
20 Act; provided, however, that any duty injury leave awarded  
21 shall be applicable only to leave dates occurring on or after  
22 July 1, 2015.

23 B. A governing body shall direct the applicable  
24 department to establish procedures, including duty injury leave  
25 application and duty injury leave granting procedures

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1 consistent with the Line of Duty Injury Act and in compliance  
2 with the department's applicable workers' compensation  
3 administration policy. At a minimum, the procedures shall  
4 establish:

5 (1) that the award of duty injury leave shall  
6 replace or supplement the public safety employee's workers'  
7 compensation income benefit;

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

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

20 (4) that leave taken by a public safety  
21 employee who returns to work on a modified or limited-duty  
22 assignment and who uses leave for a purpose unrelated to the  
23 sustained duty injury shall be subject to the department's  
24 leave policies and procedures in effect for all such non-duty  
25 injury leave;

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

4 (6) a reasonable period of time within which  
5 the department chief shall be required to respond to an  
6 application for duty injury leave, and such period of time  
7 shall not exceed twenty-eight calendar days;

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

13 (8) a review process through which a public  
14 safety employee whose application for duty injury leave is  
15 denied by the department chief may appeal the denial. The  
16 approval or denial of an application shall be in writing and  
17 shall include instructions and an explanation of the procedure  
18 and time line for appeal.

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

20 A. A department administering a duty injury leave  
21 policy pursuant to the provisions of the Line of Duty Injury  
22 Act shall establish a duty injury review committee. The  
23 committee shall consist of an odd number of members who are  
24 appointed by the department chief. Member vacancies shall be  
25 filled by appointments made by the department chief.

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

4           C. On a case-by-case basis, the committee shall  
5 review duty injury applications and consider pertinent  
6 information to determine if an injury sustained by a public  
7 safety employee qualifies as a duty injury. Such review shall  
8 be consistent with the eligibility procedures provided pursuant  
9 to Section 5 of the Line of Duty Injury Act. If the committee  
10 determines that a public safety employee's sustained injury is  
11 a duty injury, prior to making any recommendation to the  
12 department chief, the committee shall also consider whether, in  
13 the employee's performance of duties in which the injury was  
14 sustained, the employee:

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

17                   (2) may be guilty of misconduct directly  
18 associated with the injury.

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

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

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