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## FISCAL IMPACT REPORT

**SPONSOR** Pacheco **ORIGINAL DATE** 02/04/14  
**LAST UPDATED** 02/07/14 **HB** 211/aHLC

**SHORT TITLE** Line of Duty Injury Act **SB** \_\_\_\_\_

**ANALYST** Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Impact			Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Employees Retirement Association (PERA)  
 Department of Game & Fish (DGF)  
 Children, Youth & Families Department (CYFD)  
 Department of Public Safety (DPS)  
 NM Municipal League (NMML)  
 State Personnel Office (SPO)

### SUMMARY

#### Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to House Bill 211 adds to the definition of “public safety employee” an adult or juvenile probation or parole officer, an emergency medical technician and a CYFD investigator.

#### Synopsis of Original Bill

House Bill 211 creates the Line of Duty Injury Act to provide guidance to public employers that want to grant “duty injury leave” to their public safety officers when injured performing non-administrative public safety functions. The duty injury leave would allow an officer to continue to accrue service credit towards their pension benefits while on leave.

The bill applies to:

- County and Municipal Police, Sheriff’s and Fire Departments, the New Mexico Corrections Department, the Children, Youth & Families Department, the Department of Public Safety, and the Department of Game & Fish.

## House Bill 211/aHLC Page 2

- Full-time and salaried commissioned and certified law enforcement officers, firefighters, adult and juvenile correctional officers, and municipal detention officers.

The bill sets minimum procedures for granting duty injury leave, including:

- compliance with workers' compensation policies;
- leave not to exceed 1,500 hours in a 12-month period or 32 hours in a 7-day period;
- modified or limited-duty assignments upon medical release;
- forfeiture of unused duty injury leave after medical release to full duty;
- establishment of a duty injury application review committee - including the requirement to consider whether the injury was non-duty-related or due to misconduct;
- twenty-eight day time frame to respond to an application for duty injury leave;
- appeal process for denied applications; and
- disciplinary action for false claims or misuse of duty injury leave.

### **FISCAL IMPLICATIONS**

The bill places an unknown financial burden on employers as it is unclear whether the duty injury leave is to be paid leave or unpaid leave with the guarantee that the position will be held open while the employee is on duty injury leave.

The bill creates the ability for a public safety employee to use duty injury leave prior to requiring the use of annual and sick leave. This could result in higher unused sick or annual leave pay-outs when they leave employment or retire than if they had not had a duty injury leave benefit.

### **SIGNIFICANT ISSUES**

HB 211 provides additional economic safeguards for public safety employees who have sustained serious bodily injuries during the line of duty. The bill will allow the use of duty injury leave first instead of the more typical workers' compensation and paid or unpaid employer leave.

Supplemental compensation in addition to workers' compensation benefits has been known to create a disincentive to return to work for some.

With the discretion left to the department chief, this legislation could lead to unfair application of the benefit or disparity in the application of the benefit between public safety employers.

The DPS is the largest employer and has already developed its own duty injury leave program that could be a model for others.

### **PERFORMANCE IMPLCIATIONS**

SPO noted that the Collective Bargaining Agreement (CBA) between the State of New Mexico, Motor Transportation Employee Association, and the Fraternal Order of Police contains a provision for "Administrative Leave for Duty Injury," that conflicts with provisions of HB211.

Specifically, the CBA:

- limits the types of injuries covered to injuries sustained as a result of an aggravated battery, serious car accident, or mechanical failure during a vehicle safety inspection;

- establishes a Duty Injury Review Board;
- provides eligible employees up to 40 hours of administrative leave during the first week of the injury that reverts back to the department if the employee is out for four full weeks and is covered by the Workers' Compensation indemnity for that first week;
- provides employees who are going to have to be off of work for longer than a week with 13.5 hours per week of paid administrative leave for the 2<sup>nd</sup> – 4<sup>th</sup> weeks of the injury; and
- provides that the maximum paid duty injury leave is 77.8 hours.

**TECHNICAL ISSUES**

The bill includes in the definition of “duty injury” a serious bodily injury or disfigurement as determined by a department chief not an impartial physician or primary care provider.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Public safety employees who have exhausted their sick and annual leave and are unable to work at least 50 percent due to a duty-related injury will continue to not accrue PERA service credit.

AHO/svb