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### Memorandum

VIA E-MAIL

To: Napoleon Haney  
From: John B. Murphey  
Date: November 1, 2021  
Re: Proposed PSEBA Ordinance

This memo will provide the Board with background on the “Public Safety Employees Benefits Act,” which everybody refers to as PSEBA, and our recommendation that the Village adopt a PSEBA adjudication ordinance.

PSEBA was enacted in the wake of the September 11<sup>th</sup> terrorist attacks. Prior to PSEBA, police officers receiving a line-of-duty disability could continue to be covered on the employing municipality’s health insurance, provided the employee pays 100% of the Village’s prevailing group health insurance premium costs.

PSEBA changes all of that in certain circumstances. Below please find the relevant excerpts from PSEBA:

(a) An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who, on or after the effective date of this Act suffers a **catastrophic injury** or is killed in the line of duty shall pay the entire premium of the employer’s health insurance plan for the injured employee, the injured employee’s spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or the child is a full-time or part-time student and is dependent for support.

(b) In order for the law enforcement, correctional or correctional probation officer, firefighter, spouse, or dependent children to be eligible for insurance coverage under this Act, the injury or death must have occurred as the result of the officer's response to fresh pursuit, the officer or firefighter's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act. Nothing in this Section shall be construed to limit health insurance coverage or pension benefits for which the officer, firefighter, spouse, or dependent children may otherwise be eligible...

Under PSEBA, if a police officer suffers a line-of-duty disability performing certain specific police activities, that officer is entitled to free health insurance both on an individual and family basis.

### **The "Catastrophic Injury" Requirement.**

The first requirement for a police officer to be eligible for a lifetime free health insurance PSEBA benefit is that the officer has suffered a "catastrophic injury" in the line of duty. The law does not define "catastrophic," so defining that term was left to the case law. Some earlier cases interpreted catastrophic to mean that the injury had to be so bad as to leave the officer disabled from performing any gainful employment.

Ultimately, the Supreme Court of Illinois disagreed and adopted an approach linking the definition of catastrophic to the decision of the local Pension Board on the officer's disability claim. When a police officer is injured in the line of duty and it appears that that officer is not going to come back, the officer will file a petition for a disability pension with his police Pension Board. If the officer suffers a line-of-duty injury, the officer receives a pension in the amount of 65% of salary. On the other hand, if the officer suffers a disabling injury not in the line of duty, then the pension benefit is only 50% of salary.

For purposes of PSEBA, if the Pension Board rules that the officer has suffered a disabling injury in the line of duty, then the officer has suffered a catastrophic injury for purposes of PSEBA. In other words:

**Line of Duty Injury = Catastrophic Injury**

## The Core Function Requirement.

The second prong of PSEBA is what I will call the “core function” requirement. Not all line-of-duty injuries are PSEBA-qualifying. An officer can suffer a line-of-duty disability injury by performing routine acts of duty – getting rear-ended while on routine patrol, being struck by a car while directing traffic. But in order to be PSEBA-eligible, an injury must have occurred while the officer was performing one of these core functions:

- The officer’s response to fresh pursuit.
- The officer’s response to what is reasonably believed to be an emergency.
- Responding to an unlawful act perpetrated by another.
- Investigating a criminal act.

The questions then become: Who makes the determination as to whether a catastrophic injury occurred while the officer was performing a routine function as opposed to a core function? What if the officer disagrees with the determination? Can he challenge the decision in court?

There is no provision in PSEBA setting forth a procedure which is to be followed to determine whether the disabling catastrophic injury occurred as a result of the officer performing one of the core functions outlined above. As a result, a number of municipalities have adopted ordinances setting forth a process for the municipality to determine PSEBA claims at the local level. You have the IML model. I am attaching the Hoffman Estates ordinance. Hoffman Estates was one of the first municipalities to adopt a PSEBA determination ordinance. If you go on the Hoffman Estates webpage it keeps track of the PSEBA employees along with the Village’s annual health insurance payment obligations to the PSEBA annuitants.

Please feel free to share this memo with the Board in connection with the staff recommendation. Incidentally, I successfully litigated a PSEBA case in the Illinois Supreme Court establishing the principle that PSEBA entitlement to free health insurance does not commence until such time as the Pension Board determines the catastrophic injury issue. Thus, if a police officer is in a municipality where the employee pays 20% of the health insurance premiums and it takes 2-3 years for the Pension Board to reach its decision, the officer is still obligated to pay the 20% premium share up to the date the Pension Board issues its final decision. *Nowak v. City of Country Club Hills*, attached.

JBM/sml  
Enclosure