



Agency Legislative Proposal - 2021 Session

Document Name: 093020_CTDOL_ConnOSHA

(If submitting electronically, please label with date, agency, and title of proposal – 092620_SDE_TechRevisions)

State Agency: Department of Labor

Liaison: Marisa Morello

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Lead agency division requesting this proposal: CONN-OSHA

Agency Analyst/Drafter of Proposal: Anne Rugens

Title of Proposal: AAC Volunteer Fire Departments and Ambulance Companies and the Definition of Employer Under the Connecticut Occupational Safety and Health Act

Statutory Reference: CGS § 31-367

Proposal Summary: This proposal incorporates the Department’s long-standing position and modifies the definition of “employer” in the Department of Labor’s Connecticut Occupational Safety and Health Act to specifically include “volunteer fire departments” and “volunteer ambulance companies.” This proposal is technical in nature and clarifies the Connecticut Department of Labor’s jurisdiction over volunteer fire departments and volunteer ambulance companies in the wake of Mayfield v. Goshen Volunteer Fire Company, Inc., 301 Conn. 739 (2011).

PROPOSAL BACKGROUND

◇ Reason for Proposal

Please consider the following, if applicable:

- (1) Have there been changes in federal/state/local laws and regulations that make this legislation necessary? **No**
- (2) Has this proposal or something similar been implemented in other states? If yes, what is the outcome(s)? Are other states considering something similar this year?
- (3) Have certain constituencies called for this action?
- (4) What would happen if this was not enacted in law this session? **CONN-OSHA would not be able to protect certain volunteer fire departments and volunteer ambulance companies.**

◇ Origin of Proposal

New Proposal

Resubmission



If this is a resubmission, please share:

- 1) **What was the reason this proposal did not pass, or if applicable, was not included in the Administration's package?** DOL first introduced this proposal in 2012. The Goshen First Selectman is opposed to this proposal and Goshen's legislative delegation worked against it. However, a series of bi-partisan negotiations with that delegation over the years achieved a compromise in 2015 which is represented in this proposed language.
- 2) **Have there been negotiations/discussions during or after the previous legislative session to improve this proposal?** This proposal has not been proposed by CT DOL since it died on the Senate Calendar in 2015.
- 3) **Who were the major stakeholders/advocates/legislators involved in the previous work on this legislation?** At the time Representative (now Senator) Craig Miner, Roberta Willis and Vince Candelora assisted in drafting a bi-partisan compromise. Senators Clark Chapin and Andrew Roraback were strongly opposed to this proposal but have since left the legislature. To this day, the Town of Goshen still remains opposed to this proposal.
- 4) **What was the last action taken during the past legislative session?** AAC Volunteer Fire Departments and Ambulance Companies and the Definition of Employer Under the Connecticut Occupational Safety Health Act (same as 2021 proposed language) was never raised by the Labor Committee because all concepts that were set to be raised on February 20th, 2020 meeting agenda died. Senator Craig Miner stated that he opposed the proposal despite having worked to draft this proposed compromise. CT DOL feels that that the concerning level of unchecked safety issues and deaths faced by CT's volunteer firefighters warrants further legislative pursuit of this proposal.

PROPOSAL IMPACT

◇ **AGENCIES AFFECTED** (please list for each affected agency)

Agency Name: N/A Agency Contact (name, title, phone): Date Contacted:
Approve of Proposal <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Talks Ongoing
Summary of Affected Agency's Comments
Will there need to be further negotiation? <input type="checkbox"/> YES <input type="checkbox"/> NO

◇ **FISCAL IMPACT** (please include the proposal section that causes the fiscal impact and the anticipated impact)

Municipal (please include any municipal mandate that can be found within legislation) No impact if OSHA statutes and regulations are followed.
State None
Federal



None

Additional notes on fiscal impact

◇ **POLICY and PROGRAMMATIC IMPACTS** *(Please specify the proposal section associated with the impact)*

CONN-OSHA enforces state occupational safety and health regulations as they apply to state and municipal employees. This proposal incorporates the Department's long-standing position and modifies the definition of "employer" in the Department of Labor's Connecticut Occupational Safety and Health Act to specifically include "volunteer fire departments" and "volunteer ambulance companies." Although this proposal is technical in nature in that it clarifies the Connecticut Department of Labor's jurisdiction over volunteer fire departments and volunteer ambulance companies in the wake of *Mayfield v. Goshen Volunteer Fire Company, Inc.*, 301 Conn. 739 (2011), it does have a major policy impact. Specifically, Federal OSHA has determined that it does not have jurisdiction over volunteer fire departments or volunteer ambulance companies because of the volunteer departments' affiliation with municipalities. Federal OSHA only has jurisdiction over private entities and does not have jurisdiction over volunteer fire departments or volunteer ambulance companies because of its determination that there is no employer/employee relationship. Without passage of this legislation, certain volunteer fire departments and volunteer ambulance companies would not be protected under either state or federal law. Therefore, leaving the safety and health of many volunteer firefighters and ambulance workers unprotected.

◇ **EVIDENCE BASE**

What data will be used to track the impact of this proposal over time, and what measurable outcome do you anticipate? Is that data currently available or must it be developed? Please provide information on the measurement and evaluation plan. Where possible, those plans should include process and outcome components. Pew MacArthur Results First [evidence definitions](#) can help you to establish the evidence-base for your program and their [Clearinghouse](#) allows for easy access to information about the evidence base for a variety of programs.

N/A

[Insert fully drafted bill here](#)

AN ACT CONCERNING VOLUNTEER FIRE DEPARTMENTS AND AMBULANCE COMPANIES AND THE DEFINITION OF EMPLOYER UNDER THE STATE OCCUPATIONAL SAFETY AND HEALTH ACT.

Section 1. Subsection (d) of section 31-367 of the general statutes is repealed and the following is substituted in lieu thereof:

(d) "Employer" means the state and any political subdivision thereof, and, **except as provided in section 31-369, as amended by this act, any volunteer fire department and any volunteer ambulance company;**



Sec. 2. Section 31-369 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) This chapter applies to all employers, employees and places of employment in the state except the following: (1) Employees of the United States government; [and] (2) working conditions of employees over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health; **and (3) any volunteer fire department or volunteer ambulance company that can demonstrate such department or company is regulated by the Occupational Safety and Health Act of 1970 (15 USC 651 et seq.).**

(b) Nothing in this chapter shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge, diminish or affect in any manner common law or statutory rights, duties or liabilities of employers or employees, under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

Section 3. Subsection (c) of section 31-382 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(c) Any employer who has received a citation for a violation of the requirements of sections 31-369, **as amended by this act**, and 31-370, of any standard or order promulgated pursuant to section 31-372, or of regulations adopted pursuant to this chapter, which violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars for each such violation[.]; **however, any volunteer fire department and any volunteer ambulance company shall, for the first such violation, be issued a written warning.**



Agency Legislative Proposal - 2021 Session

Document Name: 093020_CTDOL_SBMA

(If submitting electronically, please label with date, agency, and title of proposal – 092621_SDE_TechRevisions)

State Agency: CT Department of Labor

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Lead agency division requesting this proposal: State Board of Mediation and Arbitration

Agency Analyst/Drafter of Proposal: Pat Fitton, Jennifer Devine

Title of Proposal: AA Regarding Neutral Arbitrator Selection Committee Requirements at the State Board of Mediation and Arbitration

Statutory Reference: 7-473c.

Proposal Summary:

Sec. 1. 7-473c. Amend the statute to require the members of the Neutral Arbitrator Selection Committee to be state residents, and to require the current requirement that arbitrators (aka members of the panel) be selected by a unanimous vote of committee to selection by no less than seven affirmative votes of the selection committee.

PROPOSAL BACKGROUND

◇ Reason for Proposal

Please consider the following, if applicable:

- (1) Have there been changes in federal/state/local laws and regulations that make this legislation necessary? **No**
- (2) Has this proposal or something similar been implemented in other states? If yes, what is the outcome(s)? Are other states considering something similar this year? **Unknown**
- (3) Have certain constituencies called for this action? **No**
- (4) What would happen if this was not enacted in law this session?

◇ Origin of Proposal

New Proposal

Resubmission

If this is a resubmission, please share:

- (1) What was the reason this proposal did not pass, or if applicable, was not included in the Administration's package?
- (2) Have there been negotiations/discussions during or after the previous legislative session to improve this proposal?
- (3) Who were the major stakeholders/advocates/legislators involved in the previous work on this legislation?
- (4) What was the last action taken during the past legislative session?



PROPOSAL IMPACT

◇ **AGENCIES AFFECTED** *(please list for each affected agency)*

Agency Name: N/A Agency Contact (name, title, phone): Date Contacted:
Approve of Proposal <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Talks Ongoing
Summary of Affected Agency's Comments
Will there need to be further negotiation? <input type="checkbox"/> YES <input type="checkbox"/> NO

◇ **FISCAL IMPACT** *(please include the proposal section that causes the fiscal impact and the anticipated impact)*

Municipal <i>(please include any municipal mandate that can be found within legislation)</i> None
State None
Federal None
Additional notes on fiscal impact

◇ **POLICY and PROGRAMMATIC IMPACTS** *(Please specify the proposal section associated with the impact)*

The bill makes an amendment to require members of the Neutral Arbitrator Selection Committee to be state residents, thereby ensuring that the members will pursue the best interests of CT residents. In addition, in order to be selected for a 2 year term as a neutral arbitrator, the bill replaces the requirement of a unanimous vote with a requirement of 7 votes out of 10, eliminating the issue of personal animus from the decision to terminate an arbitrator as requiring 3 "no" votes to eliminate an arbitrator would require substantive discussions.
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◇ **EVIDENCE BASE**

<i>What data will be used to track the impact of this proposal over time, and what measurable outcome do you anticipate? Is that data currently available or must it be developed? Please provide information on the measurement and evaluation plan. Where</i>



possible, those plans should include process and outcome components. Pew MacArthur Results First [evidence definitions](#) can help you to establish the evidence-base for your program and their [Clearinghouse](#) allows for easy access to information about the evidence base for a variety of programs.

Insert fully drafted bill here

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Sec. 1. Section 7-473c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) The Labor Commissioner shall appoint a Neutral Arbitrator Selection Committee consisting of ten members, **each of whom shall be a resident of the state**, five of whom shall represent the interests of employees and employee organizations and five of whom shall represent the interests of municipal employers, provided one of the members representing the interests of municipal employers shall be a representative of the Connecticut Conference of Municipalities. The members of the selection committee shall serve for a term of four years. Arbitrators may be removed for good cause. The selection committee shall appoint a panel of neutral arbitrators consisting of not less than twenty impartial persons representing the interests of the public in general to serve as provided in this section. Each member of the panel shall be a resident of the state and shall be selected by **no less than seven affirmative votes of the selection committee**. The members of the panel shall serve for a term of two years.

(b) (1) If neither the municipal employer nor the municipal employee organization has requested the arbitration services of the State Board of Mediation and Arbitration (A) within one hundred eighty days after the certification or recognition of a newly certified or recognized municipal employee organization required to commence negotiations pursuant to section 7-473a, or (B) within thirty days after the expiration of the current collective bargaining agreement, or within thirty days after the specified date for implementation of reopener provisions in an existing collective bargaining agreement, or within thirty days after the date the parties to an existing collective bargaining agreement commence negotiations to revise said agreement on any matter affecting wages, hours, and other conditions of employment, said board shall notify the municipal employer and municipal employee organization that one hundred eighty days have passed since the certification or recognition of the newly certified or recognized municipal employee organization, or that thirty days have passed since the specified date for implementation of reopener provisions in an existing agreement, or the



date the parties commenced negotiations to revise an existing agreement on any matter affecting wages, hours and other conditions of employment or the expiration of such collective bargaining agreement and that binding and final arbitration is now imposed on them, provided written notification of such imposition shall be sent by registered mail or certified mail, return receipt requested, to each party.

(2) Within ten days of receipt of the written notification required pursuant to subdivision (1) of this subsection, the chief executive officer of the municipal employer and the executive head of the municipal employee organization each shall select one member of the arbitration panel. Within five days of their appointment, the two members of the arbitration panel shall select a third member, who shall be an impartial representative of the interests of the public in general and who shall be selected from the panel of neutral arbitrators appointed pursuant to subsection (a) of this section. Such third member shall be the chairperson of the panel.

(3) In the event that the municipal employer or the municipal employee organization have not selected their respective members of the arbitration panel or the two members of the panel have not selected the third member, the State Board of Mediation and Arbitration shall appoint such members as are needed to complete the panel, provided (A) the member or members so appointed are residents of this state, and (B) the selection of the third member of the panel by the State Board of Mediation and Arbitration shall be made at random from among the members of the panel of neutral arbitrators appointed pursuant to subsection (a) of this section.

(c) Within ten days of appointment of the chairperson, the arbitration panel shall, by call of its chairperson, hold a hearing within the municipality involved. At least five days prior to such hearing, a written notice of the time and place of such hearing shall be sent to the municipal employer, the municipal employee organization and the other members of the panel. The chairperson of the panel shall preside over such hearing. Any member of the panel shall have the power to take testimony, to administer oaths and to summon, by subpoena, any person whose testimony may be pertinent to the matters before said panel, together with any records or other documents relating to such matters. In the case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the panel, shall have jurisdiction to order such person to appear before the panel to produce evidence or to give testimony touching the matter under investigation or in question, and any failure to obey such order may be punished by said court as a contempt thereof.

(d) (1) The hearing may, at the discretion of the panel, be continued and shall be concluded within twenty days after its commencement. Not less than two days prior to the commencement of the hearing, each party shall file with the chairperson of the panel, and deliver to the other party, a proposed collective bargaining agreement, in numbered paragraphs, which such party is willing to execute and cost data for all provisions of such proposed agreement. At the commencement of the hearing each party shall file with the panel a reply setting forth (A) those paragraphs of the proposed agreement of the other party which it is willing to accept, and (B) those paragraphs of the proposed agreement of the other party which it is unwilling to accept, together with any alternative contract



language which such party would accept in lieu of those paragraphs of the proposed agreement of the other party which it is unwilling to accept. At any time prior to the issuance of a decision by the panel, the parties may jointly file with the panel stipulations setting forth the agreement provisions which both parties have agreed to accept.

(2) Within five days after the conclusion of the taking of testimony, the panel shall forward to each party an arbitration statement, approved by a majority vote of the panel, setting forth all agreement provisions agreed upon by both parties in the proposed agreements and the replies, and in the stipulations, and stating, in numbered paragraphs, those issues which are unresolved.

(3) Within ten days after the conclusion of the taking of testimony, the parties shall file with the secretary of the State Board of Mediation and Arbitration five copies of their statements of last best offer setting forth, in numbered paragraphs corresponding to the statement of unresolved issues contained in the arbitration statement, the final agreement provisions proposed by such party. Immediately upon receipt of both statement of last best offer or upon the expiration of the time for filing such statements of last best offer, whichever is sooner, said secretary shall distribute a copy of each such statement of last best offer to the opposing party.

(4) Within seven days after the distribution of the statements of last best offer or within seven days of the expiration of the time for filing the statements of last best offer, whichever is sooner, the parties may file with the secretary of the State Board of Mediation and Arbitration five copies of their briefs on the unresolved issues. Immediately upon receipt of both briefs or upon the expiration of the time for filing such briefs, whichever is sooner, said secretary shall distribute a copy of each such brief to the opposing party.

(5) Within five days after the distribution of the briefs on the unresolved issues or within five days after the last day for filing such briefs, whichever is sooner, each party may file with said secretary five copies of a reply brief, responding to the briefs on the unresolved issues. Immediately upon receipt of the reply briefs or upon the expiration of the time for filing such reply briefs, whichever is sooner, said secretary shall simultaneously distribute a copy of each such reply brief to the opposing party.

(6) Within twenty days after the last day for filing such reply briefs, the panel shall issue, upon majority vote, and file with the State Board of Mediation and Arbitration its decision on all unresolved issues set forth in the arbitration statement, and said secretary shall immediately and simultaneously distribute a copy thereof to each party. The panel shall treat each unresolved issue set forth in the arbitration statement as a separate question to be decided by it. In deciding each such question, the panel agreement shall accept the final provision relating to such unresolved issue as contained in the statement of last best offer of one party or the other. As part of the arbitration decision, each member shall state the specific reasons and standards used in making a choice on each unresolved issue.

(7) The parties may jointly file with the panel stipulations modifying, deferring or waiving any or all provisions of this subsection.



(8) If the day for filing any document required or permitted to be filed under this subsection falls on a day which is not a business day of the State Board of Mediation and Arbitration then the time for such filing shall be extended to the next business day of such board.

(9) In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of other demands on the financial capability of the municipal employer. There shall be an irrebuttable presumption that fifteen per cent of the municipal employer's budget reserve is not available for payment of the cost of any item subject to arbitration under this chapter. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; (B) the interests and welfare of the employee group; (C) changes in the cost of living; (D) the existing conditions of employment of the employee group and those of similar groups; and (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits.

(10) The decision of the panel and the resolved issues shall be final and binding upon the municipal employer and the municipal employee organization except as provided in subdivision (12) of this subsection and, if such award is not rejected by the legislative body pursuant to said subdivision, except that a motion to vacate or modify such decision may be made in accordance with sections 52-418 and 52-419.

(11) In regard to all proceedings undertaken pursuant to this subsection the secretary of the State Board of Mediation and Arbitration shall serve as staff to the arbitration panel.

(12) Within twenty-five days of the receipt of an arbitration award issued pursuant to this section, the legislative body of the municipal employer may reject the award of the arbitrators or single arbitrator by a two-thirds majority vote of the members of such legislative body present at a regular or special meeting called and convened for such purpose. If the twenty-fifth day specified in this subdivision falls on a weekend or a holiday, such deadline shall be extended through the next business day following the twenty-fifth day.

(13) Within ten days after such rejection, the legislative body or its authorized representative shall be required to state, in writing, the reasons for such vote and shall submit such written statement to the State Board of Mediation and Arbitration and the municipal employee organization. Within ten days after receipt of such notice, the municipal employee organization shall prepare a written response to such rejection and shall submit it to the legislative body and the State Board of Mediation and Arbitration.

(14) Within ten days after receipt of such rejection notice, the State Board of Mediation and Arbitration shall select a review panel of three arbitrators or, if the parties agree, a single arbitrator who are residents of Connecticut and labor relations arbitrators approved by the American Arbitration Association and not members of the panel who issued the rejected award. Such arbitrators or single



arbitrator shall review the decision on each such rejected issue. The review conducted pursuant to this subdivision shall be limited to the record and briefs of the hearing pursuant to subsection (c) of this section, the written explanation of the reasons for the vote and a written response by either party. In conducting such review, the arbitrators or single arbitrator shall be limited to consideration of the criteria set forth in subdivision (9) of this subsection. Such review shall be completed within twenty days of the appointment of the arbitrators or single arbitrator. The arbitrators or single arbitrator shall accept the last best offer of either of the parties.

(15) Within five days after the completion of such review the arbitrators or single arbitrator shall render a decision with respect to each rejected issue which shall be final and binding upon the municipal employer and the employee organization except that a motion to vacate or modify such award may be made in accordance with sections 52-418 and 52-419. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

(e) The cost of the arbitration panel shall be distributed among the parties in the following manner: (1) The municipal employer shall pay the costs of the arbitrator appointed by it, (2) the municipal employee organization shall pay the costs of the arbitrator appointed by it, (3) the municipal employer and the municipal employee organization shall equally divide and pay the cost of the chairperson, and (4) the costs of any arbitrator appointed by the State Board of Mediation and Arbitration shall be paid by the party in whose absence the board appointed.

(f) A municipal employer and a municipal employee organization may, at any time, file with the State Board of Mediation and Arbitration a joint stipulation modifying, deferring or waiving any or all of the provisions of this section, or modifying, deferring or waiving any or all of the provisions of a previously filed stipulation, and any such stipulation shall be controlling over the provisions of this section or of any previously filed stipulation.

(g) No party may submit for binding arbitration pursuant to this section any issue or proposal which was not presented during the negotiation process, unless the submittal of such additional issue or proposal is agreed to by the parties.