



House of Representatives

General Assembly

File No. 396

January Session, 2005

Substitute House Bill No. 6447

House of Representatives, April 18, 2005

The Committee on Planning and Development reported through REP. WALLACE of the 109th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING FACTORS CONSIDERED BY AN
ARBITRATION PANEL IN MUNICIPAL BINDING ARBITRATION.**

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

1 Section 1. Subsection (d) of section 7-473c of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2005*):

4 (d) (1) The hearing may, at the discretion of the panel, be continued
5 and shall be concluded [within] not later than twenty days after its
6 commencement. Not less than two days prior to the commencement of
7 the hearing, each party shall file with the chairperson of the panel, and
8 deliver to the other party, a proposed collective bargaining agreement,
9 in numbered paragraphs, which such party is willing to execute and
10 cost data for all provisions of such proposed agreement. At the
11 commencement of the hearing each party shall file with the panel a
12 reply setting forth (A) those paragraphs of the proposed agreement of

13 the other party which it is willing to accept, and (B) those paragraphs
14 of the proposed agreement of the other party which it is unwilling to
15 accept, together with any alternative contract language which such
16 party would accept in lieu of those paragraphs of the proposed
17 agreement of the other party which it is unwilling to accept. At any
18 time prior to the issuance of a decision by the panel, the parties may
19 jointly file with the panel stipulations setting forth the agreement
20 provisions which both parties have agreed to accept.

21 (2) [Within] Not later than five days after the conclusion of the
22 taking of testimony, the panel shall forward to each party an
23 arbitration statement, approved by a majority vote of the panel, setting
24 forth all agreement provisions agreed upon by both parties in the
25 proposed agreements and the replies, and in the stipulations, and
26 stating, in numbered paragraphs, those issues which are unresolved.

27 (3) [Within] Not later than ten days after the conclusion of the
28 taking of testimony, the parties shall file with the secretary of the State
29 Board of Mediation and Arbitration five copies of their statements of
30 last best offer setting forth, in numbered paragraphs corresponding to
31 the statement of unresolved issues contained in the arbitration
32 statement, the final agreement provisions proposed by such party.
33 Immediately upon receipt of both statement of last best offer or upon
34 the expiration of the time for filing such statements of last best offer,
35 whichever is sooner, said secretary shall distribute a copy of each such
36 statement of last best offer to the opposing party.

37 (4) [Within] Not later than seven days after the distribution of the
38 statements of last best offer or [within] not later than seven days [of]
39 after the expiration of the time for filing the statements of last best
40 offer, whichever is sooner, the parties may file with the secretary of the
41 State Board of Mediation and Arbitration five copies of their briefs on
42 the unresolved issues. Immediately upon receipt of both briefs or upon
43 the expiration of the time for filing such briefs, whichever is sooner,
44 said secretary shall distribute a copy of each such brief to the opposing
45 party.

46 (5) [Within] Not later than five days after the distribution of the
47 briefs on the unresolved issues or [within] not later than five days after
48 the last day for filing such briefs, whichever is sooner, each party may
49 file with said secretary five copies of a reply brief, responding to the
50 briefs on the unresolved issues. Immediately upon receipt of the reply
51 briefs or upon the expiration of the time for filing such reply briefs,
52 whichever is sooner, said secretary shall simultaneously distribute a
53 copy of each such reply brief to the opposing party.

54 (6) [Within] Not later than twenty days after the last day for filing
55 such reply briefs, the panel shall issue, upon majority vote, and file
56 with the State Board of Mediation and Arbitration its decision on all
57 unresolved issues set forth in the arbitration statement, and said
58 secretary shall immediately and simultaneously distribute a copy
59 thereof to each party. The panel shall treat each unresolved issue set
60 forth in the arbitration statement as a separate question to be decided
61 by it. In deciding each such question, the panel agreement shall accept
62 the final provision relating to such unresolved issue as contained in the
63 statement of last best offer of one party or the other. As part of the
64 arbitration decision, each member shall state the specific reasons and
65 standards used in making a choice on each unresolved issue.

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

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

73 (9) In arriving at a decision, the arbitration panel shall give priority
74 to the public interest and the financial capability of the municipal
75 employer, including consideration of other demands on the financial
76 capability of the municipal employer. The panel shall further consider
77 the following factors in light of such financial capability: (A) The
78 negotiations between the parties prior to arbitration; (B) the interests

79 and welfare of the employee group; (C) changes in the cost of living;
80 (D) the existing conditions of employment of the employee group and
81 those of similar groups; and (E) the wages, salaries, fringe benefits, and
82 other conditions of employment prevailing in the labor market,
83 including developments in private sector wages and benefits. In
84 determining the financial capability of the municipality, it shall be an
85 irrebuttable presumption that six per cent of the general operating
86 budget of the municipality is needed to maintain the fiscal solvency of
87 such municipality.

88 (10) The decision of the panel and the resolved issues shall be final
89 and binding upon the municipal employer and the municipal
90 employee organization except as provided in subdivision (12) of this
91 subsection and, if such award is not rejected by the legislative body
92 pursuant to said subdivision, except that a motion to vacate or modify
93 such decision may be made in accordance with sections 52-418 and
94 52-419.

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

98 (12) [Within] Not later than twenty-five days of the receipt of an
99 arbitration award issued pursuant to this section, the legislative body
100 of the municipal employer may reject the award of the arbitrators or
101 single arbitrator by a two-thirds majority vote of the members of such
102 legislative body present at a regular or special meeting called and
103 convened for such purpose.

104 (13) [Within] Not later than ten days after such rejection, the
105 legislative body or its authorized representative shall be required to
106 state, in writing, the reasons for such vote and shall submit such
107 written statement to the State Board of Mediation and Arbitration and
108 the municipal employee organization. Within ten days after receipt of
109 such notice, the municipal employee organization shall prepare a
110 written response to such rejection and shall submit it to the legislative
111 body and the State Board of Mediation and Arbitration.

112 (14) [Within] Not later than ten days after receipt of such rejection
113 notice, the State Board of Mediation and Arbitration shall select a
114 review panel of three arbitrators or, if the parties agree, a single
115 arbitrator who are residents of Connecticut and labor relations
116 arbitrators approved by the American Arbitration Association and not
117 members of the panel who issued the rejected award. Such arbitrators
118 or single arbitrator shall review the decision on each such rejected
119 issue. The review conducted pursuant to this subdivision shall be
120 limited to the record and briefs of the hearing pursuant to subsection
121 (c) of this section, the written explanation of the reasons for the vote
122 and a written response by either party. In conducting such review, the
123 arbitrators or single arbitrator shall be limited to consideration of the
124 criteria set forth in subdivision (9) of this subsection. Such review shall
125 be completed within twenty days of the appointment of the arbitrators
126 or single arbitrator. The arbitrators or single arbitrator shall accept the
127 last best offer of either of the parties.

128 (15) [Within] Not later than five days after the completion of such
129 review the arbitrators or single arbitrator shall render a decision with
130 respect to each rejected issue which shall be final and binding upon the
131 municipal employer and the employee organization except that a
132 motion to vacate or modify such award may be made in accordance
133 with sections 52-418 and 52-419. The decision of the arbitrators or
134 single arbitrator shall be in writing and shall include specific reasons
135 and standards used by each arbitrator in making a decision on each
136 issue. The decision shall be filed with the parties. The reasonable costs
137 of the arbitrators or single arbitrator and the cost of the transcript shall
138 be paid by the legislative body. Where the legislative body of a
139 municipal employer is the town meeting, the board of selectmen shall
140 perform all of the duties and shall have all of the authority and
141 responsibilities required of and granted to the legislative body under
142 this subsection.

143 Sec. 2. Subsection (c) of section 10-153f of the general statutes is
144 repealed and the following is substituted in lieu thereof (*Effective*
145 *October 1, 2005*):

146 (c) (1) On the fourth day next following the end of the mediation
147 session or on the one hundred thirty-fifth day prior to the budget
148 submission date, whichever is sooner, the commissioner shall order the
149 parties to report their settlement of the dispute or, if there is no
150 settlement, to notify the commissioner of either their agreement to
151 submit their dispute to a single arbitrator or the name of the arbitrator
152 selected by each of them. Within five days of providing such notice,
153 the parties shall notify the commissioner of the name of the arbitrator
154 if there is an agreement on a single arbitrator appointed to the panel
155 pursuant to subdivision (3) of subsection (a) of this section or
156 agreement on the third arbitrator appointed to the panel pursuant to
157 said subdivision. The commissioner may order the parties to appear
158 before said commissioner during the arbitration period. If the parties
159 have notified the commissioner of their agreement to submit their
160 dispute to a single arbitrator and they have not agreed on such
161 arbitrator, within five days after such notification, the commissioner
162 shall select such single arbitrator who shall be an impartial
163 representative of the interests of the public in general. If each party has
164 notified the commissioner of the name of the arbitrator it has selected
165 and the parties have not agreed on the third arbitrator, within five
166 days after such notification, the commissioner shall select a third
167 arbitrator, who shall be an impartial representative of the interests of
168 the public in general. If either party fails to notify the commissioner of
169 the name of an arbitrator, the commissioner shall select an arbitrator to
170 serve and the commissioner shall also select a third arbitrator who
171 shall be an impartial representative of the interests of the public in
172 general. Any selection pursuant to this section by the commissioner of
173 an impartial arbitrator shall be made at random from among the
174 members appointed under subdivision (3) of subsection (a) of this
175 section. Arbitrators shall be selected from the panel appointed
176 pursuant to subsection (a) of this section and shall receive a per diem
177 fee determined on the basis of the prevailing rate for such services.
178 Whenever a panel of three arbitrators is selected, the chairperson of
179 such panel shall be the impartial representative of the interests of the
180 public in general.

181 (2) The chairperson of the arbitration panel or the single arbitrator
182 shall set the date, time and place for a hearing to be held in the school
183 district between the fifth and twelfth day, inclusive, after such
184 chairperson or such single arbitrator is selected. At least five days prior
185 to such hearing, a written notice of the date, time and place of the
186 hearing shall be sent to the board of education and the representative
187 organization which are parties to the dispute, and, if a three-member
188 arbitration panel is selected or designated, to the other members of
189 such panel. Such written notice shall also be sent, by registered mail,
190 return receipt requested, to the fiscal authority having budgetary
191 responsibility or charged with making appropriations for the school
192 district, and a representative designated by such body may be heard at
193 the hearing as part of the presentation and participation of the board of
194 education. At the hearing each party shall have full opportunity to
195 submit all relevant evidence, to introduce relevant documents and
196 written material and to argue on behalf of its positions. At the hearing
197 a representative of the fiscal authority having budgetary responsibility
198 or charged with making appropriations for the school district shall be
199 heard regarding the financial capability of the school district, unless
200 such opportunity to be heard is waived by the fiscal authority. The
201 nonappearance of the representative shall constitute a waiver of the
202 opportunity to be heard unless there is a showing that proper notice
203 was not given to the fiscal authority. The chairperson of the arbitration
204 panel or the single arbitrator shall preside over such hearing.

205 (3) The hearing may, at the discretion of the arbitration panel or the
206 single arbitrator, be continued but in any event shall be concluded
207 within twenty-five days after its commencement.

208 (4) After hearing all the issues, the arbitrators or the single arbitrator
209 shall, within twenty days, render a decision in writing, signed by a
210 majority of the arbitrators or the single arbitrator, which states in detail
211 the nature of the decision and the disposition of the issues by the
212 arbitrators or the single arbitrator. The written decision shall include a
213 narrative explaining the evaluation by the arbitrators or the single
214 arbitrator of the evidence presented for each item upon which a

215 decision was rendered by the arbitrators or the single arbitrator and
216 shall state with particularity the basis for the decision as to each
217 disputed issue and the manner in which the factors enumerated in this
218 subdivision were considered in arriving at such decision, including,
219 where applicable, the specific similar groups and conditions of
220 employment presented for comparison and accepted by the arbitrators
221 or the single arbitrator and the reason for such acceptance. The
222 arbitrators or the single arbitrator shall file one copy of the decision
223 with the commissioner, each town clerk in the school district involved
224 and the board of education and organization which are parties to the
225 dispute. The decision of the arbitrators or the single arbitrator shall be
226 final and binding upon the parties to the dispute unless a rejection is
227 filed in accordance with subdivision (7) of this subsection. The decision
228 of the arbitrators or the single arbitrator shall incorporate those items
229 of agreement the parties have reached prior to its issuance. At any time
230 prior to the issuance of a decision by the arbitrators or the single
231 arbitrator, the parties may jointly file with the arbitrators or the single
232 arbitrator, any stipulations setting forth contract provisions which both
233 parties agree to accept. In arriving at a decision, the arbitrators or the
234 single arbitrator shall give priority to the public interest and the
235 financial capability of the town or towns in the school district,
236 including consideration of other demands on the financial capability of
237 the town or towns in the school district. [In assessing the financial
238 capability of the town or towns, there shall be an irrebuttable
239 presumption that a budget reserve of five per cent or less is not
240 available for payment of the cost of any item subject to arbitration
241 under this chapter.] In determining the financial capability of the town
242 or towns, it shall be an irrebuttable presumption that six per cent of the
243 general operating budget of the municipality is needed to maintain the
244 fiscal solvency of such town or towns. The arbitrators or the single
245 arbitrator shall further consider, in light of such financial capability,
246 the following factors: (A) The negotiations between the parties prior to
247 arbitration, including the offers and the range of discussion of the
248 issues; (B) the interests and welfare of the employee group; (C)
249 changes in the cost of living averaged over the preceding three years;

250 (D) the existing conditions of employment of the employee group and
251 those of similar groups; and (E) the salaries, fringe benefits, and other
252 conditions of employment prevailing in the state labor market,
253 including the terms of recent contract settlements or awards in
254 collective bargaining for other municipal employee organizations and
255 developments in private sector wages and benefits. The parties shall
256 submit to the arbitrators or the single arbitrator their respective
257 positions on each individual issue in dispute between them in the form
258 of a last best offer. The arbitrators or the single arbitrator shall resolve
259 separately each individual disputed issue by accepting the last best
260 offer thereon of either of the parties, and shall incorporate in a decision
261 each such accepted individual last best offer and an explanation of
262 how the total cost of all offers accepted was considered. The award of
263 the arbitrators or the single arbitrator shall not be subject to rejection
264 by referendum. The parties shall each pay the fee of the arbitrator
265 selected by or for them and share equally the fee of the third arbitrator
266 or the single arbitrator and all other costs incidental to the arbitration.

267 (5) The commissioner shall assist the arbitration panel or the single
268 arbitrator as may be required in the course of arbitration pursuant to
269 this section.

270 (6) If the day for filing any document required pursuant to this
271 section falls on Saturday, Sunday or a holiday, the time for such filing
272 shall be extended to the next business day thereafter.

273 (7) The award of the arbitrators or single arbitrator may be rejected
274 by the legislative body of the local school district or, in the case of a
275 regional school district, by the legislative bodies of the participating
276 towns. Such rejection shall be by a two-thirds majority vote of the
277 members of such legislative body or, in the case of a regional school
278 district, the legislative body of each participating town, present at a
279 regular or special meeting called and convened for such purpose
280 within twenty-five days of the receipt of the award. If the legislative
281 body or legislative bodies, as appropriate, reject any such award, they
282 shall notify, within ten days after the vote to reject, the commissioner

283 and the exclusive representative for the teachers' or administrators'
284 unit of such vote and submit to them a written explanation of the
285 reasons for the vote. Within ten days after receipt of such notice, the
286 exclusive representative of the teachers' or administrators' unit shall
287 prepare, and the board of education may prepare, a written response
288 to such rejection and shall submit it to such legislative body or
289 legislative bodies, as appropriate, and the commissioner. Within ten
290 days after the commissioner has been notified of the vote to reject, (A)
291 the commissioner shall select a review panel of three arbitrators or, if
292 the parties agree, a single arbitrator, who are residents of Connecticut
293 and labor relations arbitrators approved by the American Arbitration
294 Association and not members of the panel who issued the rejected
295 award, and (B) such arbitrators or single arbitrator shall review the
296 decision on each rejected issue. The review conducted pursuant to this
297 subdivision shall be limited to the record and briefs of the hearing
298 pursuant to subdivision (2) of this subsection, the written explanation
299 of the reasons for the vote and a written response by either party. In
300 conducting such review, the arbitrators or single arbitrator shall be
301 limited to consideration of the criteria set forth in subdivision (4) of
302 this subsection. Such review shall be completed within twenty days of
303 the appointment of the arbitrators or single arbitrator. The arbitrators
304 or single arbitrator shall accept the last best offer of either of the
305 parties. Within five days after the completion of such review, the
306 arbitrators or single arbitrator shall render a final and binding award
307 with respect to each rejected issue. The decision of the arbitrators or
308 single arbitrator shall be in writing and shall include the specific
309 reasons and standards used by each arbitrator in making his decision
310 on each issue. The decision shall be filed with the parties. The
311 reasonable costs of the arbitrators or single arbitrator and the cost of
312 the transcript shall be paid by the legislative body or legislative bodies,
313 as appropriate. Where the legislative body of the school district is the
314 town meeting, the board of selectmen shall have all of the authority
315 and responsibilities required of and granted to the legislative body
316 under this subdivision.

317 (8) The decision of the arbitrators or a single arbitrator shall be

318 subject to judicial review upon the filing by a party to the arbitration,
319 within thirty days following receipt of a final decision pursuant to
320 subdivision (4) or (7), as appropriate, of a motion to vacate or modify
321 such decision in the superior court for the judicial district wherein the
322 school district involved is located. The superior court, after hearing,
323 may vacate or modify the decision if substantial rights of a party have
324 been prejudiced because such decision is: (A) In violation of
325 constitutional or statutory provisions; (B) in excess of the statutory
326 authority of the panel; (C) made upon unlawful procedure; (D)
327 affected by other error of law; (E) clearly erroneous in view of the
328 reliable, probative and substantial evidence on the whole record; or (F)
329 arbitrary or capricious or characterized by abuse of discretion or
330 clearly unwarranted exercise of discretion. In any action brought
331 pursuant to this subdivision to vacate or modify the decision of the
332 arbitrators or single arbitrator, reasonable attorney's fees, costs and
333 legal interest on salary withheld as the result of an appeal of said
334 decision may be awarded in accordance with the following: Where the
335 board of education moves to vacate or modify the decision and the
336 decision is not vacated or modified, the court may award to the
337 organization which is the exclusive representative reasonable
338 attorney's fees, costs and legal interest on salary withheld as the result
339 of an appeal; or, where the organization which is the exclusive
340 representative moves to vacate or modify the decision and the decision
341 is not vacated or modified, the court may award to the board of
342 education reasonable attorney's fees, costs and legal interest on salary
343 withheld as the result of an appeal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	7-473c(d)
Sec. 2	October 1, 2005	10-153f(c)

PD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Various State Agencies	GF - Savings	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
All Municipalities	Savings	Potential	Potential

Explanation

The bill's increase in the percentage necessary in a budget reserve fund from 5% to 6% needed to maintain fiscal solvency for consideration in school district binding arbitration proceedings and its extension to municipal employee arbitration proceedings results in a potential saving to municipalities and local and regional school districts. As fiscal solvency is only one consideration and other economic issues impact eventual awards no exact savings can be determined.

There is a potential savings to various state agencies due to the reimbursement nature of some grant programs, which are based on local expenditures. Since the local savings cannot be determined the potential state savings also cannot be determined.

OLR Bill Analysis

sHB 6447

**AN ACT CONCERNING FACTORS CONSIDERED BY AN
ARBITRATION PANEL IN MUNICIPAL BINDING ARBITRATION**

SUMMARY:

By law, arbitrators in municipal employee and school district binding arbitration proceedings must give priority to the public interest and the municipality's financial capability. Under current law, a budget reserve of 5% is assumed to be needed to maintain a municipality's fiscal solvency and thus is unavailable for paying the cost of any item subject to school district arbitrations. The bill increases this amount to 6% and extends the amended requirement to municipal employee arbitration proceedings.

EFFECTIVE DATE: October 1, 2005

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 11 Nay 7