



House of Representatives

General Assembly

File No. 372

January Session, 2013

House Bill No. 6556

House of Representatives, April 4, 2013

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING SICK BUILDINGS.

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

1 Section 1. Section 31-275 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 As used in this chapter, unless the context otherwise provides:

4 (1) "Arising out of and in the course of his employment" means an
5 accidental injury happening to an employee or an occupational disease
6 of an employee, including sick building syndrome or any building
7 related illness, originating while the employee has been engaged in the
8 line of the employee's duty in the business or affairs of the employer
9 upon the employer's premises, or while engaged elsewhere upon the
10 employer's business or affairs by the direction, express or implied, of
11 the employer, provided:

12 (A) (i) For a police officer or firefighter, "in the course of his
13 employment" encompasses such individual's departure from such

14 individual's place of abode to duty, such individual's duty, and the
15 return to such individual's place of abode after duty;

16 (ii) For an employee of the Department of Correction, (I) when
17 responding to a direct order to appear at his or her work assignment
18 under circumstances in which nonessential employees are excused
19 from working, or (II) following two or more mandatory overtime work
20 shifts on consecutive days, "in the course of his employment"
21 encompasses such individual's departure from such individual's place
22 of abode directly to duty, such individual's duty, and the return
23 directly to such individual's place of abode after duty;

24 (iii) Notwithstanding the provisions of clauses (i) and (ii) of this
25 subparagraph, the dependents of any deceased employee of the
26 Department of Correction who was injured in the course of his
27 employment, as defined in this subparagraph, on or after July 1, 2000,
28 and who died not later than July 15, 2000, shall be paid compensation
29 on account of the death, in accordance with the provisions of section
30 31-306, retroactively to the date of the employee's death. The cost of the
31 payment shall be paid by the employer or its insurance carrier which
32 shall be reimbursed for such cost from the Second Injury Fund as
33 provided in section 31-354 upon presentation of any vouchers and
34 information that the Treasurer may require;

35 (B) A personal injury shall not be deemed to arise out of the
36 employment unless causally traceable to the employment other than
37 through weakened resistance or lowered vitality;

38 (C) In the case of an accidental injury, a disability or a death due to
39 the use of alcohol or narcotic drugs shall not be construed to be a
40 compensable injury;

41 (D) For aggravation of a preexisting disease, compensation shall be
42 allowed only for that proportion of the disability or death due to the
43 aggravation of the preexisting disease as may be reasonably attributed
44 to the injury upon which the claim is based;

45 (E) A personal injury shall not be deemed to arise out of the
46 employment if the injury is sustained: (i) At the employee's place of
47 abode, and (ii) while the employee is engaged in a preliminary act or
48 acts in preparation for work unless such act or acts are undertaken at
49 the express direction or request of the employer;

50 (F) For purposes of subparagraph (C) of this subdivision, "narcotic
51 drugs" means all controlled substances, as designated by the
52 Commissioner of Consumer Protection pursuant to subsection (c) of
53 section 21a-243, but does not include drugs prescribed in the course of
54 medical treatment or in a program of research operated under the
55 direction of a physician or pharmacologist. For purposes of
56 subparagraph (E) of this subdivision, "place of abode" includes the
57 inside of the residential structure, the garage, the common hallways,
58 stairways, driveways, walkways and the yard;

59 (G) The Workers' Compensation Commission shall adopt
60 regulations, in accordance with the provisions of chapter 54, to
61 implement the provisions of this section and shall define the terms "a
62 preliminary act", "acts in preparation for work", "departure from place
63 of abode directly to duty" and "return directly to place of abode after
64 duty" on or before January 1, 2006.

65 (2) "Commission" means the Workers' Compensation Commission.

66 (3) "Commissioner" means the compensation commissioner who has
67 jurisdiction in the matter referred to in the context.

68 (4) "Compensation" means benefits or payments mandated by the
69 provisions of this chapter, including, but not limited to, indemnity,
70 medical and surgical aid or hospital and nursing service required
71 under section 31-294d and any type of payment for disability, whether
72 for total or partial disability of a permanent or temporary nature, death
73 benefit, funeral expense, payments made under the provisions of
74 section 31-284b, 31-293a or 31-310, or any adjustment in benefits or
75 payments required by this chapter.

76 (5) "Date of the injury" means, for an occupational disease, the date
77 of total or partial incapacity to work as a result of such disease.

78 (6) "Dependent" means a member of the injured employee's family
79 or next of kin who was wholly or partly dependent upon the earnings
80 of the employee at the time of the injury.

81 (7) "Dependent in fact" means a person determined to be a
82 dependent of an injured employee, in any case where there is no
83 presumptive dependent, in accordance with the facts existing at the
84 date of the injury.

85 (8) "Disfigurement" means impairment of or injury to the beauty,
86 symmetry or appearance of a person that renders the person unsightly,
87 misshapen or imperfect, or deforms the person in some manner, or
88 otherwise causes a detrimental change in the external form of the
89 person.

90 (9) (A) "Employee" means any person who:

91 (i) Has entered into or works under any contract of service or
92 apprenticeship with an employer, whether the contract contemplated
93 the performance of duties within or without the state;

94 (ii) Is a sole proprietor or business partner who accepts the
95 provisions of this chapter in accordance with subdivision (10) of this
96 section;

97 (iii) Is elected to serve as a member of the General Assembly of this
98 state;

99 (iv) Is a salaried officer or paid member of any police department or
100 fire department;

101 (v) Is a volunteer police officer, whether the officer is designated as
102 special or auxiliary, upon vote of the legislative body of the town, city
103 or borough in which the officer serves;

104 (vi) Is an elected or appointed official or agent of any town, city or

105 borough in the state, upon vote of the proper authority of the town,
106 city or borough, including the elected or appointed official or agent,
107 irrespective of the manner in which he or she is appointed or
108 employed. Nothing in this subdivision shall be construed as affecting
109 any existing rights as to pensions which such persons or their
110 dependents had on July 1, 1927, or as preventing any existing custom
111 of paying the full salary of any such person during disability due to
112 injury arising out of and in the course of his or her employment;

113 (vii) Is an officer or enlisted person of the National Guard or other
114 armed forces of the state called to active duty by the Governor while
115 performing his or her active duty service; or

116 (viii) Is elected to serve as a probate judge for a probate district
117 established in section 45a-2.

118 (B) "Employee" shall not be construed to include:

119 (i) Any person to whom articles or material are given to be treated
120 in any way on premises not under the control or management of the
121 person who gave them out;

122 (ii) One whose employment is of a casual nature and who is
123 employed otherwise than for the purposes of the employer's trade or
124 business;

125 (iii) A member of the employer's family dwelling in his house; but,
126 if, in any contract of insurance, the wages or salary of a member of the
127 employer's family dwelling in his house is included in the payroll on
128 which the premium is based, then that person shall, if he sustains an
129 injury arising out of and in the course of his employment, be deemed
130 an employee and compensated in accordance with the provisions of
131 this chapter;

132 (iv) Any person engaged in any type of service in or about a private
133 dwelling provided he is not regularly employed by the owner or
134 occupier over twenty-six hours per week;

135 (v) An employee of a corporation who is a corporate officer and
136 who elects to be excluded from coverage under this chapter by notice
137 in writing to his employer and to the commissioner; or

138 (vi) Any person who is not a resident of this state but is injured in
139 this state during the course of his employment, unless such person (I)
140 works for an employer who has a place of employment or a business
141 facility located in this state at which such person spends at least fifty
142 per cent of his employment time, or (II) works for an employer
143 pursuant to an employment contract to be performed primarily in this
144 state.

145 (10) "Employer" means any person, corporation, limited liability
146 company, firm, partnership, voluntary association, joint stock
147 association, the state and any public corporation within the state using
148 the services of one or more employees for pay, or the legal
149 representative of any such employer, but all contracts of employment
150 between an employer employing persons excluded from the definition
151 of employee and any such employee shall be conclusively presumed to
152 include the following mutual agreements between employer and
153 employee: (A) That the employer may accept and become bound by
154 the provisions of this chapter by immediately complying with section
155 31-284; (B) that, if the employer accepts the provisions of this chapter,
156 the employee shall then be deemed to accept and be bound by such
157 provisions unless the employer neglects or refuses to furnish
158 immediately to the employee, on his written request, evidence of
159 compliance with section 31-284 in the form of a certificate from the
160 commissioner, the Insurance Commissioner or the insurer, as the case
161 may be; (C) that the employee may, at any time, withdraw his
162 acceptance of, and become released from, the provisions of this chapter
163 by giving written or printed notice of his withdrawal to the
164 commissioner and to the employer, and the withdrawal shall take
165 effect immediately from the time of its service on the commissioner
166 and the employer; and (D) that the employer may withdraw his
167 acceptance and the acceptance of the employee by filing a written or
168 printed notice of his withdrawal with the commissioner and with the

169 employee, and the withdrawal shall take effect immediately from the
170 time of its service on the commissioner and the employee. The notices
171 of acceptance and withdrawal to be given by an employer employing
172 persons excluded from the definition of employee and the notice of
173 withdrawal to be given by the employee, as provided in this
174 subdivision, shall be served upon the commissioner, employer or
175 employee, either by personal presentation or by registered or certified
176 mail. In determining the number of employees employed by an
177 individual, the employees of a partnership of which he is a member
178 shall not be included. A person who is the sole proprietor of a business
179 may accept the provisions of this chapter by notifying the
180 commissioner, in writing, of his intent to do so. If such person accepts
181 the provisions of this chapter he shall be considered to be an employer
182 and shall insure his full liability in accordance with subdivision (2) of
183 subsection (b) of section 31-284. Such person may withdraw his
184 acceptance by giving notice of his withdrawal, in writing, to the
185 commissioner. Any person who is a partner in a business shall be
186 deemed to have accepted the provisions of this chapter and shall
187 insure his full liability in accordance with subdivision (2) of subsection
188 (b) of section 31-284, unless the partnership elects to be excluded from
189 the provisions of this chapter by notice, in writing and by signed
190 agreement of each partner, to the commissioner.

191 (11) "Full-time student" means any student enrolled for at least
192 seventy-five per cent of a full-time student load at a postsecondary
193 educational institution which has been approved by a state-recognized
194 or federally-recognized accrediting agency or body. "Full-time student
195 load" means the number of credit hours, quarter credits or academic
196 units required for a degree from such institution, divided by the
197 number of academic terms needed to complete the degree.

198 (12) "Medical and surgical aid or hospital and nursing service",
199 when requested by an injured employee and approved by the
200 commissioner, includes treatment by prayer or spiritual means
201 through the application or use of the principles, tenets or teachings of
202 any established church without the use of any drug or material

203 remedy, provided sanitary and quarantine regulations are complied
204 with, and provided all those ministering to the injured employee are
205 bona fide members of such church.

206 (13) "Member" includes all parts of the human body referred to in
207 subsection (b) of section 31-308.

208 (14) "Nursing" means the practice of nursing as defined in
209 subsection (a) of section 20-87a, and "nurse" means a person engaged
210 in such practice.

211 (15) "Occupational disease" includes any disease peculiar to the
212 occupation in which the employee was engaged and due to causes in
213 excess of the ordinary hazards of employment as such, and includes
214 any disease due to or attributable to exposure to or contact with any
215 radioactive material by an employee in the course of his employment.

216 (16) (A) "Personal injury" or "injury" includes, in addition to
217 accidental injury that may be definitely located as to the time when
218 and the place where the accident occurred, an injury to an employee
219 that is causally connected with the employee's employment and is the
220 direct result of repetitive trauma or repetitive acts incident to such
221 employment, and occupational disease.

222 (B) "Personal injury" or "injury" shall not be construed to include:

223 (i) An injury to an employee that results from the employee's
224 voluntary participation in any activity the major purpose of which is
225 social or recreational, including, but not limited to, athletic events,
226 parties and picnics, whether or not the employer pays some or all of
227 the cost of such activity;

228 (ii) A mental or emotional impairment, unless such impairment (I)
229 arises from a physical injury or occupational disease, (II) in the case of
230 a police officer, arises from such police officer's use of deadly force or
231 subjection to deadly force in the line of duty, regardless of whether
232 such police officer is physically injured, provided such police officer is
233 the subject of an attempt by another person to cause such police officer

234 serious physical injury or death through the use of deadly force, and
235 such police officer reasonably believes such police officer to be the
236 subject of such an attempt, or (III) in the case of a firefighter, is
237 diagnosed as post-traumatic stress disorder by a licensed and board
238 certified mental health professional, determined by such professional
239 to be originating from the firefighter witnessing the death of another
240 firefighter while engaged in the line of duty and not subject to any
241 other exclusion in this section. As used in this clause, "police officer"
242 means a member of the Division of State Police within the Department
243 of Emergency Services and Public Protection, an organized local police
244 department or a municipal constabulary, "firefighter" means a
245 uniformed member of a municipal paid or volunteer fire department,
246 and "in the line of duty" means any action that a police officer or
247 firefighter is obligated or authorized by law, rule, regulation or written
248 condition of employment service to perform, or for which the police
249 officer or firefighter is compensated by the public entity such officer
250 serves;

251 (iii) A mental or emotional impairment that results from a personnel
252 action, including, but not limited to, a transfer, promotion, demotion
253 or termination; or

254 (iv) Notwithstanding the provisions of subparagraph (B)(i) of this
255 subdivision, "personal injury" or "injury" includes injuries to
256 employees of local or regional boards of education resulting from
257 participation in a school-sponsored activity but does not include any
258 injury incurred while going to or from such activity. As used in this
259 clause, "school-sponsored activity" means any activity sponsored,
260 recognized or authorized by a board of education and includes
261 activities conducted on or off school property and "participation"
262 means acting as a chaperone, advisor, supervisor or instructor at the
263 request of an administrator with supervisory authority over the
264 employee.

265 (17) "Physician" includes any person licensed and authorized to
266 practice a healing art, as defined in section 20-1, and licensed under the

267 provisions of chapters 370, 372 and 373 to practice in this state.

268 (18) "Podiatrist" means any practitioner of podiatry, as defined in
269 section 20-50, and duly licensed under the provisions of chapter 375 to
270 practice in this state.

271 (19) "Presumptive dependents" means the following persons who
272 are conclusively presumed to be wholly dependent for support upon a
273 deceased employee: (A) A wife upon a husband with whom she lives
274 at the time of his injury or from whom she receives support regularly;
275 (B) a husband upon a wife with whom he lives at the time of her injury
276 or from whom he receives support regularly; (C) any child under the
277 age of eighteen, or over the age of eighteen but physically or mentally
278 incapacitated from earning, upon the parent with whom he is living or
279 from whom he is receiving support regularly, at the time of the injury
280 of the parent; (D) any unmarried child who has attained the age of
281 eighteen but has not attained the age of twenty-two and who is a full-
282 time student, upon the parent with whom he is living or from whom
283 he is receiving support regularly, provided, any child who has attained
284 the age of twenty-two while a full-time student but has not completed
285 the requirements for, or received, a degree from a postsecondary
286 educational institution shall be deemed not to have attained the age of
287 twenty-two until the first day of the first month following the end of
288 the quarter or semester in which he is enrolled at the time, or if he is
289 not enrolled in a quarter or semester system, until the first day of the
290 first month following the completion of the course in which he is
291 enrolled or until the first day of the third month beginning after such
292 time, whichever occurs first.

293 (20) "Previous disability" means an employee's preexisting condition
294 caused by the total or partial loss of, or loss of use of, one hand, one
295 arm, one foot or one eye resulting from accidental injury, disease or
296 congenital causes, or other permanent physical impairment.

297 (21) "Scar" means the mark left on the skin after the healing of a
298 wound or sore, or any mark, damage or lasting effect resulting from
299 past injury.

300 (22) "Second disability" means a disability arising out of a second
301 injury.

302 (23) "Second injury" means an injury, incurred by accident,
303 repetitive trauma, repetitive acts or disease arising out of and in the
304 course of employment, to an employee with a previous disability.

305 (24) "Sick building syndrome" means any illness or health problem
306 arising in an employee that can be directly attributed, due to a
307 significant number of cases, to the presence of mold, fungi or other
308 allergens on the employer's premises.

309 Sec. 2. Subsection (b) of section 5-169 of the general statutes is
310 repealed and the following is substituted in lieu thereof (*Effective*
311 *October 1, 2013*):

312 (b) If a member, while in state service, becomes permanently
313 disabled from continuing to render the service in which he has been
314 employed as a result of any injury [received] or illness, including sick
315 building syndrome, as defined in section 31-275, as amended by this
316 act, or any building related illness, received or contracted while in the
317 performance of his duty as a state employee, such member is eligible
318 for disability retirement regardless of his period of state service. If the
319 member's disability occurs on or after October 1, 1982, such disability
320 retirement income shall equal one and two-thirds per cent times years
321 of service projected to age sixty-five with a maximum based on not
322 more than thirty years of such service and a minimum of one and two-
323 thirds per cent times accrued service at the date of disability, except
324 that such income of state policemen shall be determined as provided
325 by subsection (b) of section 5-173, provided, for the purposes of the
326 formulas in said subsection, his rate of salary at the time of his
327 disability retirement shall be used if greater than his base salary. If
328 such injury occurred on or after October 1, 1982, and such member has
329 completed at least five years of state service, his disability retirement
330 income shall in no event be less than that provided under subsection
331 (a) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	31-275
Sec. 2	<i>October 1, 2013</i>	5-169(b)

LAB *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Various State Agencies	GF, TF - Cost	Indeterminate	Indeterminate

Municipal Impact:

Municipalities	Effect	FY 14 \$	FY 15 \$
All Municipalities	STATE MANDATE - Cost	Indeterminate	Indeterminate

Explanation

Section 1 of the bill may result in a cost to the state’s workers’ compensation program¹ and municipalities to provide workers’ compensation benefits for employees with sick building syndrome. The cost will depend on 1) the number of new claimants claiming sick building syndrome and the severity of the illness and 2) the cost of relocating those employees to an alternative workspace which is indeterminate.

The bill creates the presumption that sick building syndrome is compensable under workers’ compensation if a significant number of cases exist. However the bill does not define “significant”, nor does it define “other allergens”. Therefore the number of claims may be exacerbated by the broad definition of sick building syndrome. In addition, this is in contrast to current law, whereby the state covers all claims associated with indoor air quality diagnoses if the diagnosis is

¹ The state’s workers’ compensation program is self-insured and therefore is responsible for the total cost of claims incurred as opposed to a fully-insured policy where the state pays a set premium irrespective of claims costs.

determined by the Workers' Compensation Commission to be causally related to work or the work location.

The state's workers' compensation program currently covers approximately 78,090 employees.² As of March 2013 the state has 415 chronic indoor air quality claims³ at a total cost⁴ of approximately \$5.4 million and 939 acute indoor air quality claims⁵ at a total cost of approximately \$3.8 million.

Some municipalities are self-insured and therefore will be liable for all claims costs arising out of sick building syndrome diagnoses. Fully-insured municipalities will likely see an impact on their workers' compensation insurance premiums after October 1, 2013.

Section 2 of the bill does not result in a fiscal impact to the state in FY 14 and FY 15 as current pension benefits are governed by a collective bargaining agreement between the state and the State Employees Bargaining Agent Coalition (SEBAC) which is in effect until 2022.

The Out Years

The annualized ongoing fiscal impact identified above for Section 1 would continue into the future subject to inflation.

It is unlikely the bill will result in a cost to the state in 2022 when the current collective bargaining agreement governing pensions expires as Tier I closed to employees on June 30, 1984 and all Tier I employees will be eligible for normal retirement before 2022.

² In general, any individual who receives a paycheck from the state is eligible to file a workers' compensation claim. This figure reflects the total number of individuals who were eligible to receive a paycheck as of February 13, 2013, excluding student workers. (*Source: CoreCT*)

³ Chronic indoor air quality claims lack a single identifiable source of contamination.

⁴ Total Cost reflects the total paid out over the life of the claim as of March 2013.

⁵ Acute indoor air quality claims have an identifiable event/source.

OLR Bill Analysis**HB 6556*****AN ACT CONCERNING SICK BUILDINGS.*****SUMMARY:**

This bill specifically makes sick building syndrome a covered disease under workers' compensation law. It expands the definition of an injury or disease arising out of and in the course of a person's employment to specifically include sick building syndrome and any building-related illness.

The bill adds illness, and specifically sick building syndrome and building-related illness, to the statutory causes of employee disability under state employee Tier I retirement law. This explicitly makes these illnesses an acceptable cause of an employee's inability to work for disability retirement purposes. But the bill does not change the Tier II disability retirement law.

It defines "sick building syndrome" but does not define "building-related illness."

EFFECTIVE DATE: October 1, 2013

WORKERS' COMPENSATION

The bill expands the definition, under workers' compensation law, of an injury or disease arising out of and in the course of a person's employment to specifically include sick building syndrome and any building-related illness.

It defines "sick building syndrome" as any illness or health problem arising in an employee that can be directly attributed, due to a significant number of cases, to the presence of mold, fungi, or other allergens on the employer's premises.

Under workers' compensation law, the injury or disease must either totally or partially impair an employee so as to prevent the employee from doing his or her job. This means the employee would have to show that (1) there are a significant number of cases and (2) the specified allergens on the employer's premises impair the employee's ability to do his or her job.

The bill does not define "building-related illness." Therefore is it unclear how this provision would be interpreted through the workers' compensation claims system.

DISABILITY RETIREMENT

The bill adds sick building syndrome and building-related illness to the state employee Tier I disability retirement law, but does not change the Tier II disability retirement law. State employee retirement benefits are the subject of collective bargaining, and when bargaining agreements conflict with the law, the agreement prevails (CGS § 5-278(e)). So it is unclear whether this provision would have any effect if enacted.

Furthermore, Tier I closed to new employees on June 30, 1984, so most, if not all, current Tier I employees could qualify for a regular retirement if they are still working at this bill's effective date. Tier I employees qualify for regular retirement benefits if they are 55 years old with at least 25 years of service. Regular retirement benefits are more generous than disability retirement benefits. An employee starting in June 1984 would have 29 years of service by this June.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 3 (03/19/2013)