

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 226  
3 entitled “An act relating to statewide public school employee benefits”  
4 respectfully reports that it has considered the same and recommends that the  
5 bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 Sec. 1. 16 V.S.A. § 2101 is amended to read:

8 § 2101. DEFINITIONS

9 As used in this chapter:

10 (1) “Participating employee” means a school employee who is eligible  
11 for and has elected to receive health benefit coverage through a school  
12 employer.

13 (2) “School employee” means:

14 (A) an individual employed by a supervisory union or school district  
15 as a teacher or administrator as defined in section 1981 of this title; ~~or~~

16 (B) a municipal school employee as defined in 21 V.S.A. § 1722;

17 (C) individuals employed as supervisors as defined in 21 V.S.A.

18 § 1502;

19 (D) confidential employees as defined in 21 V.S.A. § 1722;

20 (E) certified employees of school districts; and

1           (F) any other permanent employee of a school employer not covered  
2           by subdivisions (A)-(E) of this subdivision (2).

3           (3) “School employer” means a supervisory union or school district as  
4           those terms are defined in section 11 of this title.

5           Sec. 2. 16 V.S.A. § 2102 is amended to read:

6           § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH

7                       BENEFITS CREATED

8           (a) Commission created. There is created an independent commission to be  
9           called the Commission on Public School Employee Health Benefits  
10          (Commission) to determine, in accordance with section 2103 of this chapter,  
11          the amounts of the premiums and out-of-pocket expenses for school employee  
12          health benefits that shall be borne by school employers and by participating  
13          employees.

14          (b) Composition and appointment.

15               (1) The Commission shall have 10 members, of whom five shall be  
16          representatives of school employees and five shall be representatives of school  
17          employers.

18               (2)(A) The representatives of school employees shall be appointed as  
19          follows:

1 (i) four members appointed by the labor organization representing  
2 the greatest number of ~~teachers, administrators, and municipal~~ school  
3 employees in this State; and

4 (ii) one member appointed by the labor organization representing  
5 the second-greatest number of ~~teachers, administrators, and municipal~~ school  
6 employees in this State.

7 (B) The five representatives of school employers shall be appointed  
8 by the organization representing the majority of ~~the~~ public school boards in  
9 this State.

10 (C) The appointing authorities shall select appointees who have an  
11 understanding of health care and employer-employee relations and who  
12 demonstrate a willingness to work collaboratively.

13 (D) The term of each member of the Commission shall be six years,  
14 provided that of the members first appointed by the labor organization  
15 described in subdivision (A)(i) of this subdivision (2), one appointee shall  
16 serve a term of two years and one appointee shall serve a term of four years,  
17 and of the members first appointed by the organization representing the  
18 majority of the public school boards in this State, one appointee shall serve a  
19 term of two years and one appointee shall serve a term of four years.

1           (3) In the event of a vacancy, the appointing authority of the member  
2 whose seat becomes vacant shall appoint a successor to serve out the  
3 remainder of the member’s term.

4           (c) Chairs. The Commission shall be chaired jointly by one member  
5 selected biennially by the representatives of school employees and one  
6 member selected biennially by the representatives of school employers.

7           (d) Removal of Commission members. Members of the Commission may  
8 be removed by the Commission only for cause and may be removed by the  
9 appointing authority of the member without cause. The Commission shall  
10 adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for  
11 removal.

12           (e) Decisions. All decisions of the Commission shall require the votes of a  
13 majority of the representatives of school employees and a majority of the  
14 representatives of school employers.

15           (f) Compensation. Commission members shall be entitled to receive per  
16 diem compensation and reimbursement of expenses pursuant to 32 V.S.A.  
17 § 1010.

18           (g) Release time. A school district that employs a member of the  
19 Commission who represents school employees shall grant the Commission  
20 member time off as necessary for the member to attend meetings of the  
21 Commission.

1        (h) Staffing and expenses. The Commission may hire staff as it deems  
2        necessary to carry out its duties under this chapter. Compensation for  
3        Commission staff and administrative expenses of the Commission shall be  
4        shared equally by school employers and school employees. The  
5        representatives of school employers and the representatives of school  
6        employees shall equitably apportion their share of the costs of compensation  
7        and administrative expenses among their members.

8        ~~(h)~~(i) Rulemaking. The Commission may adopt rules or procedures, or  
9        both, pursuant to 3 V.S.A. chapter 25 as needed to carry out its duties under  
10       this chapter.

11       (j) Alternate members. Four alternate members may be appointed to the  
12       Commission who, if appointed, shall be entitled to attend all negotiating  
13       sessions of the Commission. Up to two alternate members may be appointed  
14       by representatives of school employees and up to two alternate members may  
15       be appointed by representatives of school employers. The term of each  
16       alternate member, if appointed, shall be six years. In the event of a vacancy,  
17       the appointing authority of the alternate member whose seat becomes vacant  
18       shall appoint a successor to serve out the remainder of the alternate member's  
19       term. Alternate members may be removed by the Commission only for cause  
20       and may be removed by the appointing authority of the alternate member  
21       without cause.

1 Sec. 3. 16 V.S.A. § 2103 is amended to read:

2 § 2103. DUTIES OF THE COMMISSION

3 (a) The Commission shall determine the percentage of the premium for  
4 individual, two-person, parent-child, and family coverage under a health  
5 benefit plan that shall be borne by each school employer and the percentage  
6 that shall be borne by participating employees.

7 (1) The premium responsibility percentages shall remain in effect for the  
8 entire plan year.

9 (2) Each school employer shall be responsible for paying, on behalf of  
10 all of its participating ~~school~~ employees, the applicable percentages of  
11 premium costs as determined by the Commission.

12 ~~(3) The premium responsibility percentages for each plan tier shall be~~  
13 ~~the same for all participating employees.~~

14 (b)(1) The Commission shall determine the amount of ~~school~~ participating  
15 employees' out-of-pocket expenses for which the school employer and the  
16 ~~school~~ participating employees shall be responsible, and whether school  
17 employers shall establish a health reimbursement arrangement, a health  
18 savings account, both, or neither, for their participating employees.

19 (2) The Commission also shall determine the extent to which the  
20 employer or employee shall bear first dollar responsibility for out-of-pocket  
21 expenses if using a health reimbursement arrangement and whether the balance

1 in a participating employee's health reimbursement arrangement shall roll over  
2 from year to year.

3 ~~(3) The school employers' and school participating employees'~~  
4 ~~responsibilities for out-of-pocket expenses for each plan tier shall be the same~~  
5 ~~for all participating employees.~~

6 (c) The Commission may make recommendations regarding health benefit  
7 plan design to any intermunicipal insurance association that offers health  
8 benefit plans to entities providing educational services pursuant to 24 V.S.A.  
9 chapter 121, subchapter 6.

10 (d) The Commission shall not make any determinations regarding school  
11 employer or ~~school~~ participating employee responsibilities with respect to  
12 stand-alone vision or dental benefits.

13 Sec. 4. 16 V.S.A. § 2104 is amended to read:

14 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN  
15 AGREEMENT

16 (a)(1) The Commission shall commence negotiation of the matters set forth  
17 in subsections 2103(a) and (b) of this chapter not later than April 1 of the year  
18 before the existing agreement pursuant to this section is set to expire. On or  
19 before November 1 of the year prior to commencement of  
20 bargaining, the Commission shall request from the parties  
21 the negotiation data and information that it anticipates  
22 needing for the negotiation, in a common format, and, on or

1 before February 1 of the year of bargaining, the parties  
2 shall submit to the Commission the information requested.

3 (2) The Commission shall meet together at reasonable times at the call  
4 of the Chairs and shall negotiate in good faith on all matters set forth in  
5 subsections 2103(a) and (b) of this chapter.

6 (3)(A) The Commission shall select a person to serve as a fact finder to  
7 assist it in resolving any matters remaining in dispute in the event that the  
8 Commission is unable to reach an agreement by August 1. The fact finder  
9 shall be selected by a vote of a majority of the representatives of school  
10 employees and of a majority of the representatives of school employers. If the  
11 Commission cannot agree on a fact finder by April 5, the American Arbitration  
12 Association shall be asked to appoint the fact finder.

13 (B)(i) The Commission shall mutually agree on an arbitrator by  
14 April 5 to decide all matters remaining in dispute if it is unable to reach an  
15 agreement within 30 days after receiving the fact finder's report.

16 (ii) If the Commission is unable to mutually agree on an arbitrator,  
17 it shall form a three-member panel of arbitrators to be selected as follows:

18 (I) One arbitrator shall be selected by the representatives of  
19 school employees from a list prepared by the American Arbitration  
20 Association.

1                   (II) One arbitrator shall be selected by the representatives of  
2 school employers from a list prepared by the American Arbitration  
3 Association.

4                   (III) The Commission shall request the services of the  
5 American Arbitration Association for the appointment of the third arbitrator.

6           (b)(1) The Commission shall enter into a written agreement incorporating  
7 all matters agreed to in negotiation.

8           (2) The terms of the agreement shall be incorporated by reference into  
9 all collective bargaining agreements for school employees.

10          (c) The term of each agreement shall be negotiated by the Commission but  
11 shall not be less than two years.

12          Sec. 5. 16 V.S.A. § 2105 is amended to read:

13          § 2105. DISPUTE RESOLUTION

14          (a)(1) If the Commission is unable to reach agreement by August 1, the  
15 Commission shall meet with the fact finder selected pursuant to section 2104  
16 of this chapter not later than August 15.

17          (2) The fact finder may schedule and hold additional meetings with the  
18 Commission as necessary. The Commission shall furnish the fact finder with  
19 all records, papers, and information in its possession pertaining to any matter  
20 remaining in dispute.

1           (3) The fact finder shall, before issuing his or her decision, attempt to  
2 mediate the matters remaining in dispute.

3           (4) If the mediation fails to produce an agreement, the fact finder shall,  
4 on or before September 15, submit a written report to the Commission  
5 recommending a reasonable basis for the settlement of the matters remaining in  
6 dispute.

7           (b)(1) If the Commission is unable to resolve all matters remaining in  
8 dispute within 30 days after receiving the fact finder's report, the Commission  
9 shall submit the matters remaining in dispute to the arbitrator or arbitrators  
10 selected pursuant to section 2104 of this chapter for resolution.

11           (2) The representatives of school employees and the representatives of  
12 school employers shall submit to the arbitrator or arbitrators their last best  
13 offer on all issues remaining in dispute prior to the arbitration hearing. The  
14 arbitrator or arbitrators shall select one of the last best offers without  
15 amendment submitted by the parties prior to the arbitration hearing in its  
16 entirety ~~without amendment~~. The parties shall not be permitted to modify their  
17 last best offers post-hearing. Prior to the issuance of the  
18 arbitrator's decision, nothing shall prohibit the parties  
19 from settling the matters in dispute.

20           (3)(A) The arbitrator or arbitrators shall hold a hearing on or before  
21 November 15 at which the Commission members shall submit all relevant

1 evidence, documents, and written material, and each member may submit oral  
2 or written testimony in support of his or her position on any undecided issue  
3 that is subject to arbitration.

4 (B) In reaching a decision, the arbitrator or arbitrators shall give  
5 weight to the evidence, documents, written material, and arguments presented,  
6 as well as the following factors:

7 (i) the interests and welfare of the public;

8 (ii) the financial ability of the Education Fund and school districts  
9 across the State to pay for the costs of health care benefits and coverage;

10 (iii) comparisons of the health care benefits of school employees  
11 with the health care benefits of similar employees in the public and private  
12 sectors in Vermont;

13 (iv) the average consumer prices for goods and services  
14 commonly known as the cost of living; and

15 (v) prior and existing health care benefits and coverage for school  
16 employees.

17 (4) The arbitrator or arbitrators shall issue their written decision within  
18 30 days after the hearing, explaining in appropriate detail the rationale for  
19 selecting the last best offer, ~~which may include observations on the cost~~  
20 estimates provided by the parties. The decision of the arbitrator or arbitrators

1 shall be final and binding upon the Commission and all school employees and  
2 school employers. The decision shall not be subject to ratification.

3 (5) Upon the petition of a Commission member within not more than  
4 15 days following the arbitration decision, a Superior Court shall vacate the  
5 decision if:

6 (A) it was procured by corruption, fraud, or other undue means;

7 (B) there was evident partiality or prejudicial misconduct by the  
8 arbitrator or arbitrators;

9 (C) the arbitrator or arbitrators exceeded their power or rendered a  
10 decision requiring a person to commit an act or engage in conduct prohibited  
11 by law; or

12 (D) there is an absence of substantial evidence on the record as a  
13 whole to support the decision.

14 (6) At any time prior to the issuance of a decision by the arbitrator or  
15 arbitrators, the Commission may notify the arbitrator or arbitrators of any  
16 additional issues on which a majority of the representatives of school  
17 employees and of the representatives of school employers have reached  
18 agreement.

19 (7) If any provision of this subsection is inconsistent with any other  
20 provision of law governing arbitration, this subsection shall govern.

1 (c) The arbitrator or arbitrators shall have the authority to address  
2 complaints that either party has engaged in or is engaging in unfair bargaining  
3 practices, including a refusal to bargain in good faith. If the arbitrator or  
4 arbitrators find upon a preponderance of the evidence that a party has engaged  
5 in or is engaging in any unfair bargaining practice, the arbitrator or arbitrators  
6 may include in the decision a remedy for the unfair bargaining practice that is  
7 consistent with the provisions of 21 V.S.A. § 1727(d).

8 Sec. 6. 16 V.S.A. § 2106 is amended to read:

9 § 2106. STRIKES AND CONTRACT IMPOSITION PROHIBITED

10 (a) School employees and the representatives of school employees shall be  
11 prohibited from engaging in a strike, as defined by 21 V.S.A. § 1722(16), in  
12 relation to the negotiation of an agreement pursuant to this chapter.

13 (b) The representatives of school employers shall be prohibited from  
14 imposing the terms of the agreement that is subject to this chapter.

15 Sec. 7. 16 V.S.A. § 2107 is amended to read:

16 § 2107. RATIFICATION OF AGREEMENT

17 (a) The representatives of school employers and the representatives of  
18 school employees shall each develop procedures by which their members shall  
19 ratify the agreement entered into by the Commission pursuant to this chapter  
20 within 30 days after the date of the agreement; provided, however, that if the

1 agreement is determined by arbitration pursuant to subsection 2105(b) of this  
2 chapter, the agreement shall not be subject to ratification.

3 (b) In the event that either the school employers or school employees, or  
4 both, fail to ratify the agreement, the following provisions shall apply:

5 (1) If the Commission has not engaged in mediated fact-finding  
6 pursuant to subsection 2105(a) of this chapter during the current negotiation  
7 cycle, the Commission shall meet with the fact finder pursuant to the  
8 provisions of that subsection to settle all matters remaining in dispute. If the  
9 Commission is able to reach a new agreement, that agreement shall be  
10 submitted to the bargaining units for ratification. If, after mediated fact-  
11 finding, the Commission is unable to reach a new agreement, the Commission  
12 shall proceed to arbitration pursuant to subsection 2105(b) of this chapter.

13 (2) If the Commission has already engaged in mediated fact-finding  
14 pursuant to subsection 2105(a) of this chapter during the current negotiation  
15 cycle, the Commission shall proceed to arbitration pursuant to subsection  
16 2105(b) of this chapter.

17 Sec. 8. EFFECTIVE DATE

18 This act shall take effect on passage.

19 (Committee vote: \_\_\_\_\_)

20 \_\_\_\_\_

21 Senator \_\_\_\_\_

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FOR THE COMMITTEE