

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 unionized school employee or any
11 other employee of a supervisory union or school district who is eligible for and
12 has elected to receive health benefit coverage through a school employer.

13 (2) ~~“School Unionized 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 an individual who is a member of a collective bargaining unit at a supervisory
18 union or school district.

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

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

1 § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH

2 BENEFITS CREATED

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

9 (b) Composition and appointment.

10 (1) The Commission shall have 10 members, of whom five shall be
11 representatives of unionized school employees and five shall be representatives
12 of school employers, and four alternate members, of whom two shall be
13 representatives of unionized school employees and two shall be representatives
14 of school employers. The alternate members shall be entitled to attend all
15 negotiating sessions of the Commission.

16 (2)(A) The representatives of unionized school employees shall be
17 appointed as follows:

18 (i) four members and one alternate member appointed by the labor
19 organization representing the greatest number of ~~teachers, administrators, and~~
20 ~~municipal school~~ unionized employees in this State; and

1 (ii) one member and one alternate member appointed by the labor
2 organization representing the second-greatest number of ~~teachers,~~
3 ~~administrators, and municipal school~~ unionized employees in this State.

4 (B) The five representatives and two alternate members of school
5 employers shall be appointed by the organization representing the majority of
6 ~~the~~ public school boards in this State.

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

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

18 (3) In the event of a vacancy, the appointing authority of the member or
19 alternate member whose seat becomes vacant shall appoint a successor to serve
20 out the remainder of the member's or alternate member's term.

1 (c) Chairs. The Commission shall be chaired jointly by one member
2 selected biennially by the representatives of unionized school employees and
3 one member selected biennially by the representatives of school employers.

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

9 (e) Decisions. All decisions of the Commission shall require the votes of a
10 majority of the representatives of unionized school employees and a majority
11 of the representatives of school employers.

12 (f) Compensation. Commission members shall be entitled to receive per
13 diem compensation and reimbursement of expenses pursuant to 32 V.S.A.
14 § 1010.

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

19 (h) Staffing and expenses. The Commission may hire staff as it deems
20 necessary to carry out its duties under this chapter. Compensation for
21 Commission staff and administrative expenses of the Commission shall be

1 shared equally by school employers and unionized school employees. The
2 representatives of school employers and the representatives of unionized
3 school employees shall equitably apportion their share of the costs of
4 compensation and administrative expenses among their members.

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

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

9 § 2103. DUTIES OF THE COMMISSION

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

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

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

19 (3) The premium responsibility percentages for each plan tier shall be
20 the same for all participating employees.

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

6 (2) The Commission also shall determine the extent to which the
7 employer or employee shall bear first dollar responsibility for out-of-pocket
8 expenses if using a health reimbursement arrangement and whether the balance
9 in a participating employee's health reimbursement arrangement shall roll over
10 from year to year.

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

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

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

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

1 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN
2 AGREEMENT

3 (a)(1) The Commission shall commence negotiation of the matters set forth
4 in subsections 2103(a) and (b) of this chapter not later than April 1 of the year
5 before the existing agreement pursuant to this section is set to expire.

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

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

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

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

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

4 (II) One arbitrator shall be selected by the representatives of
5 school employers from a list prepared by the American Arbitration
6 Association.

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

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

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

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

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

16 § 2105. DISPUTE RESOLUTION

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

20 (2) The fact finder may schedule and hold additional meetings with the
21 Commission as necessary. The Commission shall furnish the fact finder with

1 all records, papers, and information in its possession pertaining to any matter
2 remaining in dispute.

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

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

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

13 (2) The representatives of unionized school employees and the
14 representatives of school employers shall submit to the arbitrator or arbitrators
15 their last best offer on all issues remaining in dispute prior to the arbitration
16 hearing. The arbitrator or arbitrators shall select one of the last best offers
17 without amendment submitted by the parties prior to the arbitration hearing in
18 its entirety without amendment. The parties shall not be permitted to modify
19 their last best offers post-hearing.

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 unionized school
11 employees with the health care benefits of similar employees in the public and
12 private 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
16 unionized school 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
21 shall be final and binding upon the Commission and all unionized school

1 employees and school employers. The decision shall not be subject to
2 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 unionized
17 school 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~~ Unionized school employees and the representatives of
11 unionized school employees shall be prohibited from engaging in a strike, as
12 defined by 21 V.S.A. § 1722(16), in relation to the negotiation of an agreement
13 pursuant to this chapter.

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

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

17 § 2107. RATIFICATION OF AGREEMENT

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

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

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

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

15 (2) If the Commission has already engaged in mediated fact-finding
16 pursuant to subsection 2105(a) of this chapter during the current negotiation
17 cycle, the Commission shall proceed to arbitration pursuant to subsection
18 2105(b) of this chapter.

19 Sec. 8. EFFECTIVE DATE

20 This act shall take effect on passage.

1 (Committee vote: _____)

2

3

Senator _____

4

FOR THE COMMITTEE