

1 **Yellow** = agreed upon in concept

2 **Blue** = NEA

3 **Green** = School Boards' Association

4

5 TO THE HONORABLE SENATE:

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

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

12 § 2101. DEFINITIONS

13 As used in this chapter:

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

17 (2) “School employee” means:

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

20 ~~or~~

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

1           (C) individuals employed as supervisors as defined in 21 V.S.A.  
2           § 1502;  
3           (D) confidential employees as defined in 21 V.S.A. § 1722;  
4           (E) certified employees of school employers; and  
5           (F) any other permanent employee of a school employer not covered  
6           by subdivisions (A)-(E) of this subdivision (2).

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

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

10           § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH  
11                           BENEFITS CREATED

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

18           (b) Composition and appointment.

19           (1) The Commission shall have 10 members, of whom five shall be  
20           representatives of school employees and five shall be representatives of school  
21           employers.

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

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

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

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

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

15           (D) The term of each member of the Commission shall be six years,  
16 provided that of the members first appointed by the labor organization  
17 described in subdivision (A)(i) of this subdivision (2), one appointee shall  
18 serve a term of two years and one appointee shall serve a term of four years,  
19 and of the members first appointed by the organization representing the  
20 majority of the public school boards in this State, one appointee shall serve a  
21 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 as permitted  
17 under 32 V.S.A. § 1010 for not more than 10 meetings per year.

18           (g) Release time. A school district that employs a member of the  
19 Commission, or an alternate member of the Commission under subsection (j)  
20 of this section, who represents school employees or school employers shall  
21 grant the Commission member time off as necessary for the member to attend

1 meetings of the Commission. **The cost of retaining a substitute for the**  
2 **Commission member who takes time off to attend meetings of the Commission**  
3 **shall be shared equally by school employers and school employees.**

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

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

14 (j) Alternate members. Four alternate members may be appointed to the  
15 Commission who, if appointed, shall be entitled to attend all negotiating  
16 sessions of the Commission. Up to two alternate members may be appointed  
17 by representatives of school employees and up to two alternate members may  
18 be appointed by representatives of school employers. The term of each  
19 alternate member, if appointed, shall be six years. In the event of a vacancy,  
20 the appointing authority of the alternate member whose seat becomes vacant  
21 shall appoint a successor to serve out the remainder of the alternate member's

1 term. Alternate members may be removed by the Commission only for cause  
2 and may be removed by the appointing authority of the alternate member  
3 without cause.

4 (k) Appropriations. The sum of \$[17,500.00] is appropriated to the  
5 Commission from the [General Fund/other source] for fiscal year 2021 for per  
6 diem compensation and reimbursement of expenses for members of the  
7 Commission. The Commission shall request the Governor to include in the  
8 Governor’s annual budget request the same amount for the same purpose. Any  
9 unused appropriation in any year shall revert to the [General Fund/other  
10 source].

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

12 § 2103. DUTIES OF THE COMMISSION

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

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

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

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

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

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

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

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

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

4 (e) The Commission shall/may negotiate a grievance procedure for disputes  
5 concerning public school employee health benefits.

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

7 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN  
8 AGREEMENT

9 (a)(1) The Commission shall commence negotiation of the matters set forth  
10 in subsections 2103(a) and (b) of this chapter not later than April 1 of the year  
11 before the existing agreement pursuant to this section is set to expire. On or  
12 before November 1 of the year prior to commencement of bargaining, the  
13 Commission shall request from the parties any data and information that it  
14 anticipates needing for the negotiation, in a common format, and, on or before  
15 February 1 of the year of bargaining, the parties shall submit to the  
16 Commission the information requested.

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

20 (3)(A) The Commission shall select a person to serve as a fact finder to  
21 assist it in resolving any matters remaining in dispute in the event that the

1 Commission is unable to reach an agreement by August 1. The fact finder  
2 shall be selected by a vote of a majority of the representatives of school  
3 employees and of a majority of the representatives of school employers. If the  
4 Commission cannot agree on a fact finder by April 5, the American Arbitration  
5 Association shall be asked to appoint the fact finder.

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

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

11 (I) One arbitrator shall be selected by the representatives of  
12 school employees from a list prepared by the American Arbitration  
13 Association.

14 (II) One arbitrator shall be selected by the representatives of  
15 school employers from a list prepared by the American Arbitration  
16 Association.

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

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

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

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

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

6 § 2105. DISPUTE RESOLUTION

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

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

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

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

20           (b)(1) If the Commission is unable to resolve all matters remaining in  
21 dispute within 30 days after receiving the fact finder's report, the Commission

1 shall submit the matters remaining in dispute to the arbitrator or arbitrators  
2 selected pursuant to section 2104 of this chapter for resolution.

3 (2) The representatives of school employees and the representatives of  
4 school employers shall submit to the arbitrator or arbitrators their last best  
5 offer on all issues remaining in dispute prior to the arbitration hearing. The  
6 arbitrator or arbitrators shall select one of the last best offers without  
7 amendment submitted by the parties prior to the arbitration hearing in its  
8 entirety ~~without amendment~~. The parties shall not be permitted to modify their  
9 last best offers post-hearing. Prior to the issuance of the arbitrator's decision,  
10 nothing shall prohibit the parties from settling the matters in dispute.

11 (3)(A) The arbitrator or arbitrators shall hold a hearing on or before  
12 November 15 at which the Commission members shall submit all relevant  
13 evidence, documents, and written material, including a comprehensive cost  
14 estimate for the term of the proposal with a breakdown of costs borne by  
15 employers and costs borne by employees, and each member may submit oral or  
16 written testimony in support of his or her position on any undecided issue that  
17 is subject to arbitration.

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

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

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

3                   (iii) comparisons of the health care benefits of school employees  
4 with the health care benefits of similar employees in the public and private  
5 sectors in Vermont;

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

8                   (v) prior and existing health care benefits and coverage for school  
9 employees.

10               (4) The arbitrator or arbitrators shall issue their written decision within  
11 30 days after the hearing, explaining in appropriate detail the rationale for  
12 selecting the last best offer. The decision shall include a comprehensive cost  
13 estimate for the term of the award for each of the last best offers submitted by  
14 the parties [and a full explication of the basis for the decision] [note—  
15 duplicative of lines 11-12]. The cost estimate shall include a breakdown of  
16 costs borne by employers and costs borne by employees. The decision of the  
17 arbitrator or arbitrators shall be final and binding upon the Commission and all  
18 school employees and school employers. The decision shall not be subject to  
19 ratification.

1           (5) Upon the petition of a Commission member within not more than  
2           15 days following the arbitration decision, a Superior Court shall vacate the  
3           decision if:

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

5                   (B) there was evident partiality or prejudicial misconduct by the  
6           arbitrator or arbitrators;

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

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

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

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

19           (c) The arbitrator or arbitrators shall have the authority to address  
20           complaints that either party has engaged in or is engaging in unfair bargaining  
21           practices, including a refusal to bargain in good faith. If the arbitrator or

1 arbitrators find upon a preponderance of the evidence that a party has engaged  
2 in or is engaging in any unfair bargaining practice, the arbitrator or arbitrators  
3 may include in the decision a remedy for the unfair bargaining practice that is  
4 consistent with the provisions of 21 V.S.A. § 1727(d).

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

6 § 2106. STRIKES AND CONTRACT IMPOSITION PROHIBITED

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

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

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

13 § 2107. RATIFICATION OF AGREEMENT

14 (a) The representatives of school employers and the representatives of  
15 school employees shall each develop procedures by which their members shall  
16 ratify the agreement entered into by the Commission pursuant to this chapter  
17 within 30 days after the date of the agreement; provided, however, that if the  
18 agreement is determined by arbitration pursuant to subsection 2105(b) of this  
19 chapter, the agreement shall not be subject to ratification.

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

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

9           (2) If the Commission has already engaged in mediated fact-finding  
10 pursuant to subsection 2105(a) of this chapter during the current negotiation  
11 cycle, the Commission shall proceed to arbitration pursuant to subsection  
12 2105(b) of this chapter.

13 **Sec. 8. RETROACTIVE APPLICATION TO THE ARBITRATOR'S**

14 **AWARD IN DECEMBER 2019**

15 For the purposes of the arbitrator's employee health benefits award of

16 December 2019:

17 (1) supervisory and managerial employees who were otherwise not  
18 covered by the definition of school employee under 16 V.S.A. § 2101(2)(A) or  
19 (B) as in effect as of the date of the arbitrator's award shall, for the purposes of  
20 determining which benefit levels apply under the arbitrator's award, be treated  
21 as a teacher or administrator under Sec. 2101(2)(A) as then in effect; and

