

Senate Education - School employee health benefits draft for discussion

1 Sec. 1. 16 V.S.A. chapter 61 is added to read:

2 CHAPTER 61. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS

3 § 2101. DEFINITIONS

4 As used in this chapter:

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

7 (2) “School employee” means:

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

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

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

13 § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS

14 CREATED

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

20 (b) Composition and appointment.

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

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

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

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

6 (B) The five representatives of school employers shall be appointed by the Vermont
7 School Boards Association.

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

11 (D) The term of each member of the Commission shall be six years, provided that of
12 the members first appointed by the labor organization described in subdivision (A)(i) of this
13 subdivision (2), 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 Vermont School Boards
15 Association, one appointee shall serve a term of two years and one appointee shall serve a term
16 of four years.

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

19 (c) Chairs. The Commission shall be chaired jointly by one member selected biennially by
20 the representatives of school employees and one member selected biennially by the
21 representatives of school employers.

1 (d) Removal of Commission members. Members of the Commission may be removed only
2 for cause. The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis
3 and process for removal.

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

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

8 **(g) Staffing. The Commission may hire such staff as it deems necessary to carry out its**
9 **duties under this chapter. Compensation for Commission staff shall be supported by . . . ?**

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

12 § 2103. DUTIES OF THE COMMISSION

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

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

17 (2) Each school employer shall be responsible for paying the percentage of the premium
18 cost determined by the Commission on behalf of all of its participating school employees.

19 (b)(1) The Commission shall determine the amount of school employees' out-of-pocket
20 expenses for which the school employer and the school employees shall be responsible, and
21 whether school employers shall establish a health reimbursement arrangement or a health savings
22 account, or neither, for their participating employees.

1 (2) The Commission also shall determine the extent to which the employer or employee
2 shall bear first dollar responsibility for out-of-pocket expenses if using a health reimbursement
3 arrangement.

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

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

8 (a)(1) The Commission shall commence negotiation of the matters set forth in subsections
9 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement
10 pursuant to this section is set to expire.

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

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

19 **(B) The Commission shall, at the commencement of negotiations, form a three-**
20 **member panel of arbitrators to decide all matters remaining in dispute if it is unable to**
21 **reach an agreement within 30 days after receiving the fact finder's report. The panel of**
22 **arbitrators shall be selected as follows:**

1 **(i) One arbitrator selected by the representatives of school employees from a**
2 **list prepared by the American Arbitration Association.**

3 **(ii) One arbitrator selected by the representatives of school employers from a**
4 **list prepared by the American Arbitration Association.**

5 **(iii) One arbitrator selected jointly by the representatives of school employees**
6 **and the representatives of school employers. If the parties are unable to agree on a third**
7 **arbitrator within five days after selection of the other members of the panel, they shall**
8 **request the services of the American Arbitration Association for the appointment of the**
9 **third arbitrator.**

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

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

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

16 § 2105. DISPUTE RESOLUTION

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

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

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

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

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

10 **(2) The Commission shall submit to the arbitration panel all proposals related to the**
11 **issues remaining in dispute that are supported by at least one member of the Commission.**
12 **The arbitrators shall be limited to selecting one of the proposals submitted with respect to**
13 **each undecided issue.**

14 (3)(A) The arbitrators shall hold a hearing on or before November 15 at which the
15 Commission members shall submit all relevant evidence, documents, and written material, and
16 each member may argue on behalf of his or her position on any undecided issue that is subject to
17 arbitration.

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

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

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

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

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

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

6 (4) The arbitrators shall issue their decision within 30 days after the hearing. The decision
7 of the arbitrators shall be final and binding upon the Commission and all school employees and
8 school employers. The decision shall not be subject to ratification.

9 (5) Upon the petition of a Commission member within not more than 15 days following
10 the arbitrators' decision, a Superior Court shall vacate the decision if:

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

12 (B) there was evident partiality or prejudicial misconduct by the arbitrators;

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

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

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

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

22 **§ 2106. UNFAIR LABOR PRACTICES**

23 **(a) It shall be an unfair labor practice for the representatives of school employers to:**

1 (1) refuse to bargain collectively in good faith with the representatives of school
2 employees; or

3 (2) refuse to appropriate sufficient funds to implement the written agreement
4 entered into pursuant to section 2104 of this chapter.

5 (b) It shall be an unfair labor practice for the representatives of school employees to
6 refuse to bargain collectively in good faith with the representatives of school employees.

7 (c) 21 V.S.A. §§ 1727-1729 shall apply to this chapter for the purpose of preventing
8 unfair labor practices and enforcing the provisions of this section.

9 § 2107. STRIKES AND CONTRACT IMPOSITION PROHIBITED

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

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

15 § 2108. RATIFICATION OF AGREEMENT

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

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

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

7 (2) If the Commission has already engaged in mediated fact finding pursuant to subsection
8 2105(a) of this chapter during the current negotiation cycle, the Commission shall proceed to
9 arbitration pursuant to subsection 2105(b) of this chapter.

10 **§ 2109. DUTIES OF SCHOOL EMPLOYERS**

11 Each school employer shall:

12 (1) deduct from the gross wages of each participating employee a sum equal to the
13 percentage of the premium determined by the Commission to be the employee's responsibility
14 for the applicable tier of coverage;

15 (2) remit to the administrator of the health benefit plan the amount determined by the
16 Commission to be the employers' premium responsibility for each participating employee, along
17 with the amount deducted from the employee's wages for the employee's premium share;

18 (3) contribute toward the out-of-pocket expenses of each participating employee in the
19 amounts and manner determined by the Commission to be the employer's responsibility; and

20 (4) participate in any health reimbursement arrangement or health savings account, or
21 both, in the amounts and to the extent determined by the Commission.

1 Sec. 2. 16 V.S.A. § 2004 is amended to read:

2 § 2004. AGENDA

3 (a) The school board, through its negotiations council, shall, upon request, negotiate with
4 representatives of the teachers' or administrators' organization negotiations council on matters of
5 salary, related economic conditions of employment, the manner in which it will enforce an
6 employee's obligation to pay the agency fee, procedures for processing complaints and
7 grievances relating to employment, and any mutually agreed-upon matters not in conflict with
8 the statutes and laws of the State of Vermont.

9 (b) As used in this section, the terms "salary" and "related economic conditions of
10 employment" shall not include health care benefits or coverage. Health care benefits and health
11 coverage, including health reimbursement arrangements and health savings accounts, shall not be
12 subject to collective bargaining pursuant to this chapter, but shall be **determined pursuant** to
13 chapter 61 of this title.

14 Sec. 3. 16 V.S.A. § 2005 is amended to read:

15 § 2005. WRITTEN AGREEMENT

16 The negotiations councils for the school board and the teachers' or administrators'
17 organization shall enter into a written agreement or agreements incorporating therein matters
18 agreed to in negotiation. The written agreement shall incorporate by reference the terms of the
19 agreement entered **into pursuant** to chapter 61 of this title.

20 Sec. 4. 21 V.S.A. § 1722 is amended to read:

21 § 1722. DEFINITIONS

22 As used in this chapter:

23 * * *

1 (12) “Municipal employee” means any employee of a municipal employer, including a
2 municipal school employee or a professional employee as defined in subdivision 1502(11) of this
3 title, except:

4 * * *

5 (17) “Wages, hours, and other conditions of employment” means any condition of
6 employment directly affecting the economic circumstances, health, safety, or convenience of
7 employees but excluding matters of managerial prerogative as defined in this section. For
8 collective bargaining related to municipal school employees, “wages, hours, and other conditions
9 of employment” shall not include health care benefits or coverage.

10 * * *

11 (21) “Municipal school employee” means an employee of a supervisory union or school
12 district that is not otherwise subject to 16 V.S.A. chapter 57 (labor relations for teachers and
13 administrators) and who is not otherwise excluded pursuant to subdivision (12) of this
14 section.

15 Sec. 5. 21 V.S.A. § 1725 is amended to read:

16 § 1725. COLLECTIVE BARGAINING PROCEDURE

17 (a)(1) For the purpose of collective bargaining, the representatives of the municipal employer
18 and the bargaining unit shall meet at any reasonable time and shall bargain in good faith with
19 respect to wages, hours, and conditions of employment; and shall execute a written contract
20 incorporating any agreement reached; provided, however, that neither party shall be compelled to
21 agree to a proposal nor to make a concession, nor to bargain over any issue of managerial
22 prerogative.

1 (3) “School employer” shall have the same meaning as in 16 V.S.A. § 2101.

2 (b) A health benefit association shall offer no more than one health benefit plan to school
3 employers and shall offer the same plan to all school employers.

4 (c) A health benefit association shall solicit the input of the Commission on Public School
5 Employee Health Benefits established in 16 V.S.A. § 2102 regarding the design of the health
6 benefit plan to be offered to school employers for coverage of their school employees.

7 (d) The governing board of a health benefit association shall be composed of the following
8 six members:

9 (1) three members appointed by the organization representing the majority of the school
10 employers in this State; provided however, that at the discretion of the organization, one of these
11 members may be a representative of the organization; and

12 (2) three members appointed by the labor organization representing the greatest number of
13 school employees in the State.

14 (e) An A health benefit association that offers hospital, surgical and medical benefits
15 insurance to entities that are providing educational services under this subchapter, shall make
16 such insurance its health benefit plan available to approved or recognized independent schools
17 operating in Vermont. Participation shall be on the same terms and conditions that apply to
18 municipalities and shall not create joint and several liability as a result of any act or omission of
19 any other school, municipality, or association. Schools Approved or recognized independent
20 schools that participate under this section shall be provided with copies of the annual audit. The
21 provisions of section 16 V.S.A. § 166 of Title 16 shall apply for purposes of determining
22 whether a school qualifies as an “approved or recognized independent school.”

1 Sec. 8. DEPARTMENT OF FINANCIAL REGULATION; RULEMAKING

2 The Department of Financial Regulation shall amend its rules pursuant to 3 V.S.A. chapter 25
3 as needed to conform to the provisions of 24 V.S.A. § 4947 as amended by this act.

4 Sec. 9. SCHEDULE FOR NEGOTIATIONS DURING 2018; VERMONT EDUCATION
5 HEALTH INITIATIVE BOARD TRANSITION;

6 (a) Notwithstanding any provision of 16 V.S.A. chapter 61 to the contrary, the Commission
7 on Public School Employee Health Benefits shall negotiate the agreement for school employee
8 health benefits to take effect on July 1, 2019 pursuant to the following schedule:

9 (1) Negotiations shall commence on or before ~~August~~ July 1, 2018.

10 (2) If the Commission has not reached an agreement by ~~October~~ September 1, 2018, the
11 Commission shall proceed to fact finding and the fact finder shall meet with the Commission on
12 or before ~~October~~ September 15, 2018.

13 (3) The fact finder shall, on or before ~~November~~ October 15, 2018, submit a written
14 report to the Commission recommending a reasonable basis for the settlement of the matters
15 remaining in dispute.

16 (4) If the Commission is unable to reach an agreement by ~~November~~ 5, 2018, it shall
17 submit all matters remaining in dispute to arbitration at the earliest possible opportunity.

18 (5) On or before December ~~21~~ 15, 2018, the arbitrator shall render a decision on all
19 matters remaining in dispute.

20 **(6) If the Commission is able to reach an agreement, the agreement shall be ratified**
21 **as provided pursuant 16 V.S.A. § 2108; provided, however, that if either the school**
22 **employers or school employees, or both, fail to ratify the agreement, the Commission shall**
23 **proceed to arbitration without engaging in further negotiation or mediated fact finding.**

1 (b)(1) The composition of the board of a health benefit association, as defined in 24 V.S.A.
2 § 4947(a), that is in place on the date of passage of this act may continue in the same form until
3 July 1, 2018. On July 1, 2018, the terms of all board members then serving shall expire.

4 (2) Beginning on July 1, 2018, the board of a health benefit association shall conform to
5 the composition specified in 24 V.S.A. § 4947(d) and the terms of all new board members shall
6 begin on that date. Board members serving immediately prior to July 1, 2018 shall be eligible
7 for reappointment to the extent permitted by the board's bylaws.

8 Sec. 10. EFFECTIVE DATE

9 This act shall take effect on passage.