

**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 and expenses. The Commission may hire staff as it deems necessary to**  
9 **carry out its duties under this chapter. Compensation for Commission staff and**  
10 **administrative expenses of the Commission shall be shared equally by school employers**  
11 **and school employees. The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25**  
12 **to equitably apportion the costs of compensation and administrative expenses among**  
13 **school employers and among school employees and to collect the amounts due.**

14     (h) Rulemaking. The Commission may adopt rules or procedures, or both, pursuant to  
15 3 V.S.A. chapter 25 as needed to carry out its duties under this chapter.

16 § 2103. DUTIES OF THE COMMISSION

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

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

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

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

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

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

11 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN AGREEMENT

12     (a)(1) The Commission shall commence negotiation of the matters set forth in subsections  
13 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement  
14 pursuant to this section is set to expire.

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

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

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

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

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

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

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

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

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

19 § 2105. DISPUTE RESOLUTION

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

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

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

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

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

13       **(2) The representatives of school employees and the representatives of school**  
14 **employers shall submit to the arbitration panel their last best offer on all issues remaining**  
15 **in dispute. The arbitrators shall select one of the last best offers, in its entirety without**  
16 **amendment.**

17       (3)(A) The arbitrators shall hold a hearing on or before November 15 at which the  
18 Commission members shall submit all relevant evidence, documents, and written material, and  
19 each member **may submit oral or written testimony in support of** his or her position on any  
20 undecided issue that is subject to arbitration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 2106. UNFAIR LABOR PRACTICES**

2 **(a) It shall be an unfair labor practice for the representatives of school employers to**  
3 **refuse to bargain collectively in good faith with the representatives of school employees or**  
4 **for the representatives of school employees to refuse to bargain collectively in good faith**  
5 **with the representatives of school employers.**

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

8 **§ 2107. STRIKES AND CONTRACT IMPOSITION PROHIBITED**

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

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

14 **§ 2108. RATIFICATION OF AGREEMENT**

15 **(a) The representatives of school employers and the representatives of school employees shall**  
16 **each develop procedures by which their members shall ratify the agreement entered into by the**  
17 **Commission pursuant to this chapter within 30 days after the date of the agreement; provided,**  
18 **however, that if the 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 both, fail to ratify**  
21 **the agreement, the following provisions shall apply:**

22 **(1) If the Commission has not engaged in mediated fact finding during the current**  
23 **negotiation cycle, the Commission shall meet with the fact finder pursuant to the provisions of**



1 subsection 2105(a) of this chapter to settle all matters remaining in dispute. If the Commission is  
2 able to reach a new agreement, that agreement shall be submitted to the bargaining units for  
3 ratification. If, after mediated fact finding, the Commission is unable to reach a new agreement,  
4 the Commission shall proceed to arbitration pursuant to subsection 2105(b) of this chapter.

5 (2) If the Commission has already engaged in mediated fact finding pursuant to subsection  
6 2105(a) of this chapter during the current negotiation cycle, the Commission shall proceed to  
7 arbitration pursuant to subsection 2105(b) of this chapter.

8 § 2109. DUTIES OF SCHOOL EMPLOYERS

9 Each school employer shall:

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

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

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

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

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

21 § 2004. AGENDA

22 (a) The school board, through its negotiations council, shall, upon request, negotiate with  
23 representatives of the teachers' or administrators' organization negotiations council on matters of

1 salary, related economic conditions of employment, the manner in which it will enforce an  
2 employee's obligation to pay the agency fee, procedures for processing complaints and  
3 grievances relating to employment, and any mutually agreed-upon matters not in conflict with  
4 the statutes and laws of the State of Vermont.

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

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

11 § 2005. WRITTEN AGREEMENT

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

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

17 § 1722. DEFINITIONS

18 As used in this chapter:

19 \* \* \*

20 (12) "Municipal employee" means any employee of a municipal employer, including a  
21 municipal school employee or a professional employee as defined in subdivision 1502(11) of this  
22 title, except:

23 \* \* \*

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

6 \* \* \*

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

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

11 § 1725. COLLECTIVE BARGAINING PROCEDURE

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

18 (2)(A) For the purpose of collective bargaining related to municipal school employees,  
19 “wages, hours, and conditions of employment” shall not include health care benefits or coverage.  
20 Health care benefits and coverage, including health reimbursement arrangements and health  
21 savings accounts, shall not be subject to collective bargaining by municipal school employees  
22 pursuant to this chapter, but shall be determined pursuant to 16 V.S.A. chapter 61.



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

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

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

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

18 Sec. 8. DEPARTMENT OF FINANCIAL REGULATION; RULEMAKING

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

1 Sec. 9. SCHEDULE FOR NEGOTIATIONS DURING 2018; VERMONT EDUCATION  
2 HEALTH INITIATIVE **PLANS**; BOARD TRANSITION

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

6 (1) Negotiations shall commence on or before July 1, 2018.

7 (2) If the Commission has not reached an agreement by September 1, 2018, the  
8 Commission shall proceed to fact finding and the fact finder shall meet with the Commission on  
9 or before September 15, 2018.

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

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

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

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

21 **(b)(1) A health benefit association offering health benefit plans pursuant to 24 V.S.A.**  
22 **§ 4947 on July 1, 2018 shall continue to make the same health benefit plans available to**  
23 **public school employers and approved or recognized independent school employers, and**

1 **their participating employees, until the expiration of the first agreement entered into by the**  
2 **Commission on Public School Employee Health Benefits. A health benefit association may**  
3 **modify its plan designs or plan offerings, or both, beginning with the health benefit plans to**  
4 **be offered in the first plan year to which the Commission's second agreement applies.**

5 **(2) Nothing in subdivision (1) of this subsection shall be construed to limit or modify**  
6 **the requirement that a health benefit association file annual, actuarially sound, proposed**  
7 **premium rates with the Department of Financial Regulation in amounts sufficient to**  
8 **ensure the continued solvency of the association and its health benefit plans.**

9 **(c)(1) The composition of the board of a health benefit association, as defined in 24 V.S.A.**  
10 **§ 4947(a), that is in place on the date of passage of this act may continue in the same form until**  
11 **July 1, 2018. On July 1, 2018, the terms of all board members then serving shall expire.**

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

16 Sec. 10. EFFECTIVE DATE

17 **This act shall take effect on passage.**