

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.

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

15 (i) four members appointed by the labor organization representing
16 the greatest number of ~~teachers, administrators, and municipal school~~
17 unionized employees in this State; and

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

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

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

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

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

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

20 (d) Removal of Commission members. Members of the Commission may
21 be removed by the Commission only for cause and may be removed by the

1 member's appointing authority without cause. The Commission shall adopt
2 rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for
3 removal.

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

7 (f) Compensation. Commission members shall be entitled to receive per
8 diem compensation and reimbursement of expenses pursuant to 32 V.S.A.
9 § 1010.

10 (g) Release time. A school district that employs a member of the
11 Commission who represents unionized school employees shall grant the
12 Commission member time off as necessary for the member to attend meetings
13 of the Commission.

14 (h) Staffing and expenses. The Commission may hire staff as it deems
15 necessary to carry out its duties under this chapter. Compensation for
16 Commission staff and administrative expenses of the Commission shall be
17 shared equally by school employers and unionized school employees. The
18 representatives of school employers and the representatives of unionized
19 school employees shall equitably apportion their share of the costs of
20 compensation and administrative expenses among their members.

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

4 (j) Alternate members. Four alternate members may be appointed to the
5 Commission who, if appointed, shall be entitled to attend all negotiating
6 sessions of the Commission. One alternate member may be appointed by the
7 labor organization representing the greatest number of unionized employees in
8 this State, one alternate member may be appointed by the labor organization
9 representing the second-greatest number of unionized employees in this State,
10 and up to two alternate members may be appointed by the organization
11 representing the majority of public school boards in this State. The term of
12 each alternate member, if appointed, shall be six years. In the event of a
13 vacancy, the appointing authority of the alternate member whose seat becomes
14 vacant shall appoint a successor to serve out the remainder of the alternate
15 member's term. Alternate members may be removed by the Commission only
16 for cause and may be removed by the alternate member's appointing authority
17 without cause.

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

19 § 2103. DUTIES OF THE COMMISSION

20 (a) The Commission shall determine the percentage of the premium for
21 individual, two-person, parent-child, and family coverage under a health

1 benefit plan that shall be borne by each school employer and the percentage
2 that shall be borne by participating employees.

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

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

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

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

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

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

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

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

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

12 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN
13 AGREEMENT

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

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 unionized
3 school employees and of a majority of the representatives of school employers.

4 If the Commission cannot agree on a fact finder by April 5, the American
5 Arbitration 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 unionized 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 unionized 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 unionized school employees and the
4 representatives of school employers shall submit to the arbitrator or arbitrators
5 their last best offer on all issues remaining in dispute prior to the arbitration
6 hearing. The arbitrator or arbitrators shall select one of the last best offers
7 without amendment submitted by the parties prior to the arbitration hearing in
8 its entirety without amendment. The parties shall not be permitted to modify
9 their last best offers post-hearing.

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

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

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

19 (ii) the financial ability of the Education Fund and school districts

20 across the State to pay for the costs of health care benefits and coverage;

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

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

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

8 (4) The arbitrator or arbitrators shall issue their written decision within
9 30 days after the hearing, explaining in appropriate detail the rationale for
10 selecting the last best offer, which may include observations on the cost
11 estimates provided by the parties. The decision of the arbitrator or arbitrators
12 shall be final and binding upon the Commission and all unionized school
13 employees and school employers. The decision shall not be subject to
14 ratification.

15 (5) Upon the petition of a Commission member within not more than
16 15 days following the arbitration decision, a Superior Court shall vacate the
17 decision if:

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

19 (B) there was evident partiality or prejudicial misconduct by the
20 arbitrator or arbitrators;

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

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

6 (6) At any time prior to the issuance of a decision by the arbitrator or
7 arbitrators, the Commission may notify the arbitrator or arbitrators of any
8 additional issues on which a majority of the representatives of unionized
9 school employees and of the representatives of school employers have reached
10 agreement.

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

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

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

21 § 2106. STRIKES AND CONTRACT IMPOSITION PROHIBITED

1 (a) ~~School~~ Unionized school employees and the representatives of
2 unionized school employees shall be prohibited from engaging in a strike, as
3 defined by 21 V.S.A. § 1722(16), in relation to the negotiation of an agreement
4 pursuant to this chapter.

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

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

8 § 2107. RATIFICATION OF AGREEMENT

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

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

19 (1) If the Commission has not engaged in mediated fact-finding
20 pursuant to subsection 2105(a) of this chapter during the current negotiation
21 cycle, the Commission shall meet with the fact finder pursuant to the

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

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

10 Sec. 8. EFFECTIVE DATE

11 This act shall take effect on passage.

12 (Committee vote: _____)

13 _____

14 Senator _____

15 FOR THE COMMITTEE