

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 school employee who is eligible  
11 for and has elected to receive health benefit coverage through a school  
12 employer.

13 (2) “School employee” means:

14 (A) includes the following individuals:

15 (i) an individual employed by a ~~supervisory union or school~~  
16 ~~district~~ employer as a teacher or administrator as defined in section 1981 of  
17 this title; or

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

19 (iii) an individual employed as a supervisor as defined in

20 21 V.S.A. § 1502;

21 (iv) a confidential employee as defined in 21 V.S.A. § 1722;

1                   (v) a certified employee of a school employer; and  
2                   (vi) any other permanent employee of a school employer not  
3 covered by subdivisions (i)-(v) of this subdivision (2); and  
4                   (B) notwithstanding subdivision (A) of this subdivision (2), excludes  
5 individuals who serve in the role of superintendent.

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

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

9                   § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH

10                   BENEFITS CREATED

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

17                   (b) Composition and appointment.

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

1 grant the Commission member time off as necessary for the member to attend  
2 meetings of the Commission.

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

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

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

1 and may be removed by the appointing authority of the alternate member  
2 without cause.

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

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

10 § 2103. DUTIES OF THE COMMISSION

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

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

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

20 ~~(3) The premium responsibility percentages for each plan tier shall be~~  
21 ~~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.

1       (e) The Commission may negotiate a State-wide grievance procedure for  
2       disputes concerning public school employee health benefits.

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

4       § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN  
5       AGREEMENT

6       (a)(1) The Commission shall commence negotiation of the matters set forth  
7       in subsections 2103(a) and (b) of this chapter not later than April 1 of the year  
8       before the existing agreement pursuant to this section is set to expire. On or  
9       before [November 1] of the year prior to commencement of bargaining, the  
10       Commission shall request from the parties any data and information that it  
11       anticipates needing for the negotiation, in a common format, and, on or before  
12       February 1 of the year of bargaining, the parties shall submit to the  
13       Commission the information requested. [This language is still being considered  
14       by VSBA and VT-NEA]

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

18       (3)(A) The Commission shall select a person to serve as a fact finder to  
19       assist it in resolving any matters remaining in dispute in the event that the  
20       Commission is unable to reach an agreement by August 1. The fact finder  
21       shall be selected by a vote of a majority of the representatives of school



1 employees and of a majority of the representatives of school employers. If the  
2 Commission cannot agree on a fact finder by April 5, the American Arbitration  
3 Association shall be asked to appoint the fact finder.

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

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

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

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

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

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

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

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

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

4 § 2105. DISPUTE RESOLUTION

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

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

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

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

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

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

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

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

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

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

1 (iii) comparisons of the health care benefits of school employees  
2 with the health care benefits of similar employees in the public and private  
3 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 school  
7 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. The decision of the arbitrator or arbitrators shall  
11 be final and binding upon the Commission and all school employees and  
12 school employers. The decision shall not be subject to ratification.

13 (5) Upon the petition of a Commission member within not more than  
14 15 days following the arbitration decision, a Superior Court shall vacate the  
15 decision if:

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

17 (B) there was evident partiality or prejudicial misconduct by the  
18 arbitrator or arbitrators;

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

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

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

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

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

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

18          § 2106. STRIKES AND CONTRACT IMPOSITION PROHIBITED

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

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

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

4 § 2107. RATIFICATION OF AGREEMENT

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

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

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

1           (2) If the Commission has already engaged in mediated fact-finding  
2           pursuant to subsection 2105(a) of this chapter during the current negotiation  
3           cycle, the Commission shall proceed to arbitration pursuant to subsection  
4           2105(b) of this chapter.

5           Sec. 8. EFFECTIVE DATE

6           This act shall take effect on passage.

7           (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE