TO: Governor Phil Scott;

Rep. Mitzi Johnson, Speaker of the House

Sen. Tim Ashe, President Pro Tem of the Senate

FROM: Employer Commissioners for Educational Employees Health Care

Re: Report on First Utilization of Act 11 of 2018 Special Session

Date: January 7, 2020

This communication is intended to be a respectful report from the Employer Commissioners of the Commission established by Act 11 of the 2018 Special Session. As you are all aware, this Act created statewide bargaining for K-12 educational employees concerning health care. The Act simultaneously removed jurisdiction from Vermont's school districts to deal with this subject on and after July 1, 2020. Instead, it provided that the results of the statewide bargaining process would be incorporated by reference into every collective bargaining agreement and school policy relating to health care for such educational employees.

As understood by the Employer Commissioners, the exponential growth in health care costs for Vermont's educational employees over the last decade is not financially sustainable for the State of Vermont. Both Finance Commissioner Adam Greshin and DFR Commissioner Michael Piechak testified unambiguously to this effect at both the Fact-Finding and Last Best Offer stages of these proceedings.

Notwithstanding this clear testimony, your Employer Commissioners believe that the process that was just completed will result in approximately $25 Million of additional cost as a result of the necessary utilization of the last best offer (LBO) process specified by the statute, and the arbitrator's selection of the Employee Commissioners' LBO proposal (See attached analysis from Employer Commissioners' health benefits consultant Steve May). This additional cost will be approximately 10% of the overall cost of health care benefits for educational employees. Additionally, the decision stripped away the ability to pair the Gold CDHP Plan with a Health Savings Account, a choice that a significant number of educational employees are currently making and indicated a desire to continue, and also structured the award so that nearly no educational employee will need to absorb a single dollar of out of pocket costs related to their health care coverage. Its impact will be to negate gains most recently achieved in bargaining by many Vermont school districts, with a resulting cost that is higher than what was the case with the VHP Dual Option plans that were intentionally replaced by VEHI with high deductible plans in 2018 in order to achieve cost containment.

The five Employer Commissioners believe that there are serious flaws in the legislation as it currently exists which require attention during the upcoming session. We believe that the following issues must be addressed:

1. The Act specifies that if the parties are not able to reach agreement through direct bargaining plus utilization of both mediation and fact-finding procedures, the matter is to be resolved through an LBO final and binding arbitration process in which the

proposal of one side or the other is to be selected in its entirety. It specifies that if the parties are not able to agree upon the selection of an arbitrator, the arbitrator will be selected either as a tripartite panel or as a single arbitrator from the American Arbitration Association's listing of approved arbitrators. In the proceeding just concluded, the Employer Commissioners agreed with the Employee Commissioners upon the appointment of a single arbitrator. For the future, however, we believe the arbitrator or arbitration panel must have a greater connection to and awareness of this state. We recommend that the statute be amended to provide that unless the parties are able to agree upon a single arbitrator, both the Employer and Employee Commissioners will appoint a panel member of their choosing who resides in Vermont and is neither an employee of or consultant to the participating parties. We further recommend that the Chair of the arbitration panel be appointed through the AAA selection process if the two appointed panelists are unable to agree on a Chair.

2. We believe that the requirement to choose one proposal or the other in its entirety should be retained only if combined with recommendation #1 for the requirement of a panel consisting of at least two Vermonters.
3. The single arbitrator who decided the matter in this just completed cycle provided no analysis or rationale for his decision other than his determination that the last best offer submitted by the Employee Commissioners more closely adhered to the criteria of the statute than that submitted by the Employer Commissioners. The State and its taxpayers are most poorly served by a binding decision that provided so little explanation as to the basis of a decision having millions of dollars of consequence. A full explication of the basis for the decision must henceforth be required by the statute. A copy of the decision is attached.
4. The final and binding arbitration award must also be required to specify how much the separate proposals of the parties are likely to cost the State of Vermont, Vermont school districts and their supporting taxpayers based upon evidence and testimony presented at the hearing.
5. Whereas Act 85 of the 2017 Legislative Session made clear that its purpose was to effectuate savings in the continuously escalating cost of health care for educational employees, Act 11 seemed to have the schizophrenic purposes of both increasing the opportunity for access to health care for a larger segment of the educational employee population while at the same time attempting to moderate escalating costs. This unclear articulation of the ultimate legislative intent led to a major dispute between the parties that persisted throughout the entire negotiation and impasse procedures. This was perhaps most effectively articulated by the individual selected by the parties to serve as mediator who stated that he was glad not to have to serve as arbitrator because of insufficient statutory guidance.
6. As is the case with both the labor relations act for executive branch state employees (SELRA), for Judiciary employees (JELRA) we Employer Commissioners believe that the estimated cost to implement the final order as determined by the arbitration panel should be communicated to the General Assembly for the necessary

appropriation, and if a lesser amount is appropriated, the parties should be obligated to bargain within the dollars made available.

7. As the statute was interpreted and applied by the arbitrator, the parties were not required to exchange and submit their last best offers in their totality in advance of the LBO arbitration hearing as is also the case under SELRA and JELRA, and for municipal employees (MELRA). Instead, such LBO positions were ordered to be submitted in connection with the parties' post hearing briefs. This creates both confusion and undue opportunity for manipulation. The statute needs to be clarified to be as per the other referenced statutes.
8. The Act does not contain a mechanism for resolving grievances relating to the interpretation and enforcement of its resulting agreement or award. The VLRB declined jurisdiction to resolve a dispute because of this. Potentially conflicting interpretations arising from district by district grievance decisions should be precluded to avoid chaos. A statewide grievance resolution methodology must therefore be a requirement for the next agreement.
9. The cycle for the next round of negotiations/impasse procedures should be amended to provide for an earlier absolute conclusion than mid-December, which is too late in the year for effective budget development by the impacted school districts. We recommend that the next negotiation cycle commence by October15, 2021 and be concluded by September 15, 2022.
10. The statute also does not provide sufficient guidance as to the role of alternate commissioners. While it specifies the Commission is to be made up of 10 members, with five being employer representatives and five being employee representatives, the Employee Commissioners continued to insist throughout the process that the five alternates should have the right to participate in direct negotiations, contrary to the Employer Commissioners' interpretation. This lack of clarity needs to be rectified.
11. Act 11 also lacks definitional clarity as to the scope of its coverage. While it seemingly intends to cover all educational employees, it then only specifically references licensed teachers and administrators on the one hand, and "municipal employees" on the other. The statutory definition of a "municipal employee" adopted in Act 11 expressly excludes supervisors and confidential employees. This means that school system employees such as an HR Director, IT Director, Food Service Director and confidential assistant to a superintendent of schools have been inadvertently excluded. These exclusions should be rectified.
12. Adequate funding for the per diem, out of pocket and travel expenses of both Employer and Employee Commissioners must be adequately provided for.

There are additional points which the Employer Commissioners would also be prepared to discuss upon request of the administration or applicable Legislative Leaders/committees, but believe it is best to confine this communication to major areas of concern at present.

Respectfully submitted: Employer Commissioners,

Elizabeth Fitzgerald, South Burlington School District, Chair

Patrick Healy, Twinfield Union School Dist., Caledonia Central SU

Adrienne Raymond, Mill River UUSD

Susan Hamlyn Prescott, Lamoille North MUUSD

Geo Honigford, White River Valley SU

CC:

Rep. Kate Webb, Chair, House Committee on Education

Sen. Philip Baruth, Chair, Senate Committee on Education