VERMONT SCHOOL BOARDS ASSOCIATION

Great Governance, Excellent Education, Strong Communities

To: Senate Education Committee
From: Sue Ceglowski, Executive Director
Re: S.226
Date: February 26, 2020

Good afternoon Chairman Baruth and Committee members:

Thank you for the opportunity to respond to Draft 4.1 of S.226 and address questions raised by the Committee last week.

Response to VT-NEA's Requests – Set Forth in Blue in Draft 4.1

1. Deletion of 16 VSA Section 2103(a)(3) which states "The premium responsibility percentages for each plan tier shall be the same for all participating employees." Also, deletion of 16 VSA Section 2103(b)(3) which states "The school employers' and school employees' responsibilities for out of pocket expenses for each plan tier shall be the same for all participating employees."

   VSBA and the Employer Commissioners strongly oppose the removal of the above language from the statute because it introduces a new level of complexity into the process. A common benefit provides a higher level of predictability for school employers, employees and the VEHI rate setting process. For this reason, 16 VSA Section 2103(a)(3) and 2103(b)(3) should not be deleted.

2. Addition of language to 16 VSA Section 2014(a)(1) stating "On or before November 1 of the year prior to commencement of bargaining, the Commission shall request from the parties the negotiation data and information that it anticipates needing for the negotiation, in a common format, and, on or before February 1 of the year of bargaining, the parties shall submit to the Commission the information requested."

   VSBA and the Employer Commissioners oppose the addition of the above language. It is in the best interest of school districts to respond to the Commission's requests for information and they will be in a better position to do so during the second round of bargaining. Additionally, the proposed language is unclear – who are the parties?

Questions Raised by the Committee Regarding VSBA/Employer Commissioner's Requests

1. **Scope of Bargaining:** VSBA and the Employer Commissioners requested amendment of 16 V.S.A. §2103 by inserting a provision that would require the Commission to negotiate a grievance procedure for the statewide benefit.

   Committee members asked two questions: (a) what is an example of a grievance that could occur and (b) rather than requiring the Commission to negotiate a grievance procedure for the statewide benefit, would it be better to make it optional (may rather than shall).

   (a) An example of a grievance that could occur: the arbitrator's award provides that the premium share for support staff is status quo for 2021 and that it will not exceed a 20% contribution level and will increase by not more than 2% points in 2022. The language in the arbitrator's award does not say whether it is 20% of any premium, or 20% of the Gold CDHP premium applied to other plans (like the teacher's language does). The Commission (not local boards on an ad hoc basis) is better positioned to resolve a dispute about this issue and other grievances that arise due to interpretation of the language of the award or other agreements reached by the Commission In fact, there are several areas of agreement that were reached by the parties that are not incorporated into the arbitrator's award. The Commission is in the best position to provide guidance and interpret the application of language to a specific situation, as opposed to local boards. Allowing 50+ different interpretations of the statewide benefit would undermine the entire purpose of the Act and lead to uneven implementation, creating confusion where there should be clarity. Finally, if the parties are unable to resolve a grievance at the local level and it proceeds to arbitration, you could end up with a situation where arbitrators are issuing different interpretations of the same language.

   (b) Making it optional for the Commission to negotiate a grievance procedure for the statewide benefit will mean that one side can refuse to address the issue, thereby

maintaining the status quo which will cause uneven implementation of the statewide benefit as set forth above.

2. **Arbitration Process:** VSBA and the Employer Commissioners requested amendment of 16 V.S.A. §2105(b) as follows:
    a. (b)(3)(A): The arbitrator or arbitrators shall hold a hearing on or before November 15 at which the Commission members shall submit all relevant evidence, documents, and written material, <u>including a full cost estimate for the full term of the proposal with a breakdown of costs borne by employers and costs borne by employees</u>, and each member may submit oral or written testimony in support of his or her positions on any undecided issue that is subject to arbitration.
    b. (b)(4): The arbitrator or arbitrators shall issue their decision within 30 days after the hearing. <u>The decision shall include a full cost estimate for the full term of the award for each of the last best offers submitted by the parties and a full explication of the basis for the decision. The cost estimate shall include a breakdown of costs borne by employers and costs borne by employees.</u>

Before I address questions asked by the Committee last week, it is notable that the language in version 4.1 does not match our above requests for language to be added to 16 V.S.A. §2105(b)(3) and (4). Instead of "full cost estimate for the full term of the award" version 4.1 requires "a comprehensive cost estimate for the term of the award."

Committee members asked whether the arbitrator would just take each side's cost estimate regarding that side's last best offer or whether the arbitrator would be required to do his/her own analysis. Additionally, there was a question about whether the estimates would be for individual employees, for districts, or expressed on a statewide level.

The intent behind the requested language is that the arbitrator will include the estimates provided by the parties and that the parties will be expected to "show their math" to support the estimates they present at the hearing - not that the arbitrator would be required to conduct an independent cost estimate. To address the Committee's concerns we provide the following additions to the proposed language (in yellow):

    a. (b)(3)(A): The arbitrator or arbitrators shall hold a hearing on or before November 15 at which the Commission members shall submit all relevant evidence, documents, and

written material, including a full cost estimate for the full term of the proposal with a breakdown of costs borne by employers and costs borne by employees on a statewide basis, and each member may submit oral or written testimony in support of his or her positions on any undecided issue that is subject to arbitration.

b. (b)(4): The arbitrator or arbitrators shall issue their decision within 30 days after the hearing. The decision shall include ~~a~~ the full cost estimates for the full term of the award for each of the last best offers submitted by the parties and a full explication of the basis for the decision. The full cost estimates shall include a breakdown of costs borne by employers and costs borne by employees on a statewide basis.

An arbitrator's decision on a statewide benefit which does not include any information about the statewide costs lacks transparency and provides no guidance to the parties for future negotiations.

3. **Release Time:** The Committee asked for input on the issue of substitute pay which is addressed at the top of page 5 of draft 4.1.

   The definition of school employee earlier in the bill, suggests that individual employees will be sharing the cost of obtaining their own substitutes.

   VSBA and the Employer Commissioners support an approach that would clarify that if an employee is eligible for paid release time then he/she is not eligible for per diem. Requiring the VSBA or NEA to pay school districts for the costs of substitutes would be complex and burdensome for all involved.