To: House Committee on General, Housing and Military Affairs
From: Elizabeth Fitzgerald, Co-Chair, Commission on Public School Employee Health Benefits
Re: H.63 and H.81
Date: January 19, 2021

My name is Elizabeth Fitzgerald. I am co-chair of the Commission responsible for bargaining health benefits for public school employees. I, along with my four colleagues, represent the employer school districts and taxpayers, in making sure all school employees retain access to high quality health benefits that are economically sustainable. I am also a 15-year member of the South Burlington School Board, serving many years as Chair, and served five years as a member of the VEHI Board, including during the transition to the current health plans.

I want to thank you, Chairperson Stevens, for the opportunity to testify on H. 63 and H.81, the two bills dedicated to improving Act 11 of 2018, the original law that created the Commission and moved health benefit bargaining to a statewide level. We now have experience with the law, and I would like to take this opportunity to provide some overall observations relative to the more substantive elements of the bills which are in front of you.

As for the two bills introduced, while there are many commonalities between them, the differences are important to understand and I believe essential to include. I, nor anyone who served on the employer side of the Commission, was given the opportunity to testify last year on the Senate bill S. 226, which has now been reintroduced as H.81. Despite passing the Senate in 2020, S.226 did not represent agreement among stakeholders as some have indicated.

While there are a dozen or so differences between the two bills, and I am happy to discuss any or all of them, I will focus my comments to two areas: what the Commission should be required to bargain over (Page 5 and page 6 of the side by side) and the dispute resolution process (Pages 7-12 of the side by side)

1. What the Commission should be required to bargain over
    a. (page 5) The language should **remain** that all employees should be responsible for the **same** premium share and the same out of pocket cost share. This standardization was contemplated and was intentional when Senate Ed drafted and took testimony on language that would become Act 11 in the 2018 special session. It was understood there would be a cost to making available access to generous employer health coverage to all employees, regardless of position. But having the same access also merits the same employer cost share as well. It has been a primary goal. From an affordability standpoint, the common premium and out of pocket (OOP) share goals established in Act 11 meet the Affordable Care Act (ACA) affordability criteria. Districts have been working hard to bring support staff wages in line with minimum wage mandates and access to the healthcare benefit is an important value-add to all employee's total compensation.The current statewide award enriched the benefit across the state with the maximum total OOP cost borne by an employee enrolled in a family plan of $800. The employer's analyst estimated those increases to be about $25 million, driven by

increased access to the plans, increased choice of tier coverage, employer first dollar and total exposure to HRA OOP expense. Because plans have only recently gone into effect in January, we will be monitoring that increase closely. In the meantime, healthcare expenses are becoming an increasing share of school budgets. In South Burlington, those increases have grown from 10.7% in FY19 to 13.2% in this year's proposed budget. Additional healthcare insurance costs represent almost 30% of the budget increase we are asking from our local community. Operations and programming have been cut, in the past and in the recently Board-approved budget, in no small part, due to increasing healthcare costs. The longer range impacts of COVID-related needs on student outcomes and service requirements have Boards scrambling to balance fiscal priorities in a way that communities can understand and support. Recent testimony to the House Ed Committee validates these shared experiences. This is not exclusively a collective bargaining issue, but one, absent some firm guidance and guardrails on financial impact, that will erode educational operations and programming at the state and local level.

The benefits for public school employees are extraordinarily generous by any definition, specifically by the ACA. Employers view this benefit, among others, as a tool to attract and retain talented staff into the profession. Actuarial values (or AV's), as the primary indicator used with insurance risk pools, have increased with the statewide award to 97/98% compared to 2017 VEHI plans which were at 95%. Most Vermonters have access to plans on Vermont Health Connect with AVs from 60-90%. State Employees have the same benefit regardless of what position they hold. The cost and value of the plans are independent of income, particularly as that benefit is no longer negotiated at the local level.

Make no mistake, that employers aren't tone deaf to the relative percentage of household income required by support staff to access the benefit. We are equally vigilant of taxpayers ability to provide a high quality education for our youth, and recognize that it has long been the practice that many of our non-licensed staff choose to work in education to access the generous healthcare benefits. The standardized benefit was but one "governor" on trying to manage the total benefit cost contemplated by Act 11 and start to change the double-digit trajectory seen over the past 4 years, without impacting the high quality of plans.

I have linked testimony and exhibits presented during the Last Best Offer Arbitration from Adam Greshin, Commissioner of Finance and Management and from Michael Pieciak, Commissioner of the Department of Financial Regulation (DFR) as supporting documentation for your reference.

b. (page 6) A **grievance** procedure should be required - language should be "shall" not "may" Terms and conditions of a statewide healthcare benefit are no longer negotiated at the local level and, as such, cannot be interpreted by District/SU staff. Similar to statewide pension benefits and disciplinary procedures, local districts should not be

responsible for any grievance associated with this benefit which is outside their locally-negotiated CBA. There is a high likelihood of different outcomes resulting from grievances being administered and arbitrated at the local level which will erode any agreement or award.

c. (page 6) **Cash in Lieu (CIL)** is a part of the district's health care budgets and should not be decoupled from the health benefit bargaining and should be determined by the Commission. CIL has historically been a way for employers to manage total benefit costs down by financially incenting those employees who could access healthcare benefits from another employer (private or public) to do so for a cash payment which is usually much less than the cost of the benefit. Under the ACA and with the introduction of statewide bargaining, it is clear that employers have the obligation and responsibility to offer and fund the benefit to educational employees. Arguably, this can and will likely increase costs across the state, but it will also create transparency to the full and dedicated cost of healthcare benefits for educational employees (and their dependents) and eliminate any arbitrary and potentially inequitable incentives within the entire educational system particularly where individuals can access benefits through a spouse or partner employed by the same or another school District while still receiving a CIL payment or have chosen healthcare coverage through another source/employer altogether.

2. **Dispute Resolution** – In this area, (called the Impasse procedures, which are applicable when the parties have not been able to reach agreement despite an extensive direct bargaining effort) we make several related requests, together with our rationale:

I think the entire Commission was shocked and surprised by the brevity and lack of justification by the Arbitrator's award and the fact finder's "punt" on dealing with one of the two main negotiable issues, that being OOP expenses. I have included a links in my testimony to excerpts from the fact finder's and arbitrator's award to the Commission with the prior amounting to "math is hard" in reference to OOP funding options and and the latter indicating that factors (associated with Statute and direction to the arbitrator) had been considered and weighted, with no further discussion or clarification.

These recommendations in H.63 address the need to access breadth of experience in arbitration deliberations, inform the parties of detailed rationale for judgements and provide a basis for appeal if justified. They also emphasize the critical need to present fully-vetted cost estimates for proposals based on the material dollar value of these benefits and their impact on local budgets.

a. First, this would provide that the mediator and the factfinder should be separate individuals unless the parties themselves agree to do a mediated fact finding. Mediation is a process during which, more often than not, the parties are separately and confidentially speaking to the mediator about what they are prepared to do to work toward a settlement. Often, during this process, both parties indicate how far they are

prepared to "stretch" to find settlement, setting forth positions that may be acceptable but are not desirable. While fact finding is supposed to be based exclusively on evidence presented, the fact finder cannot typically "un-ring the bell" once he/she has heard a possible mediation position. This is why these two functions are almost always separated in Vermont's labor statutes.

b. This language would provide that last best offer arbitration should be heard by a panel rather than by a single arbitrator. This is also consistent with how most "interest" arbitration proceedings are conducted, including the last best offer arbitration procedures for state of Vermont employees. It is clear that from our first and most recent experience that some depth and potentially breadth "on the bench" in determining a choice between last best offers, when the impact on school districts, their employees, and taxpayers is so significant would be desirable for all stakeholders.

c. Substantively, the arbitration panel should be required to analyze the bedrock principles that were behind this enactment and its Act 85 predecessor, namely a proper balancing of access to quality Health Care for educational employees with the assurance of reasonable cost escalation containment and financial sustainability on behalf of the taxpayers. Without this requirement, the statute remains seriously unbalanced.

d. It is critical to understand the details of proposal costs throughout the bargaining process, but certainly in dispute resolution. It is not enough to limit financial assessment of proposals to employer and employee percentage of premium and OOP share. Cost estimates, including a full estimate of those costs to be borne by employers and employees, comparative plan data relative to Vermont Health Connect, the impact of proposals on future plan AVs, the costs of administering the benefit at the state and local level, any negotiated CIL and the estimated impact on ed spending, are necessary to assessing the balance between access and reasonable cost containment. This statewide benefit allocates over $200 million of taxpayer dollars; dollars that are not available for other public policy goals including improving student learning and property tax relief, and cost estimates must be explicitly codified in the law.

e. H.63 proposes that written decisions by the arbitration panel, inclusive of the rationale for the decision, be sufficiently comprehensive so that all parties can understand its basis, consider whether there are grounds for a judicial appeal as permitted in limited circumstances, explain the decision to impacted constituencies, implement it fairly and make adjustments in future rounds of bargaining.

f. As is the case with every other Vermont labor relations statute, there should be access to the Vermont Labor Relations Board (VLRB) to adjudicate unfair labor practice charges. This should simply not be the domain of the ultimate arbitration panel or arbitrator whose function should be limited to the critically important determination of which of the competing proposals to accept. Utilizing the VLRB will also result in the creation of a record that can be used to appeal to the Vermont supreme court and those very rare situations where there has been a major error of law.

As I said previously, this is not just a collective bargaining process discussion, it is a public policy issue. The first round of bargaining has caused reflection on the need for clarity in Act 11's mission in establishment of the Commission to balance access to high quality healthcare for educational employees while bending the cost escalation trajectory of those benefits.

In closing, I again want to thank you for your time and your service.