

**Side-by-Side of S.226 (2020) v. H.81 (2021)**

**Jim DesMarais**

**2/26/21 (v.1.1)**

**Yellow—differences**

**Note—bills use \*\*\* to show unchanged text in the underlying statute. This side-by-side inserts \*\*\* where text is unchanged from current statute in these bills for ease of comparison**

<b>S.226 (2020)</b>	<b>H.81 (2021)</b>
<p>Sec. 1. 16 V.S.A. § 2101 is amended to read:</p> <p>§ 2101. DEFINITIONS</p> <p>As used in this chapter:</p> <p>(1) “Participating employee” means a school employee who is eligible for and has elected to receive health benefit coverage through a school employer.</p> <p>(2) “School employee” <del>means:</del></p> <p><u>(A) includes the following individuals:</u></p> <p><del>(A)(i) an individual employed by a supervisory union or school district employer as a teacher or administrator as defined in section 1981 of this title; or</del></p> <p><del>(B)(ii) a municipal school employee as defined in 21 V.S.A. § 1722;</del></p> <p><u>(iii) an individual employed as a supervisor as defined in 21 V.S.A. § 1502;</u></p> <p><u>(iv) a confidential employee as defined in 21 V.S.A. § 1722;</u></p> <p><u>(v) a certified employee of a school employer; and</u></p>	<p>Sec. 1. 16 V.S.A. § 2101 is amended to read:</p> <p>§ 2101. DEFINITIONS</p> <p>As used in this chapter:</p> <p>(1) “Participating employee” means a school employee who is eligible for and has elected to receive health benefit coverage through a school employer.</p> <p>(2) “School employee” <del>means:</del></p> <p><u>(A) includes the following individuals:</u></p> <p><del>(A)(i) an individual employed by a supervisory union or school district employer as a teacher or administrator as defined in section 1981 of this title; or</del></p> <p><del>(B)(ii) a municipal school employee as defined in 21 V.S.A. § 1722;</del></p> <p><u>(iii) an individual employed as a supervisor as defined in 21 V.S.A. § 1502;</u></p> <p><u>(iv) a confidential employee as defined in 21 V.S.A. § 1722;</u></p> <p><u>(v) a certified employee of a school employer; and</u></p>

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<p style="text-align: center;"><u>(vi) any other permanent employee of a school employer not covered by subdivisions (i)–(v) of this subdivision (2); and</u></p> <p style="text-align: center;"><u>(B) notwithstanding subdivision (A) of this subdivision (2), excludes individuals who serve in the role of superintendent.</u></p> <p style="text-align: center;">(3) “School employer” means a supervisory union or school district as those terms are defined in section 11 of this title.</p> <p>Sec. 2. 16 V.S.A. § 2102 is amended to read:            § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS CREATED</p> <p style="text-align: center;">* * *</p> <p>(b) Composition and appointment.</p> <p>(1) The Commission shall have 10 members, of whom five shall be representatives of school employees and five shall be representatives of school employers.</p> <p>(2)(A) The representatives of school employees shall be appointed as follows:</p> <p style="padding-left: 20px;">(i) four members appointed by the labor organization representing the greatest number of <del>teachers, administrators, and municipal</del> school employees in this State; and</p> <p style="padding-left: 20px;">(ii) one member appointed by the labor organization representing the second-greatest number of <del>teachers, administrators, and municipal</del> school employees in this State.</p> <p>(B) The five representatives of school employers shall be appointed by the organization representing the majority of the public school boards in this State.</p> <p style="text-align: center;">* * *</p>	<p style="text-align: center;"><u>(vi) any other permanent employee of a school employer not covered by subdivisions (i)–(v) of this subdivision (2); and</u></p> <p style="text-align: center;"><u>(B) notwithstanding subdivision (A) of this subdivision (2), excludes individuals who serve in the role of superintendent.</u></p> <p style="text-align: center;">(3) “School employer” means a supervisory union or school district as those terms are defined in section 11 of this title.</p> <p>Sec. 2. 16 V.S.A. § 2102 is amended to read:            § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS CREATED</p> <p style="text-align: center;">* * *</p> <p>(b) Composition and appointment.</p> <p>(1) The Commission shall have 10 members, of whom five shall be representatives of school employees and five shall be representatives of school employers.</p> <p>(2)(A) The representatives of school employees shall be appointed as follows:</p> <p style="padding-left: 20px;">(i) four members appointed by the labor organization representing the greatest number of <del>teachers, administrators, and municipal</del> school employees in this State; and</p> <p style="padding-left: 20px;">(ii) one member appointed by the labor organization representing the second-greatest number of <del>teachers, administrators, and municipal</del> school employees in this State.</p> <p>(B) The five representatives of school employers shall be appointed by the organization representing the majority of <del>the</del> public school boards in this State.</p> <p style="text-align: center;">* * *</p>

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<p>(d) Removal of Commission members. Members of the Commission may be removed <u>by the Commission only for cause and may be removed by the appointing authority of the member without cause.</u> The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.</p> <p style="text-align: center;">* * *</p> <p>(f) Compensation. Commission members shall be entitled to receive per diem compensation and reimbursement of expenses <u>pursuant to as permitted under 32 V.S.A. § 1010 for not more than 10 meetings per year.</u></p> <p>(g) <u>Release time. A school district that employs a member of the Commission, or an alternate member of the Commission under subsection (j) of this section, who represents school employees or school employers shall grant the Commission member time off as necessary for the member to attend meetings of the Commission.</u></p> <p>(h) Staffing and expenses. The Commission may hire staff as it deems necessary to carry out its duties under this chapter. Compensation for Commission staff and administrative expenses of the Commission shall be shared equally by school employers and school employees. The representatives of school employers and the representatives of school employees shall equitably apportion their share of the costs of compensation and administrative expenses among their members.</p> <p><del>(h)</del>(i) Rulemaking. The Commission may adopt rules or procedures, or both, pursuant to 3 V.S.A. chapter 25 as needed to carry out its duties under this chapter.</p> <p>(j) <u>Alternate members. Four alternate members may be appointed to the Commission who, if appointed, shall be entitled to attend all negotiating sessions of the Commission. Up to two</u></p>	<p>(d) Removal of Commission members. Members of the Commission may be removed <u>only for cause. The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal by the appointing authority of the member without cause.</u></p> <p style="text-align: center;">* * *</p> <p>(f) Compensation. Commission members shall be entitled to receive per diem compensation and reimbursement of expenses <u>pursuant to as permitted under 32 V.S.A. § 1010 for not more than 20 meetings per year.</u></p> <p>(g) <u>Release time. A school district that employs a member of the Commission, or an alternate member of the Commission under subsection (j) of this section, who represents school employees or school employers shall grant the Commission member time off as necessary for the member to attend meetings of the Commission.</u></p> <p>(h) Staffing and expenses. The Commission may hire staff as it deems necessary to carry out its duties under this chapter. Compensation for Commission staff and administrative expenses of the Commission shall be shared equally by school employers and school employees. The representatives of school employers and the representatives of school employees shall equitably apportion their share of the costs of compensation and administrative expenses among their members.</p> <p><del>(h)</del>(i) Rulemaking. The Commission may adopt rules or procedures, or both, pursuant to 3 V.S.A. chapter 25 as needed to carry out its duties under this chapter.</p> <p><u>(j) Alternate members.</u> <u>(1) Four alternate members may be appointed to the Commission.</u></p>

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<p><u>alternate members may be appointed by representatives of school employees and up to two alternate members may be appointed by representatives of school employers. The term of each alternate member, if appointed, shall be six years. In the event of a vacancy, the appointing authority of the alternate member whose seat becomes vacant shall appoint a successor to serve out the remainder of the alternate member's term. Alternate members may be removed by the Commission only for cause and may be removed by the appointing authority of the alternate member without cause.</u></p>	<p><u>(2) Up to two alternate members may be appointed by representatives of school employees and up to two members may be appointed by representatives of school employers.</u></p> <p><u>(3) The term of each alternate member, if appointed, shall be six years.</u></p> <p><u>(4) An alternate member may serve temporarily in the role as a member appointed under subsection (b) of this section only in the absence of an appointed member and shall not otherwise have participation or voting rights in Commission business.</u></p> <p><u>(5) An alternate member shall be appointed to be a full member of the Commission by the alternate member's appointing authority upon the resignation or removal of a full member.</u></p> <p><u>(6) In the event of a vacancy of an alternate member, the appointing authority of the alternate member shall appoint a successor to serve out the remainder of the alternate member's term.</u></p> <p><u>(7) Alternate members may be removed by the appointing authority of the alternate member without cause.</u></p>
<p><u>(k) Funding. The Commission shall request the Governor to include in the Governor's annual budget a minimum of \$17,500.00 appropriated to the Agency of Education for per diem compensation and reimbursement of expenses for members of the Commission. Any unencumbered appropriation shall revert to the General Fund in the year following the conclusion of an agreement under subdivision 2104(b)(1) of this title.</u></p>	<p><u>(k) Funding. The Commission shall request the Governor to include in the Governor's annual budget a minimum of \$35,000.00 appropriated to the Agency of Education for per diem compensation and reimbursement of expenses for members of the Commission. Any unencumbered appropriation shall revert to the General Fund in the year following the conclusion of an agreement under subdivision 2104(b)(1) of this title.</u></p>
<p>Sec. 2a. APPROPRIATION</p>	<p>Sec. 3. APPROPRIATION</p>
<p><u>The sum of \$17,500.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2022 for per</u></p>	<p><u>The sum of \$35,000.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2022 for per</u></p>

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<p><u>diem compensation and reimbursement of expenses for members of the Commission.</u></p> <p>Sec. 3. 16 V.S.A. § 2103 is amended to read: § 2103. DUTIES OF THE COMMISSION</p> <p>(a) The Commission shall determine the percentage of the premium for individual, two-person, parent-child, and family coverage under a health benefit plan that shall be borne by each school employer and the percentage that shall be borne by participating employees.</p> <p>(1) The premium responsibility percentages shall remain in effect for the entire plan year.</p> <p>(2) Each school employer shall be responsible for paying, on behalf of all of its participating <del>school</del> employees, the applicable percentages of premium costs as determined by the Commission.</p> <p><del>(3) The premium responsibility percentages for each plan tier shall be the same for all participating employees.</del></p> <p>(b)(1) The Commission shall determine the amount of <del>school participating</del> employees' out-of-pocket expenses for which the school employer and the <del>school participating</del> employees shall be responsible, and whether school employers shall establish a health reimbursement arrangement, a health savings account, both, or neither, for their participating employees.</p> <p style="text-align: center;">* * *</p>	<p><u>diem compensation and reimbursement of expenses for members of the Commission.</u></p> <p>Sec. <b>4</b>. 16 V.S.A. § 2103 is amended to read: § 2103. DUTIES OF THE COMMISSION</p> <p>(a) The Commission shall determine the percentage of the premium for individual, two-person, parent-child, and family coverage under a health benefit plan that shall be borne by each school employer and the percentage that shall be borne by participating employees.</p> <p>(1) The premium responsibility percentages shall remain in effect for the entire plan year.</p> <p>(2) Each school employer shall be responsible for paying, on behalf of all of its participating <del>school</del> employees, the applicable percentages of premium costs as determined by the Commission.</p> <p><del>(3) The premium responsibility percentages for each plan tier shall be the same for all participating employees.</del></p> <p>(b)(1) The Commission shall determine the amount of <del>school participating</del> employees' <b>calendar year</b> out-of-pocket expenses for which the school employer and the <del>school participating</del> employees shall be responsible, and whether school employers shall establish a health reimbursement arrangement, a health savings account, both, or neither, for their participating employees.</p> <p style="text-align: center;">* * *</p>

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<p><del>(3) The school employers' and school employees' responsibilities for out of pocket expenses for each plan tier shall be the same for all participating employees.</del></p> <p style="text-align: center;">* * *</p> <p>(d) The Commission shall not make any determinations regarding school employer or <del>school</del> <u>participating</u> employee responsibilities with respect to stand-alone vision or dental benefits.</p> <p><u>(e) The Commission may negotiate a statewide grievance procedure for disputes concerning public school employee health benefits.</u></p> <p>Sec. 4. 16 V.S.A. § 2104 is amended to read: § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN AGREEMENT</p> <p>(a)(1) The Commission shall commence negotiation of the matters set forth in subsections 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement pursuant to this section is set to expire. <u>On or before October 1 of</u></p>	<p><del>(3) The school employers' and school employees' responsibilities for out of pocket expenses for each plan tier shall be the same for all participating employees.</del></p> <p style="text-align: center;">* * *</p> <p>(d) The Commission shall not make any determinations regarding school employer or <del>school</del> <u>participating</u> employee responsibilities with respect to stand-alone vision or dental benefits.</p> <p><u>(e) The Commission may negotiate a statewide grievance procedure for disputes concerning public school employee health benefits.</u></p> <p><u>(f) In no case shall a school employee receive cash in lieu of receipt of healthcare benefits from one school employer while simultaneously receiving health care benefits from the same or another school employer.</u></p> <p><u>(g) Accommodations shall be made for school employees whose workload is shared between more than one school employer, and who may not otherwise qualify for health care benefits from only one school employer. The affected school employers shall determine the proportionate portion of the shared costs of the health benefits.</u></p> <p>Sec. <b>5</b>. 16 V.S.A. § 2104 is amended to read: § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN AGREEMENT</p> <p>(a)(1) The Commission shall commence negotiation of the matters set forth in subsections 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement pursuant to this section is set to expire. <u>On or before October 1 of</u></p>

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<p><u>the year prior to commencement of bargaining, the Commission shall request from the parties any 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.</u></p>	<p><u>the year prior to commencement of bargaining, the Commission shall request from the parties any 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.</u></p>
<p style="text-align: center;">* * *</p>	<p style="text-align: center;">* * *</p>
	<p>Sec. 5a. 16 V.S.A. § 2104 is amended to read:  § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN AGREEMENT</p> <p>(a)(1) The Commission shall commence negotiation of the matters set forth in subsections 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement pursuant to this section is set to expire. On or before October 1 of the year prior to commencement of bargaining, the Commission shall request from the parties any 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.</p> <p style="text-align: center;">* * *</p> <p>(3)(A) The Commission shall select a person to serve as a fact finder to assist it in resolving any matters remaining in dispute in the event that the Commission is unable to reach an agreement by August 1. The fact finder shall be selected by a vote of a majority of the representatives of school employees and of a majority of the representatives of school employers. If the Commission cannot agree on a fact finder by April 5, the American Arbitration Association shall be asked to appoint the fact finder.</p> <p>(B)(i) The Commission shall mutually agree on an arbitrator by April 5 to decide all matters remaining in dispute if it is unable</p>

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<p>Sec. 5. 16 V.S.A. § 2105 is amended to read:            § 2105. DISPUTE RESOLUTION</p> <p style="text-align: center;">* * *</p> <p>(b)(1) If the Commission is unable to resolve all matters remaining in dispute within 30 days after receiving the fact finder's report, the Commission shall submit the matters</p>	<p>to reach an agreement within 30 days after receiving the fact finder's report.</p> <p>(ii) If the Commission is unable to mutually agree on an arbitrator, it shall either request the Vermont Labor Relations Board (VLRB) to decide all matters remaining in dispute or form a three-member panel of arbitrators to be selected as follows:</p> <p>(I) One arbitrator shall be selected by the representatives of school employees from a list prepared by the American Arbitration Association.</p> <p>(II) One arbitrator shall be selected by the representatives of school employers from a list prepared by the American Arbitration Association.</p> <p>(III) The Commission shall request the services of the American Arbitration Association for the appointment of the third arbitrator.</p> <p>(b)(1) The Commission shall enter into a written agreement incorporating all matters agreed to in negotiation.</p> <p>(2) The terms of the agreement or the VLRB or arbitration award shall be incorporated by reference into all collective bargaining agreements for school employees.</p> <p>(c) The term of each agreement shall be negotiated by the Commission but shall not be less than two years.</p> <p>Sec. 6. 16 V.S.A. § 2105 is amended to read:            § 2105. DISPUTE RESOLUTION</p> <p style="text-align: center;">* * *</p> <p>(b)(1) If the Commission is unable to resolve all matters remaining in dispute within 30 days after receiving the fact finder's report, the Commission shall submit the matters</p>



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<p>remaining in dispute to the arbitrator or arbitrators selected pursuant to section 2104 of this chapter for resolution.</p> <p>(2) The representatives of school employees and the representatives of school employers shall submit to the arbitrator or arbitrators their last best offer on all issues remaining in dispute <u>prior to the arbitration hearing</u>. The arbitrator or arbitrators shall select one of the last best offers <u>without amendment, submitted by the parties prior to the arbitration hearing in its entirety without amendment. The parties shall not be permitted to modify their last best offers post hearing. Prior to the issuance of the arbitrator’s decision, nothing shall prohibit the parties from settling the matters in dispute.</u></p> <p>(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 cost estimate for the 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 position on any undecided issue that is subject to arbitration.</p> <p style="text-align: center;">* * *</p> <p>(4) The arbitrator or arbitrators shall issue their <u>written decision within 30 days after the hearing, explaining in appropriate detail the rationale for selecting the last best offer</u>. The decision of the arbitrator or arbitrators shall be final and binding upon the Commission and all school employees and school employers. The decision shall not be subject to ratification.</p>	<p>remaining in dispute to the arbitrator or arbitrators selected pursuant to section 2104 of this chapter for resolution.</p> <p>(2) The representatives of school employees and the representatives of school employers shall submit to the arbitrator or arbitrators their last best offer on all issues remaining in dispute <u>prior to the arbitration hearing</u>. The arbitrator or arbitrators shall select one of the last best offers <u>without amendment, submitted by the parties prior to the arbitration hearing in its entirety without amendment. The parties shall not be permitted to modify their last best offers post hearing. Prior to the issuance of the decision of the arbitrator or arbitrators, nothing shall prohibit the parties from settling the matters in dispute.</u></p> <p>(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 cost estimate for the 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 position on any undecided issue that is subject to arbitration.</p> <p style="text-align: center;">* * *</p> <p>(4) The arbitrator or arbitrators shall issue <u>their a written decision within 30 days after the hearing, providing a full explication of the basis for the decision</u>. The decision of the arbitrator or arbitrators shall be final and binding upon the Commission and all school employees and school employers. The decision shall not be subject to ratification.</p>

<b>S.226 (2020)</b>	<b>H.81 (2021)</b>
<p>(5) Upon the petition of a Commission member within not more than 15 days following the arbitration decision, a Superior Court shall vacate the decision if:</p> <p style="text-align: center;">* * *</p>	<p>(5) Upon the petition of a <u>Commission member majority of the employer or the employee members</u> within not more than 15 days following the arbitration decision, a Superior Court shall vacate the decision if:</p> <p style="text-align: center;">* * *</p> <p><u>Sec. 6a. 16 V.S.A. § 2105 is amended to read:</u>  <u>§ 2105. DISPUTE RESOLUTION</u></p> <p style="text-align: center;">* * *</p> <p><u>(b)(1) If the Commission is unable to resolve all matters remaining in dispute within 30 days after receiving the fact finder's report, the Commission shall submit the matters remaining in dispute to the <u>VLRB</u>, arbitrator, or arbitrators selected pursuant to section 2104 of this chapter for resolution.</u></p> <p><u>(2) The representatives of school employees and the representatives of school employers shall submit to the <u>VLRB</u>, arbitrator, or arbitrators their last best offer on all issues remaining in dispute prior to the <u>VLRB</u> or arbitration hearing. The <u>VLRB</u>, arbitrator, or arbitrators shall select one of the last best offers without amendment, submitted by the parties prior to the <u>VLRB</u> or arbitration hearing in its entirety without amendment. The parties shall not be permitted to modify their last best offers post hearing. Prior to the issuance of the decision of the <u>VLRB</u>, arbitrator, or arbitrators, nothing shall prohibit the parties from settling the matters in dispute.</u></p> <p><u>(3)(A) The <u>VLRB</u>, 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 cost estimate for the term of the proposal with a breakdown of costs borne by employers and costs</u></p>

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	<p>borne by employees, and each member may submit oral or written testimony in support of his or her position on any undecided issue that is subject to arbitration.</p> <p>(B) In reaching a decision, the <u>VLRB</u>, arbitrator, or arbitrators shall give weight to the evidence, documents, written material, and arguments presented, as well as the following factors:</p> <p style="text-align: center;">* * *</p> <p>(4) The <u>VLRB</u>, arbitrator, or arbitrators shall issue a written decision within 30 days after the hearing, providing a full explication of the basis for the decision. The decision of the <u>VLRB</u>, arbitrator, or arbitrators shall be final and binding upon the Commission and all school employees and school employers. The decision shall not be subject to ratification.</p> <p>(5) Upon the petition of a majority of the employer or the employee members within not more than 15 days following the <u>VLRB</u> or arbitration decision, the <u>Vermont Supreme Court, in the case of a VLRB decision, or a Superior Court in the case of an arbitration decision</u>, shall vacate the decision if:</p> <p>(A) it was procured by corruption, fraud, or other undue means;</p> <p>(B) there was evident partiality or prejudicial misconduct by the <u>VLRB</u> or arbitrator or by individual members of the <u>VLRB</u> or arbitrators <u>arbitration panel</u>;</p> <p>(C) the <u>VLRB</u>, arbitrator, or arbitrators exceeded <u>its or their power</u> or rendered a decision requiring a person to commit an act or engage in conduct prohibited by law; or</p> <p>(D) there is an absence of substantial evidence on the record as a whole to support the decision.</p> <p>(6) At any time prior to the issuance of a decision by the <u>VLRB</u>, arbitrator, or arbitrators, the Commission may notify the <u>VLRB</u>, arbitrator, or arbitrators of any additional issues on which</p>

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<p>Sec. 7. EFFECTIVE DATE  <u>This act shall take effect on passage.</u></p>	<p>a majority of the representatives of school employees and of the representatives of school employers have reached agreement.            (7) If any provision of this subsection is inconsistent with any other provision of law governing arbitration, this subsection shall govern.            (c) The VLRB, arbitrator, or arbitrators shall have the authority to address complaints that either party has engaged in or is engaging in unfair bargaining practices, including a refusal to bargain in good faith. If the VLRB, arbitrator, or arbitrators find upon a preponderance of the evidence that a party has engaged in or is engaging in any unfair bargaining practice, the VLRB, arbitrator, or arbitrators may include in the decision a remedy for the unfair bargaining practice that is consistent with the provisions of 21 V.S.A. § 1727(d).</p> <p>Sec. 7. EFFECTIVE DATES  <u>Secs. 5a and 6a shall take effect on January 1, 2022. This section and the remaining sections of this act shall take effect on passage.</u></p>