

1 S.226

2 Introduced by Senator Perchlik

3 Referred to Committee on Education

4 Date: January 7, 2020

5 Subject: Education; collective bargaining; Commission on Public School
6 Employee Health Benefits

7 Statement of purpose of bill as introduced: This bill proposes to allow the
8 Commission on Public School Employee Health Benefits to allocate premium
9 and out-of-pocket responsibilities between employers and employees based on
10 the ability of the employee to pay these expenses, to permit an arbitrator
11 resolving a dispute for the Commission greater latitude in fashioning a
12 resolution, and to establish a process for the Commission to request and
13 receive information necessary for the negotiations.

14 An act relating to statewide public school employee health benefits

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. 16 V.S.A. § 2102 is amended to read:~~

17 ~~§ 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH~~

18 ~~BENEFITS CREATED~~

19

1 ~~(g) Release time. A school district that employs a member of the~~
2 Commission who represents school employees shall grant the Commission
3 member time off as necessary for the member to attend meetings of the
4 Commission.

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

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

15 Sec. 2. 16 V.S.A. § 2103 is amended to read:

16 § 2103. DUTIES OF THE COMMISSION

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

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

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

4 (3) The premium responsibility percentages for each plan tier shall be
5 ~~the same for all~~ may differ among participating employees to reflect an
6 employee's ability to pay based on the amount of the employee's salary.

7 (b)(1) The Commission shall determine:

8 (A) the amount of school employees' out-of-pocket expenses for
9 which the school employer and the school employees shall be responsible,
10 which may take into account an employee's ability to pay based on the amount
11 of the employee's salary; and

12 (B) whether school employers shall establish a health reimbursement
13 arrangement, a health savings account, both, or neither, for their participating
14 employees.

15 (2) The Commission also shall determine the extent to which the
16 employer or employee shall bear first dollar responsibility for out-of-pocket
17 expenses if using a health reimbursement arrangement and whether the balance
18 in a participating employee's health reimbursement arrangement shall roll over
19 ~~from year to year.~~

1 ~~(3) The school employers' and school employees' responsibilities for~~
2 ~~out-of-pocket expenses for each plan tier shall be the same for all participating~~
3 ~~employees.~~

4 * * *

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

6 § 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN
7 AGREEMENT

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

16 * * *

17 Sec. 4. 16 V.S.A. § 2105 is amended to read:

18 § 2105. DISPUTE RESOLUTION

19 * * *

20 (b)(1) If the Commission is unable to resolve all matters remaining in
21 ~~dispute within 30 days after receiving the fact finder's report, the Commission~~

1 ~~shall submit the matters remaining in dispute to the arbitrator or arbitrators~~
2 selected pursuant to section 2104 of this chapter for resolution.

3 (2) The representatives of school employees and the representatives of
4 school employers shall submit to the arbitrator or arbitrators their last best
5 offer on all issues remaining in dispute.

6 (3) The arbitrator or arbitrators shall select one of the last best offers in
7 its entirety without amendment, provided, however, that if the arbitrator or
8 arbitrators determine that the last best offers submitted by both parties are
9 unreasonable and likely to produce undesirable results or to have a long-lasting
10 negative impact on the parties' collective bargaining relationship, then the
11 arbitrator or arbitrators may either:

12 (A) select the recommendations made by the fact finder in their
13 entirety pursuant to subdivision (a)(4) of this section; or

14 (B) select among the following on an issue-by-issue basis:

15 (i) the last best offer of the representatives of the school
16 employees; and

17 (ii) the last best offer of the representatives of the school
18 employers.

19 * * *

20 Sec. 5. 16 V.S.A. § 2108 is amended to read:

21 § 2108. DUTIES OF SCHOOL EMPLOYERS

22 ~~Each school employer shall.~~

* * *

~~(3) contribute toward the out-of-pocket expenses of each participating employee in the amounts and manner determined by the Commission to be the employer’s responsibility; and~~

~~(4) participate in any health reimbursement arrangement or health savings account, or both, in the amount and to the extent determined by the Commission; and~~

~~(5) provide the Commission with timely information as requested by the Commission in the fulfillment of its duties.~~

Sec. 6. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. 16 V.S.A. § 2101 is amended to read:

§ 2101. DEFINITIONS

As used in this chapter:

(1) “Participating employee” means a school employee who is eligible for and has elected to receive health benefit coverage through a school employer.

(2) “School employee” means:

(A) includes the following individuals:

(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

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

(iii) an individual employed as a supervisor as defined in 21 V.S.A. § 1502;

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

(v) a certified employee of a school employer; and

(vi) any other permanent employee of a school employer not covered by subdivisions (i)-(v) of this subdivision (2); and

(B) notwithstanding subdivision (A) of this subdivision (2), excludes individuals who serve in the role of superintendent.

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

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

§ 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH
BENEFITS CREATED

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

(b) Composition and appointment.

(1) The Commission shall have 10 members, of whom five shall be representatives of school employees and five shall be representatives of school employers.

(2)(A) The representatives of school employees shall be appointed as follows:

(i) four members appointed by the labor organization representing the greatest number of teachers, ~~administrators, and municipal~~ school employees in this State; and

(ii) one member appointed by the labor organization representing the second-greatest number of teachers, ~~administrators, and municipal~~ school employees in this State.

(B) The five representatives of school employers shall be appointed by the organization representing the majority of ~~the~~ public school boards in this State.

(C) The appointing authorities shall select appointees who have an understanding of health care and employer-employee relations and who demonstrate a willingness to work collaboratively.

(D) The term of each member of the Commission shall be six years, provided that of the members first appointed by the labor organization described in subdivision (A)(i) of this subdivision (2), one appointee shall

serve a term of two years and one appointee shall serve a term of four years, and of the members first appointed by the organization representing the majority of the public school boards in this State, one appointee shall serve a term of two years and one appointee shall serve a term of four years.

(3) In the event of a vacancy, the appointing authority of the member whose seat becomes vacant shall appoint a successor to serve out the remainder of the member's term.

(c) Chairs. The Commission shall be chaired jointly by one member selected biennially by the representatives of school employees and one member selected biennially by the representatives of school employers.

(d) Removal of Commission members. Members of the Commission may be removed by the Commission only for cause and may be removed by the appointing authority of the member without cause. The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

(e) Decisions. All decisions of the Commission shall require the votes of a majority of the representatives of school employees and a majority of the representatives of school employers.

(f) Compensation. Commission members shall be entitled to receive per diem compensation and reimbursement of expenses pursuant to as permitted under 32 V.S.A. § 1010 for not more than 10 meetings per year.

(g) 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.

(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.

(h)(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.

(j) 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 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.

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

(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.

Sec. 2a. APPROPRIATION

The sum of \$17,500.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2021 for per diem compensation and reimbursement of expenses for members of the Commission.

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

§ 2103. DUTIES OF THE COMMISSION

(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.

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

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

~~(3) The premium responsibility percentages for each plan tier shall be the same for all participating employees.~~

(b)(1) The Commission shall determine the amount of ~~school~~ participating employees' out-of-pocket expenses for which the school employer and the ~~school~~ participating 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.

(2) The Commission also shall determine the extent to which the employer or employee shall bear first dollar responsibility for out-of-pocket expenses if using a health reimbursement arrangement and whether the balance in a participating employee's health reimbursement arrangement shall roll over from year to year.

~~(3) The school employers' and school participating employees' responsibilities for out-of-pocket expenses for each plan tier shall be the same for all participating employees.~~

(c) The Commission may make recommendations regarding health benefit plan design to any intermunicipal insurance association that offers health benefit plans to entities providing educational services pursuant to 24 V.S.A. chapter 121, subchapter 6.

(d) The Commission shall not make any determinations regarding school employer or ~~school~~ participating employee responsibilities with respect to stand-alone vision or dental benefits.

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

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

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

(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.

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

(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.

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

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

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

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

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

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

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

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

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

§ 2105. DISPUTE RESOLUTION

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

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

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

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

(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 arbitrator or arbitrators selected pursuant to section 2104 of this chapter for resolution.

(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 prior to the arbitration hearing. The arbitrator or arbitrators shall select one of the last best offers 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.

(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 cost estimate for the term of the proposal with a breakdown of costs borne by employers and costs 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.

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

(i) the interests and welfare of the public;

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

(iii) comparisons of the health care benefits of school employees with the health care benefits of similar employees in the public and private sectors in Vermont;

(iv) the average consumer prices for goods and services commonly known as the cost of living; and

(v) prior and existing health care benefits and coverage for school employees.

(4) The arbitrator or arbitrators shall issue their written decision within 30 days after the hearing, explaining in appropriate detail the rationale for

selecting the last best offer. 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.

(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:

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

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

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

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

(6) At any time prior to the issuance of a decision by the arbitrator or arbitrators, the Commission may notify the arbitrator or arbitrators of any additional issues on which 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 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 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 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).

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

~~**§ 2106. STRIKES AND CONTRACT IMPOSITION PROHIBITED**~~

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

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

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

~~§ 2107. RATIFICATION OF AGREEMENT~~

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

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

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

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

~~Sec. 8 6. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~