

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1881 Session of
2009

INTRODUCED BY KESSLER, O'NEILL, GRUCELA, SEIP, BENNINGHOFF,
BEYER, BISHOP, BOYD, BRENNAN, BRIGGS, BUXTON, CALTAGIRONE,
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K. SMITH, SOLOBAY, SONNEY, STABACK, STURLA, R. TAYLOR, WALKO,
WHITE AND YUDICHAK, JULY 22, 2009

REFERRED TO COMMITTEE ON APPROPRIATIONS, JULY 22, 2009

AN ACT

1 Establishing the Public School Employees' Benefit Board and
2 providing for its powers and duties; requiring a school
3 employee benefits study and evaluation; providing for a
4 Statewide health benefits program for public school
5 employees, for alternative measures for cost reduction and
6 for a retirement health savings plan; and establishing the
7 Public School Employees' Benefit Trust Fund.

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23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 CHAPTER 1

26 PRELIMINARY PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Public School
29 Employees' Benefit Act.

30 CHAPTER 3

1 ADMINISTRATION OF BENEFITS

2 SUBCHAPTER A

3 DEFINITIONS

4 Section 301. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Alternate health care plan." A plan or plan design
9 established by the Public School Employees' Benefit Board
10 pursuant to section 331(f)(2)(ii) which the board in its
11 exclusive authority determines to contain benefits equivalent to
12 the standard benefit package.

13 "Alternative measures program." A program created by the
14 Public School Employees' Benefit Board in accordance with the
15 provisions of Subchapter E.

16 "Annuitant." Any "annuitant" or "disability annuitant" as
17 defined in 24 Pa.C.S. § 8102 (relating to definitions).

18 "Best practices." Standards of criteria, measures and
19 results developed by the Public School Employees' Benefit Board
20 that may be reflective of such standards developed by broadly
21 accepted organizations such as the National Committee for
22 Quality Assurance (NCQA) and the Centers for Medicare and
23 Medicaid Services (CMS), consulting firm benchmarks and medical
24 and industry journals that promote the precisions of efficient
25 delivery and design of employee benefits.

26 "Board." The Public School Employees' Benefit Board created
27 in section 311.

28 "Board member." A person designated or appointed to the
29 Public School Employees' Benefit Board pursuant to section
30 311(a).

1 "Consortium." A coalition of two or more geographically
2 defined public school entities, or a coalition of one or more
3 geographically defined public school entities and one or more
4 political subdivisions as defined by 61 Pa. Code § 315.2
5 (relating to definitions), formed for the purpose of pooling
6 combined purchasing of the individual participants in order to
7 increase bargaining power to obtain health care benefits.

8 "Contribution rate." The rate established by the Public
9 School Employees' Benefit Board in accordance with section
10 334(b) and (c) used to determine contributions by the
11 Commonwealth and public school entities for the funding of the
12 standard benefit package for eligible individuals in each health
13 care region.

14 "Cost-sharing." The fee paid by the member that covers a
15 share of the cost of providing group health benefits under the
16 Statewide health benefits program or the fee paid by a school
17 employee or annuitant that covers a share of the cost of
18 providing health care coverage in a plan sponsored by the public
19 school entity. The term shall not include:

20 (1) any fee paid by the member, school employee or
21 annuitant at the time of service, such as copayments or
22 deductibles, in order to obtain prescription drugs or other
23 specific health care services; or

24 (2) any additional cost paid by the member, school
25 employee or annuitant for optional benefit packages.

26 "Eligible individual." An individual who is a member or the
27 health care dependent of a member.

28 "Employee benefits account." A ledger account of the Public
29 School Employees' Benefit Trust Fund created in section 336(a)
30 (1).

1 "Employer contribution account." A ledger account of the
2 Public School Employees' Benefit Trust Fund created in section
3 336(a)(3).

4 "Health care dependent." An individual who is eligible to
5 receive health care coverage under the Statewide health benefits
6 program due to the individual's relation to the member, as
7 determined by the Public School Employees' Benefit Board.

8 "Health care region." The geographic regions determined by
9 the Public School Employees' Benefit Board to be appropriate for
10 providing health benefits for eligible individuals based on the
11 availability of insurance carriers, benefit administrators,
12 health care providers, health care provider networks, costs and
13 any other factors related to health care or the financing of the
14 benefits.

15 "IRC." The Internal Revenue Code of 1986, as designated and
16 referred to in section 2 of the Tax Reform Act of 1986 (Public
17 Law 99-514, 100 Stat. 2085, 2095). A reference in this chapter
18 to "IRC § " shall be deemed to refer to the identically numbered
19 section and subsection or other subdivision of such section in
20 26 U.S.C. (relating to Internal Revenue Code).

21 "Long-term substitute." A school employee who is
22 substituting for an officer, administrator or employee of a
23 public school entity for a qualifying period of time to be
24 determined by the Public School Employees' Benefit Board.

25 "Medicare." The programs established by Title XVIII of the
26 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.)
27 which include: Part A, Hospital Insurance Benefits for the Aged
28 and Disabled; Part B, Supplementary Medical Insurance Benefits
29 for the Aged and Disabled; Part C, Medicare+ Choice Program; and
30 Part D, Voluntary Prescription Drug Benefit Program; and

1 including any subsequent changes or additions to those programs.

2 "Member." An eligible individual who is so specified for
3 enrollment in the Statewide health benefits program and in whose
4 name the identification card is issued. A member can be:

5 (1) A school employee.

6 (2) An annuitant.

7 (3) A transfer employee.

8 (4) An individual separated from employment with a
9 public school entity who the Public School Employees' Benefit
10 Board determines is eligible to purchase continuation of
11 coverage in the Statewide health benefits program.

12 (5) Others as approved by the Public School Employees'
13 Benefit Board.

14 "Optional benefit package." A plan or plan design
15 established by the Public School Employees' Benefit Board
16 pursuant to section 331(f)(2)(iii) which includes specific
17 health care services that are not part of the standard benefit
18 package.

19 "Participant account holder." A school employee
20 participating in a retirement health savings plan or a school
21 employee who retires or otherwise terminates employment with a
22 public school entity and becomes eligible to be reimbursed from
23 the employee's retirement health savings plan account for the
24 I.R.C.-qualified health-related expenses. The term shall also
25 include the health care dependent of a school employee who
26 succeeds in interest to a deceased school employee and becomes
27 eligible to be reimbursed for health-related expenses from the
28 school employee's account.

29 "Phase-in period." The period of program operation in any
30 health care region from the time the Public School Employees'

1 Benefit Board begins implementation of mandatory participation
2 under section 332 until the commencement of the first plan year
3 in which 75% of school districts in that region are
4 participating in the program.

5 "Program." The Statewide health benefits program sponsored
6 by the Public School Employees' Benefit Board in accordance with
7 the provisions of Subchapter D.

8 "Public School Code." The act of March 10, 1949 (P.L.30,
9 No.14), known as the Public School Code of 1949.

10 "Public school entity." A school district of any class,
11 intermediate unit, area vocational-technical school, charter
12 school or other school, as provided for under the act of March
13 10, 1949 (P.L.30, No.14), known as the Public School Code of
14 1949. The term shall also include the Scotland School for
15 Veterans' Children and the Scranton State School for the Deaf.

16 "Qualified majority vote." A vote by the Public School
17 Employees' Benefit Board requiring the support of a majority of
18 the members of the board present and voting, with the support of
19 at least two board members described in section 311(a)(1), at
20 least two board members appointed under section 311(a)(3) and at
21 least four board members appointed under section 311(a)(2), of
22 whom at least two board members must be appointed under section
23 311(a)(2)(i)(A), to pass.

24 "Qualifying event." A change in marital status, death of a
25 member or the change in a health care dependent's status,
26 subsequent to the commencement of coverage under this chapter,
27 or the involuntary termination of health plan coverage that was
28 obtained through a health care dependent.

29 "Reserve account." A ledger account of the Public School
30 Employees' Benefit Trust Fund created in section 336(a)(2).

1 "Retirement system." The Public School Employees' Retirement
2 System of Pennsylvania as established by the act of July 18,
3 1917 (P.L.1043, No.343).

4 "School employee." Any person regularly employed by or in a
5 public school entity for which work the person is receiving
6 regular remuneration as an officer, administrator, employee or
7 long-term substitute. The term excludes any independent
8 contractor, person compensated on a fee basis or, unless
9 otherwise determined by the Public School Employees' Benefit
10 Board, any part-time hourly school employee. The term includes
11 any employee of a public school entity who has a position for
12 which eligibility in a health care plan sponsored by the public
13 school entity is in effect as of the effective date of this
14 chapter.

15 "Standard benefit package." The benefit package established
16 by the Public School Employees' Benefit Board pursuant to
17 section 331(f)(1).

18 "Supplemental benefits." Dental care, vision care and
19 employee assistance program benefits that may be offered in
20 addition to medical and hospital services and prescription drug
21 benefits.

22 "Transfer employee." A person who is not a school employee
23 who is regularly employed at a worksite in a public school
24 entity, regardless of who actually employs the person, if the
25 person is performing services previously performed by a school
26 employee.

27 "Trust fund." The Public School Employees' Benefit Trust
28 Fund established in section 336.

29 SUBCHAPTER B

30 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

1 Section 311. Public School Employees' Benefit Board.

2 (a) Status and membership.--The board shall be an
3 independent administrative board and shall consist of the
4 following board members:

5 (1) The Secretary of the Budget, the Secretary of
6 Education, the Secretary of Administration and the Insurance
7 Commissioner, who shall serve ex officio.

8 (2) Eight persons representing school employees who are
9 covered by the program appointed in the following manner:

10 (i) Six persons representing school employees who
11 are covered by the program in an approximate proportion
12 to the percentage of professional employees represented
13 in collective bargaining by school employee unions
14 working in public school entities that will be covered by
15 the program when it is fully operational and based on
16 full participation by all school entities, appointed by
17 the Governor and chosen from a list of candidates
18 submitted by those school employee unions; provided that
19 all of the following shall occur:

20 (A) no fewer than five persons shall be
21 appointed from a list of candidates submitted by the
22 school employee union that on the effective date of
23 this chapter represents in collective bargaining the
24 greatest proportion of all professional employees
25 working in public school entities that will be
26 covered by the program when it is fully operational
27 based on full participation by all school entities;

28 (B) no less than one person shall be appointed
29 from a list of candidates submitted by any school
30 employee union that on the effective date of this

chapter represents in collective bargaining more than 4,000 professional employees working in public school entities that will be covered by the program when it is fully operational; and

(ii) Two persons representing school employees who are covered by the program represented in collective bargaining by school employee unions other than school employee unions within subparagraph (i) appointed by the Governor and chosen from a list of candidates submitted by those school employee unions other than school employee unions within subparagraph (i).

(iii) For purposes of this section "school employee unions" shall include a Statewide affiliate of such school employee unions.

(3) Four persons representing public school entity employers appointed by the Governor and chosen from a list of candidates submitted by the Pennsylvania School Boards Association. At least one of the school entity employer representatives initially named to the board shall be a member of a consortium board.

The school employee unions and the Pennsylvania School Boards Association shall provide the Governor with their respective lists of candidates within 15 days following the effective date of this section. The Governor shall make his appointments within 45 days following receipt of the lists.

(b) Terms.--

(1) Three board members appointed under subsection (a) (2) (i), as designated by the Governor, shall serve a term of two years, and three board members appointed under subsection (a) (2) (i), as designated by the Governor, shall serve a term

1 of four years.

2 (2) One board member appointed under subsection (a)(2)
3 (ii), as designated by the Governor, shall serve a term of
4 two years, and one board member appointed under subsection
5 (a)(2)(ii), as designated by the Governor, shall serve a term
6 of four years.

7 (3) Two board members appointed under subsection (a)(3),
8 as designated by the Governor, shall serve a term of two
9 years, and two board members appointed under subsection (a)
10 (3), as designated by the Governor, shall serve a term of
11 four years, except that the Pennsylvania School Boards
12 Association shall designate for which initial term the
13 representative who is a member of a consortium board shall
14 serve.

15 (4) Successors for all board members shall be appointed
16 for terms of four years, except as provided in subsection
17 (d). Board members shall be eligible for reappointment.

18 (c) Meetings.--The board shall meet as needed to fulfill its
19 duties, and nine board members shall constitute a quorum. Board
20 members shall elect the chairman of the board. Except in
21 instances where a qualified majority is required under this
22 chapter, a majority of the board members present and voting
23 shall have authority to act upon any matter. The board is
24 authorized to establish rules of its operation, including a
25 provision for the removal of board members for nonattendance.

26 (d) Vacancies.--A vacancy occurring during the term of any
27 board member shall be filled for the unexpired term by a
28 successor appointed in the same manner as his predecessor. The
29 school employee unions and the Pennsylvania School Boards
30 Association shall provide the Governor with their respective

1 lists of candidates within 60 days prior to the end of a
2 member's term or within 15 days of any other vacancy.

3 (e) Oath of office.--Each board member shall take an oath of
4 office that the member will, so far as it devolves upon the
5 member, diligently and honestly administer the affairs of the
6 board and that the member will not knowingly violate or
7 willfully permit to be violated any of the provisions of law
8 applicable to this chapter. The oath shall be subscribed by the
9 board member making it and certified by the officer before whom
10 it is taken and shall be immediately filed in the office of the
11 Secretary of the Commonwealth.

12 (f) Compensation and expenses.--Board members who are
13 members of the retirement system or the State Employees'
14 Retirement System shall serve without compensation. Board
15 members who are members of the retirement system and who are
16 employed by a public school entity shall not suffer loss of
17 salary or wages through serving on the board. The board, on
18 request of the employer of any board member who is an active
19 professional or nonprofessional member of the retirement system,
20 may reimburse the employer for the salary or wages of the member
21 or for the cost of employing a substitute for the board member
22 while the board member is necessarily absent from employment to
23 execute the duties of the board. The board members who are not
24 members of either the retirement system or the State Employees'
25 Retirement System may be paid \$100 per day when attending
26 meetings, and all board members shall be reimbursed for any
27 necessary expenses. When, however, the duties of the board as
28 mandated are not executed, no compensation or reimbursement for
29 expenses of board members shall be paid or payable during the
30 period in which the duties are not executed.

1 (g) Corporate power and legal advisor.--For the purposes of
2 this chapter, the board shall possess the power and privileges
3 of a corporation. The Office of General Counsel shall be the
4 legal advisor of the board.

5 (h) Duties of the board.--The board shall have the power and
6 authority to carry out the duties established by this chapter,
7 including the design, implementation and administration of the
8 school employee health benefits study pursuant to Subchapter C
9 and either the Statewide health benefits program if approved
10 pursuant to section 323 or the alternative measures program if
11 created pursuant to section 351.

12 Section 312. Administrative duties of board.

13 (a) Employees.--The compensation of all officers and
14 employees of the board who are not covered by a collective
15 bargaining agreement shall be established by the board
16 consistent with the standards of compensation established by the
17 Executive Board.

18 (b) Secretary.--The board shall select a secretary, who
19 shall not be a board member. The secretary shall act as chief
20 administrative officer for the board. In addition to other
21 powers and duties conferred upon and delegated to the secretary
22 by the board, the secretary shall:

23 (1) Serve as the administrative agent of the board and
24 as liaison between the board and applicable legislative
25 committees.

26 (2) Review and analyze proposed legislation and
27 legislative developments affecting the program and present
28 findings to the board, legislative committees and other
29 interested groups or individuals.

30 (3) Receive inquiries and requests for information

concerning the program from the press, Commonwealth officials, public school entities, school employees and the general public and provide information as authorized by the board.

(c) Professional personnel.--The board may employ or contract with consultants and other professional personnel as needed to conduct the school employee health benefits study and evaluation pursuant to Subchapter C and to operate the program, including third-party administrators, managed care managers, chief medical examiners, actuaries, investment advisors and managers, legal counsel and other professional personnel as it deems advisable. The board may also contract for the services of any national or State banking corporation or association having trust powers, with respect to carrying out the business and other matters of the program.

(d) Expenses.--The board shall, through the Governor, submit to the General Assembly annually a budget covering the administrative expenses of this chapter. The expenses, as approved by the General Assembly in an appropriation bill, shall be paid:

(1) from the General Fund; or

(2) starting in the first fiscal year after the transition period is complete and every fiscal year thereafter, from reserves and investment earnings of the trust fund.

(e) Meetings.--The board shall hold at least four regular meetings annually and other meetings as it may deem necessary.

(f) Records.--The board shall keep a record of all its proceedings which shall be open to inspection by the public.

(g) Procurement.--The board shall not be subject to 62

1 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code).

2 (h) Temporary regulations.--

3 (1) Notwithstanding any other provision of law to the
4 contrary and in order to facilitate the prompt implementation
5 of this chapter, regulations promulgated by the board during
6 the two years following the effective date of this chapter
7 shall be deemed temporary regulations which shall expire no
8 later than three years following the effective date of this
9 chapter or upon promulgation of regulations as generally
10 provided by law. The temporary regulations shall not be
11 subject to:

12 (i) Sections 201, 202, 203, 204 and 205 of the act
13 of July 31, 1968 (P.L.769, No.240), referred to as the
14 Commonwealth Documents Law.

15 (ii) The act of June 25, 1982 (P.L.633, No.181),
16 known as the Regulatory Review Act.

17 (2) The authority provided to the board to adopt
18 temporary regulations in this subsection shall expire two
19 years from the effect date of this chapter. Regulations
20 adopted after the two-year period shall be promulgated as
21 provided by law.

22 (i) Postretirement benefits study.--The board shall conduct
23 an assessment of public school entity postretirement health care
24 liability in this Commonwealth and publish a report providing
25 generalized data regarding the scope of the liability to be
26 borne by public school entities and measures implemented by
27 public school entities to prepare for this liability. This
28 assessment may be conducted in conjunction with the study
29 required by section 321.

30 SUBCHAPTER C

1 STUDY AND OPTIONS ELECTION

2 Section 321. School employee health benefits study and
3 evaluation.

4 (a) Study.--The board shall conduct a thorough evaluation of
5 existing health care arrangements covering school employees in
6 this Commonwealth, examine future cost forecasts and collect
7 data necessary to determine if the board could construct and
8 sponsor a health care benefit program that would reduce long-
9 term costs or the rate of growth of long-term costs in the
10 aggregate for public school entities while maintaining a
11 comprehensive package of quality health care benefits for school
12 employees. The board shall conduct the study as provided under
13 this section.

14 (b) Data elements.--No later than 60 days after the board is
15 constituted, the board shall determine the information necessary
16 to evaluate the existing health care arrangements covering
17 school employees in this Commonwealth and begin to collect the
18 data, including, but not limited to:

19 (1) The total cost of providing medical/hospital and
20 prescription drug coverage.

21 (2) The types and levels of coverage currently made
22 available to school employees.

23 (3) The nature of health care purchasing arrangements.

24 (4) An explanation and estimate of any financial
25 obligation of or funds owed to a public school entity related
26 to the termination of coverage under a school district-
27 sponsored health benefits plan.

28 (5) An estimate of the amount of and basis for claims
29 which may be outstanding during the transition for public
30 school entities which self-fund their coverage and the status

1 of any reserves established for such outstanding claims.

2 (6) The term and effect of collective bargaining
3 agreements governing health benefits.

4 (7) The amount and basis of any school employee cost-
5 sharing, both individual and in aggregate.

6 (8) The total amount of employer-paid costs in
7 aggregate.

8 (9) An assessment of any postretirement health care
9 benefit liabilities and claims experience data.

10 (c) Data sources.--All entities providing health benefit
11 coverage for eligible individuals or administering coverage for
12 health benefits under this chapter shall provide information on
13 coverage, benefits, plan design, claims data, premiums, cost-
14 sharing and financial arrangements as the board shall specify to
15 meet the requirements of subsection (b). Notwithstanding any law
16 to the contrary, any agency, authority, board, commission,
17 council, department or office under the jurisdiction of the
18 Governor shall cooperate with the board in its collection of
19 health insurance or health care coverage data as specified by
20 the board to effectuate this section in accordance with this
21 section.

22 (d) Public school entities.--The Secretary of Education
23 shall assist the board in obtaining the necessary data for the
24 study from public school entities and consortia. In the event it
25 is necessary to facilitate the collection of data from a
26 noncooperating public school entity or consortium, the Secretary
27 of Education may request the State Treasurer to cause the
28 suspension of any payment of moneys due to the noncooperating
29 public school entity or public school entities that are
30 participants in a noncooperating consortium on account of any

1 appropriation for schools or other purposes until the necessary
2 information is properly provided. A public school entity shall
3 be notified before any payments are suspended and may appeal to
4 the secretary and request an extension of time if there have
5 been extenuating circumstances preventing the timely submission
6 of all necessary information. In considering an appeal, the
7 secretary may grant an extension of time for the public school
8 entity or consortium to provide the necessary information before
9 the suspension is instituted. The board is authorized and shall
10 authorize school entities and consortia to enter into agreements
11 with entities providing or administering coverage for health
12 care benefits under this chapter for the purpose of carrying out
13 the provisions of this section.

14 (e) Health benefit entities.--

15 (1) An entity providing or administering health
16 insurance or health care coverage for public school
17 employees, with the exception of public school entities or
18 consortia as provided for in subsection (d), shall, upon the
19 written request of the board, public school entities,
20 consortium or insured, provide claims and loss information
21 within 60 days of the request or sooner, if so determined by
22 the board.

23 (2) The Insurance Commissioner, the Department of Health
24 and any other agency, authority, board, commission, council,
25 department or office under the jurisdiction of the Governor
26 having regulatory authority over any entity charged under
27 paragraph (1), hereafter known as "regulating authority,"
28 shall cooperate with the board, if necessary, to obtain
29 information from any insurance company, third-party
30 administrator or other administrator or provider of health

1 insurance benefits for school employees, other than a public
2 school entity or consortium. Following notice and hearing,
3 the board may impose an order assessing a penalty of up to
4 \$1,000 per day upon any entity, other than a public school
5 entity or consortium, that willfully fails to comply with the
6 obligations imposed by this section. If the entity does not
7 comply with the obligations imposed by this section within 15
8 days of an order being imposed, the board shall notify the
9 regulating authority of the failure of an entity under its
10 jurisdiction to provide data as set forth in this section.
11 Upon notification, the regulating authority shall suspend or
12 revoke the license of the entity or otherwise suspend or
13 revoke the entity's ability to operate until such time as the
14 board notifies the regulating authority that the entity is in
15 compliance. The board shall have standing to petition the
16 Commonwealth Court to seek enforcement of the order.

17 (3) This subsection shall apply to every entity
18 providing or administering group health coverage in
19 connection with providing health care benefits to school
20 employees within this Commonwealth, including plans,
21 policies, contracts or certificates issued by:

22 (i) A stock insurance company incorporated for any
23 of the purposes set forth in section 202(c) of the act of
24 May 17, 1921 (P.L.682, No.284), known as The Insurance
25 Company Law of 1921.

26 (ii) A mutual insurance company incorporated for any
27 of the purposes set forth in section 202(d) of The
28 Insurance Company Law of 1921.

29 (iii) A professional health services plan
30 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to

professional health services plan corporations).

(iv) A health maintenance organization as defined in the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

(v) A fraternal benefit society as defined in section 2403 of The Insurance Company Law of 1921.

(vi) A hospital plan corporation as defined in 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

(vii) Health care plans subject to the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829), to the maximum extent permitted by Federal law.

(viii) An administrator as defined in section 1002 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

(ix) A person licensed pursuant to Article VI-A of The Insurance Department Act of 1921.

(x) Any other person providing or administering group health care coverage on behalf of a public school entity, or accepting charges or premiums from a public school entity, in connection with providing health care coverage for school employees, including, but not limited to, multiple employer welfare arrangements, self-insured public school entities and third-party administrators.

(f) Confidentiality.--Any data requested by or provided to the board pursuant to this section shall comply with the standards for privacy established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

(g) Prepared materials.--Any documents, materials or

1 information solely prepared or created for the purpose of
2 implementation of subsection (b) are confidential and shall not
3 be discoverable or admissible as evidence in any civil or
4 administrative action or proceeding. Any documents, materials,
5 records or information that would otherwise be available from
6 original sources shall not be construed as immune from discovery
7 or use in any civil or administrative action or proceeding
8 merely because they were presented to the board. Nothing in this
9 subsection shall be construed to prevent publication or
10 dissemination of the aggregate study findings.

11 (h) Received materials.--Any documents, materials or
12 information received by the board or by a department under the
13 jurisdiction of the Governor on the board's behalf for the
14 purpose of implementation of subsection (b) shall not be
15 discoverable from the board, any department or the submitting
16 entity, nor shall they be admissible as evidence in any civil or
17 administrative action or proceeding. Any documents, materials,
18 records or information that would otherwise be available from
19 original sources shall not be construed as immune from discovery
20 or use in any civil or administrative action or proceeding
21 merely because they were received by the board or any
22 department.

23 (i) Document review.--No current or former member or
24 employee of the board or any department shall be allowed to
25 testify as to any matters by reason of the member's or
26 employee's review of documents, materials, records or
27 information submitted to the board by the entity providing
28 health insurance or health care coverage pursuant to subsection
29 (b). The enjoinder of testimony does not apply to findings or
30 actions by the board or any department that are public records.

1 (j) Original source document.--In the event an original
2 source document as set forth in subsection (g) is determined by
3 a court of competent jurisdiction to be unavailable from the
4 entity providing health insurance or health care coverage in a
5 civil action or proceeding, then, in that circumstance alone,
6 the board may be required pursuant to a court order to release
7 that original source document to the party identified in the
8 court order.

9 (k) Right-to-know requests.--Any documents, materials or
10 information made confidential by subsection (f) shall not be
11 subject to requests under the act of June 21, 1957 (P.L.390,
12 No.212), referred to as the Right-to-Know Law, or any successor
13 statute.

14 (l) Liability.--Notwithstanding any other provision of law,
15 no person or entity providing any documents, materials or
16 information to the board, any department or other entity on the
17 board's behalf shall be held by reason of having provided the
18 documents, materials or information to have violated any
19 criminal law, or to be civilly liable under any law, unless the
20 information is false and the person providing the information
21 knew or had reason to believe that the information was false and
22 was motivated by malice toward any person directly affected by
23 the action.

24 Section 322. Board review and election.

25 (a) Options assessment.--Upon collection of the necessary
26 information, the board shall evaluate existing public school
27 entity health care arrangements, examine options that would
28 aggregate, either Statewide or regionally, health care coverage
29 for public school employees, assess possible cost-management
30 improvements and solicit input from public school entities and

1 consortia identified with best practice standards. The board
2 shall investigate the creation of a Statewide health benefits
3 program as provided for in section 331 with the goal of
4 improving the overall affordability of providing health care
5 coverage for public school employees. The cost projections shall
6 be predicated on a plan that provides quality health care
7 benefits at a level consistent with those now provided to most
8 school employees through existing collective bargaining
9 contracts and offers coverage to school employees and other
10 eligible individuals.

11 (b) Election to proceed with program.--No later than ten
12 months after the board is constituted, unless a request by the
13 board for an extension is granted by the Governor, the board
14 shall decide whether to implement a Statewide health benefits
15 program, as provided for in section 331, or to implement an
16 alternative measures program, as provided for in section 351, to
17 reduce health coverage costs for public school entities. The
18 board's election to implement a Statewide health benefits
19 program or to implement an alternative measures program shall
20 require approval by a qualified majority vote. Upon election to
21 proceed with a Statewide health benefits program, the board
22 shall develop a plan for adoption, pursuant to section 323.

23 (c) Alternative election.--If the board decides that a
24 Statewide health benefits program cannot be created in
25 accordance with subsection (a), or the board fails to achieve
26 agreement and approve a plan for implementing a Statewide health
27 benefits program, the board will proceed with consideration of
28 an alternative measures program that will reduce long-term costs
29 or the rate of growth of such costs in the aggregate for public
30 school entities in accordance with Subchapter E.

1 Section 323. Plan adoption.

2 (a) Statewide health benefits program adoption.--Within
3 three months of electing to proceed with the Statewide health
4 benefits program, pursuant to section 322(b), the board shall
5 verify that implementation of a Statewide health care program
6 will result in reduction in the Statewide aggregate cost of the
7 purchase of benefits or the rate of growth of such costs and
8 adopt a proposed plan for the implementation of the program. The
9 proposed plan shall be in writing and shall include a detailed
10 description of the program and the transition procedures
11 necessary to phase in and implement the program. The board's
12 adoption of a proposed plan shall require approval by a
13 qualified majority vote.

14 (b) Parameters of program.--The description of the Statewide
15 health benefits program shall at minimum include:

16 (1) The eligibility requirements for a school employee
17 and the employee's health care dependents to qualify for
18 participation in the program.

19 (2) The identification of the benefits to be included as
20 part of the standard benefit package.

21 (3) Disclosure of any member cost-sharing contributions,
22 whether expressed as a target percentage of overall program
23 costs or individually determined as a percentage of salary
24 and whether the cost-sharing is uniform on a Statewide basis
25 or varies by health care region.

26 (4) The designation of health care regions.

27 (5) The design of the Statewide pool or regional pools
28 that would be established to aggregate public school entities
29 for the purpose of purchasing services and managing health
30 insurance risks.

1 (6) The requirements for electronic eligibility
2 transmission between the board and other participating
3 entities, including public school entities, consortia and the
4 retirement system.

5 (7) Financial and accounting plans, including the
6 establishment of any necessary reserves or escrow accounts
7 with carriers.

8 (8) The method to be used to compare costs and levels of
9 health care benefits pursuant to section 332(d)(2).

10 (c) Transition procedures.--The description of the steps to
11 phase in and implement the Statewide health benefits program
12 shall at minimum include:

13 (1) A determination of when the standard benefit package
14 shall become the mandatory program offering for eligible
15 individuals in a public school entity as health care benefits
16 for school employees are normalized on a Statewide basis.

17 (2) A determination, based on the size and structure of
18 any risk pool established within a health care region, as to
19 when the program would be phased in within that region.

20 (3) The interim steps to aggregate public school
21 entities into a Statewide pool or regional pools, including
22 any best practice standards and benchmarks to be applied to
23 new or existing consortia, or public school entities, or in
24 any selection process to build a Statewide or regional pool.

25 (4) Transition rules on member cost-sharing
26 responsibility until any member cost-sharing is required for
27 all members Statewide, or within any region.

28 (5) Transition rules to limit any negative financial
29 impact on a public school entity required to purchase health
30 care coverage through a Statewide or regional pool and to

1 normalize contribution rates for all participating public
2 school entities within the same health care region.

3 (d) Alternative measures program adoption.--Within three
4 months of proceeding with consideration of an alternative
5 measures program pursuant to section 322(c), the board shall
6 adopt a proposed plan for the implementation of an alternative
7 measures program, pursuant to Subchapter E, that will result in
8 reduction in the Statewide aggregate cost of the purchase of
9 benefits or the rate of growth of such costs. The proposed plan
10 shall be in writing and shall include a detailed description and
11 the transition procedures necessary to phase in and implement
12 the alternative measures program. The board's adoption of a
13 proposed plan for implementation of an alternative measures
14 program shall require approval by a qualified majority vote.

15 (e) Legislative and public review.--

16 (1) The board shall publish the provisions of any
17 proposed plan adopted pursuant to this section in the
18 Pennsylvania Bulletin and make it available on the board's
19 Internet website. Following publication, the board shall
20 schedule at least eight public hearings to solicit public
21 input on the plan. The hearings shall be conducted in
22 Philadelphia County; Allegheny County; and the Northeast,
23 Northwest, Southeast, Southwest, North Central and South
24 Central regions of this Commonwealth.

25 (2) The board shall submit the provisions of any
26 proposed plan adopted pursuant to this section to the
27 chairman and minority chairman of the Education Committee of
28 the Senate and the chairman and minority chairman of the
29 Education Committee of the House of Representatives. The
30 committees shall have 45 days to review the proposed plan and

1 submit comments to the board.

2 (f) Final plan adoption.--Upon completion of the public
3 hearings pursuant to subsection (e)(1) and expiration of the
4 committee review pursuant to subsection (e)(2), the board shall
5 review all the testimony and comments received regarding the
6 proposed plan. The board may, subject to a qualified majority
7 vote, make changes and adjustments to the plan to effectuate
8 this chapter. Within 90 days of publishing the proposed plan,
9 pursuant to subsection (e)(1), the board shall publish the final
10 plan, as adopted by the board, in the Pennsylvania Bulletin and
11 on the Internet website of the Department of Education.

12 (g) Legislative oversight.--The board shall proceed with
13 implementation unless a resolution to the contrary has been
14 adopted within 45 days after publication of the plan, in
15 accordance with this subsection. Upon publication of the final
16 adopted plan in the Pennsylvania Bulletin, the board shall
17 submit the plan to the Education Committee of the Senate and the
18 Education Committee of the House of Representatives. Either
19 committee may recommend to its respective chamber whether the
20 board shall be prevented from implementing the plan. If the
21 committee recommends the plan not be implemented, the Secretary
22 of the Senate or the Chief Clerk of the House of Representatives
23 shall place on the calendar for the next legislative day the
24 question, in the form of a resolution, of whether the board
25 shall proceed with implementation. If the resolution is adopted
26 in either chamber, it shall be referred to the Education
27 Committee in the opposite chamber which may recommend the board
28 not implement the plan. Upon the recommendation, the resolution
29 shall be placed on the calendar of the chamber. If a majority of
30 the members elected to each House approve the resolution, the

1 resolution shall be presented to the Governor for approval or
2 disapproval in accordance with section 9 of Article III of the
3 Constitution of Pennsylvania.

4 (h) Failure to reach consensus.--If the board fails to
5 achieve agreement and approve a plan for implementing a
6 Statewide health benefits program by a qualified majority vote
7 or if the board fails to achieve agreement and approve a plan
8 for implementing an alternative measures program by a qualified
9 majority vote, the board shall report as to its findings and
10 reasons preventing agreement on a plan to the Governor, the
11 President pro tempore of the Senate and the Speaker of the House
12 of Representatives.

13 SUBCHAPTER D

14 STATEWIDE HEALTH BENEFITS PROGRAM

15 Section 331. Health benefits program.

16 (a) Creation.--Upon adoption of a Statewide health plan
17 under section 323(f), the board shall proceed to initiate and
18 sponsor an employee benefits program for eligible individuals.

19 (b) Program design.--The board shall design a program which
20 follows the parameters of the plan and transition procedures as
21 established in section 323. The board may develop and administer
22 the program itself or operate through any legal entity
23 authorized by law to do so, including consortia, and the program
24 may be developed and administered differently within each health
25 care region as long as a standard benefit package that is
26 substantially equivalent in coverage, as determined by the
27 board, is available to eligible individuals. The program may
28 also be administered in whole or in part on a fully insured or
29 self-funded basis at the board's sole discretion. The board
30 shall seek no fewer than three proposals for the administration

1 of the program.

2 (c) Implementation.--The board may:

3 (1) Establish pools for selected areas of coverage, such
4 as pharmacy services, transplants, stop-loss insurance,
5 health care management or other possible areas that in the
6 board's judgment can be offered Statewide or regionally on a
7 more stable and cost-effective basis. The board may offer
8 separate plans to public school entities and consortia prior
9 to the phase-in of the standard benefit package.

10 (2) Make the program available in some health care
11 regions before it is made available within all regions.

12 (d) Eligibility requirements.--The board shall have full
13 authority to determine eligibility requirements for benefits and
14 to adopt rules and regulations setting forth the same which will
15 be binding on all eligible individuals. No coverage shall be
16 provided for eligible individuals without payment being made,
17 except under circumstances as may be established by the board
18 under reasonable guidelines.

19 (e) Coverage and plan selection.--The board shall have full
20 authority to select and contract with insurance carriers, health
21 maintenance organizations, pharmacy benefit managers, third-
22 party administrators, reinsurers and any other entities
23 necessary to provide a range of benefit packages to eligible
24 individuals through the program. The board shall have full
25 authority to determine the nature, amount and duration and
26 discontinuation of coverage to be provided.

27 (f) Standard and optional benefits.--

28 (1) A standard benefit package shall be established by
29 the board that shall include coverage for medical and
30 hospital services, prescription drugs and may include

1 supplemental and other benefits in amounts to be determined
2 by the board.

3 (2) Within each health care region, the board shall
4 approve and make available to each eligible individual
5 affiliated with a public school entity which is participating
6 in the program the following:

7 (i) A health care plan that includes coverage the
8 board determines to be the equivalent of the standard
9 benefit package established in paragraph (1).

10 (ii) One or more alternate health care plans or plan
11 designs which in the board's judgment contain benefits
12 equivalent to the standard benefit package in paragraph
13 (1). The deductibles and copayments for each alternate
14 health care plan shall be set and annually adjusted so
15 that the cost of providing the coverage for the
16 Commonwealth and a public school entity is no greater
17 than the cost incurred for the health plan in
18 subparagraph (i).

19 (iii) One or more optional benefit plans, as
20 approved by the board, which allow an eligible individual
21 to purchase coverage that is not included in the standard
22 benefit package, provided that any cost over and above
23 the cost of the health care plan in subparagraph (i) is
24 to be paid by the member except as otherwise provided in
25 section 338(f)(1)(ii).

26 (3) The detailed basis on which payment of benefits is
27 to be made shall be specified in writing. The benefits
28 provided in this chapter are subject to change or
29 modification by the board from time to time as the board, in
30 its discretion, may determine. All changes or modifications

shall be specified in writing and communicated to members within a reasonable period of time.

Section 332. Participation.

(a) Mandatory participation.--The board shall have the authority to require public school entities to participate in the program on a Statewide basis or may phase in and require participation on a regional basis. Except as provided under subsections (c), (d), (e) and (f), public school entities in any health care region designated by the board shall be required to participate in the program.

(b) Transition plan.--When the board determines pursuant to subsection (a) that a public school entity shall be required to participate in the program, the public school entity or consortium in which the public school entity is a participant shall, within a reasonable period of time as determined by the board, present to the board a transition plan with a schedule for the eventual migration of school employees into the program. The board shall review the transition plan with the public school entity or consortium and make any necessary modifications before granting approval of the plan. A public school entity or consortium shall be subject to adherence to the transition plan approved by the board.

(c) Extensions of time.--The board shall give due consideration to a transition plan submitted pursuant to subsection (b) that includes a request for an extension of time. Requests may be submitted by, but shall not be limited to, any of the following:

- (1) A public school entity that participates in a consortium where an extension of time is necessary for the rundown and proper termination of the consortium's health

1 care program.

2 (2) A public school entity that participates in a
3 consortium where the withdrawal of the public school entity
4 may undermine the financial stability of the consortium.

5 (3) A public school entity or a consortium which will
6 incur a significant financial penalty under terms of a
7 contract with an insurance carrier or other provider of
8 health care coverage for a contract in existence on or before
9 January 1, 2008.

10 (4) A public school entity or consortium which will
11 incur a significant financial cost, including fees, penalties
12 or other contractual financial obligations, related to the
13 termination of coverage under a contract of insurance or, in
14 the case of a public school entity that self-insures,
15 insufficient reserves to pay claims incurred during the
16 previous coverage year, if the obligation relates to a plan
17 of coverage that was in existence on or before January 1,
18 2008, and the public school entity or consortium provides the
19 board with a financial plan for meeting these obligations.

20 (d) Rejection of participation.--Within 60 days of creation
21 of the health benefits program under section 331(a), a public
22 school entity may reject participation in the program under the
23 following conditions:

24 (1) the governing body of the school entity and the
25 school employee union representing the greatest number of
26 school employees in the school entity that would be covered
27 by the program when it is fully operational execute a
28 memorandum of understanding rejecting participation in the
29 program that is approved by a majority of the members of the
30 governing body and a majority of the employees that would be

1 covered by the program; and

2 (2) the memorandum of understanding demonstrates that
3 participation in the program would result in:

4 (i) payment by the school entity on behalf of school
5 employees and their eligible health care dependents that
6 would exceed the cost, excluding any employee cost-
7 sharing, of providing, purchasing and administering
8 health care benefits to members who are school employees
9 and their eligible health care dependents in the year
10 before implementation of the program;

11 (ii) a reduction in the coverage of health care
12 benefits for school employees; provided that, if more
13 than one plan is available to school employees in the
14 school entity, this comparison shall be with the health
15 care plan that covers the greatest number of bargaining
16 unit members; or

17 (iii) both (i) and (ii).

18 (e) Optional membership.--No school district of the first
19 class, as classified pursuant to section 202 of the Public
20 School Code, shall be required to participate in the program,
21 except as may be agreed upon under terms of a collective
22 bargaining agreement covering a majority of employees of a
23 school district of the first class. Upon a school district of
24 the first class entering participation in the program pursuant
25 to a collective bargaining agreement, continued participation in
26 the program shall become mandatory.

27 (f) Prohibited membership.--A public school entity that, on
28 the effective date of this chapter, participates in the
29 Pennsylvania Employees' Benefit Trust Fund shall be prohibited
30 from participating in the program, and employees of the public

1 school entity shall not have the right to elect membership in
2 the program.

3 (g) Transition of employees.--A public school entity that
4 provides some or all of its employees with health benefits
5 through another health care plan by virtue of one or more
6 collective bargaining agreements, entered into prior to the
7 effective date of this chapter, shall not be required to join
8 the program until expiration of the collective bargaining
9 agreements. The public school entity and some or all of its
10 employees or bargaining representatives of its employees may by
11 mutual agreement and approval of the board join the program at
12 an earlier date. Renewal or extension of a collective bargaining
13 agreement shall constitute its expiration for the purpose of
14 this subsection.

15 Section 333. Continuation of coverage and transfer employees.

16 (a) Annuitants.--Upon retirement, an annuitant eligible
17 under paragraph (1) or (2) shall have the option to elect
18 coverage in the program, including coverage for any eligible
19 health care dependent. The annuitant shall be responsible to pay
20 the full cost of the coverage, unless a public school entity has
21 agreed, separate from any requirements of the program, to pay
22 toward the coverage pursuant to an award of health benefits
23 under a written policy or agreement collectively bargained or
24 otherwise entered into by the public school entity. The board
25 shall annually determine the cost of coverage as follows:

26 (1) For an annuitant who is enrolled in the program
27 pursuant to section 513 of the Public School Code or an
28 annuitant who pursuant to any award of health benefits for
29 annuitants under a written policy or agreement collectively
30 bargained or otherwise entered into by the public school

1 entity prior to the effective date of this section, payments
2 shall be based on the total contribution rate established
3 pursuant to section 334(b) and (c) for a school employee in
4 the same health care region, plus a 2% administrative fee.

5 (2) For an annuitant, other than an annuitant qualified
6 for coverage under paragraph (1), payments shall be made on
7 the same basis as an annuitant qualified for coverage under
8 paragraph (1), except as determined as follows:

9 (i) The board shall periodically have the actuary
10 review and determine the separate cost of providing
11 continuation of coverage to annuitants under this
12 paragraph, along with an assessment of its impact on the
13 cost of providing coverage to members who are school
14 employees and annuitants qualified for coverage under
15 paragraph (1). The review and assessment shall first
16 occur as part of the school employee health benefits
17 study and evaluation conducted pursuant to section 321
18 and its results shall be considered in the development of
19 parameters under section 323(b).

20 (ii) The board shall consider the findings of the
21 actuary in subparagraph (i) to determine if there is a
22 substantial impact on the cost of providing coverage to
23 members who are school employees and annuitants qualified
24 for coverage under paragraph (1). If there is a
25 substantial cost impact, the board shall require payments
26 for an annuitant qualified to elect coverage in the
27 program under this paragraph to be separately determined
28 and the contribution rate to be based on the
29 disaggregated cost of providing the coverage, plus a 2%
30 administrative fee.

1 (b) Separation from service.--The board shall determine the
2 eligibility of members, other than annuitants covered by
3 subsection (a), to elect continuation of coverage in the program
4 upon separation from service as a school employee. The member
5 shall be responsible to pay the full cost of the coverage in the
6 member's health care region, plus an administrative fee to be
7 set by the board. The board shall, at minimum, provide
8 continuation of coverage eligibility that meets the requirements
9 of Title X of the Employee Retirement Income Security Act of
10 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide
11 the continuation of coverage options required pursuant to 51
12 Pa.C.S. § 7309 (relating to employment discrimination for
13 military membership or duty) for members on military leave.

14 (c) Transfer employees.--The board may, in its discretion,
15 approve the participation of transfer employees in the program,
16 provided that any position for which a transfer employee who is
17 provided health benefits in a health care plan sponsored by a
18 public school entity through an agreement that was in existence
19 on or before January 1, 2008, with the transfer employee's
20 employer shall be allowed to participate in the program. The
21 board shall set the terms and conditions necessary for
22 participation in the program, including the cost of coverage to
23 be paid by the third-party entity which shall be based on the
24 full cost of coverage in the health care region as determined by
25 the board, plus an administrative fee. The sponsoring public
26 school entity shall be responsible to the board for the
27 collection of the payments for transfer employees from the
28 third-party entity.

29 Section 334. Partnership for stable benefits funding.

30 (a) Basis of partnership.--In recognition that the long-term

1 viability and stability of the program will require public
2 school entity employers, members and the Commonwealth to be
3 partners both in sustaining the health benefits program as well
4 as managing the costs of a reasonable and appropriate standard
5 benefit package, the board shall determine for each plan year
6 and in each region the payments due from public school entities,
7 from members and from the Commonwealth.

8 (b) Determination of contribution rate.--The board shall
9 determine for each plan year the total amount of the
10 contributions by the Commonwealth, public school entities and
11 school employees required to provide projected benefits for that
12 plan year under the standard benefit package on behalf of each
13 school employee member and the employee's eligible health care
14 dependents. The contribution rate shall consist of the amount
15 required to provide the standard benefit package, including
16 appropriate reserves and administrative expenses, and shall be
17 adjusted for each health care region to reflect the cost of
18 benefits in that region. The contribution rates may
19 differentiate between single coverage for members only and types
20 of family coverage, as determined by the board.

21 (c) Certification of rate.--The board shall certify the
22 contribution rate for each health care region to the
23 Commonwealth and public school entities, including the payments
24 that shall be due from public school entities, from members and
25 from the Commonwealth. The certifications shall be regarded as
26 final and not subject to modification by the Secretary of the
27 Budget.

28 (d) Commonwealth cost share.--The Commonwealth shall make a
29 contribution to offset a portion of the cost increase consistent
30 with subsections (e) and (f) for any plan year in which the

board determines that the aggregate cost of providing the standard benefit package on behalf of members who are school employees and their eligible health care dependents exceeds the sum of:

(1) the projected carry-over balance for the plan year in the employer contribution account after all required transfers have been made to the employee benefits account for the prior year; and

(2) any employee cost-sharing for the plan year.

(e) Budget submission and appropriation.--If the board determines that the requirements of subsection (d) have been met, all of the following shall occur:

(1) The board shall submit to the Secretary of the Budget an itemized budget specifying the amount necessary to be appropriated by the Commonwealth consistent with subsection (f). The budget submission shall be on a form and in a manner determined by the Secretary of the Budget and shall occur no later than November 1 of the fiscal year preceding the plan year for which funds are requested.

(2) Upon appropriation by the General Assembly to provide for the obligations of the Commonwealth, the amount shall be paid by the State Treasurer through the Department of Revenue into the employer contribution account within 30 days of receipt of the requisition presented each month by the board.

(f) Limitation on Commonwealth contribution.--

(1) The Commonwealth shall not be obligated to pay any amount beyond that which is appropriated by the General Assembly. The amount requested by the board pursuant to subsection (e) (1) shall not exceed the sum of any amount paid

1 by the Commonwealth for the fiscal year preceding the plan
2 year for which funds are requested and the lesser of:

3 (i) 50% of the amount that the board determines is
4 necessary to meet the increase in the contribution rate
5 on behalf of members who are school employees determined
6 pursuant to subsection (b); and

7 (ii) the product of the total revenue transferred in
8 the prior plan year from the employer contribution
9 account to the employee benefits account and the most
10 recent annual percent change in the per enrollee private
11 health insurance premium for all benefits, as defined in
12 the National Health Expenditure Data published by the
13 Centers for Medicare and Medicaid Services, Department of
14 Health and Human Services.

15 (2) If any excess revenue in the employer contribution
16 account is to be applied to payments for the plan year, then
17 the excess revenue shall be used to reduce the calculation
18 under this subsection in proportion to the Commonwealth's
19 share of the total increase in the contribution rate on
20 behalf of active members for the plan year.

21 (g) Additional optional contribution.--Notwithstanding the
22 limitation in subsection (f), the General Assembly may
23 appropriate additional revenue to the employer contribution
24 account in any fiscal year.

25 (h) Allocation of Commonwealth contribution.--Any
26 contribution made by the Commonwealth under this section shall
27 be used to offset an increase in the contribution rate paid in a
28 health care region by public school entities on behalf of
29 members who are school employees and their eligible health care
30 dependents and to maintain any offset that was paid in a prior

1 year. The Commonwealth contribution shall be allocated to offset
2 a portion of each participating public school entity's cost of
3 coverage on a per-member basis, for members who are school
4 employees and their eligible health care dependents, based on
5 the public school entity's market value/income aid ratio using
6 the most recent data provided by the Department of Education.
7 For any public school entity that is not assigned a market
8 value/income aid ratio by the Department of Education, the
9 Commonwealth contribution shall not be adjusted based on a
10 market value/income aid ratio. For the purpose of this
11 subsection, "market value/income aid ratio" shall have the same
12 meaning given to it in the Public School Code.

13 (i) Contributions on behalf of school employees.--Consistent
14 with any transition procedure pursuant to section 323(c)(5),
15 each public school entity shall be required to make payments to
16 the trust fund on behalf of members who are school employees and
17 their eligible health care dependents based on the contribution
18 rate certified by the board in subsection (c). The increase in
19 payments made from one year to the next by public school
20 entities on behalf of school employees shall be equal to or
21 greater than the increase in payment from one year to the next
22 made pursuant to subsection (d), excluding any additional
23 optional contribution made by the Commonwealth pursuant to
24 subsection (g).

25 (j) Deduction from appropriations.--In the event a public
26 school entity does not make the required payment in the time
27 allotted, as determined by the board, the Secretary of Education
28 and the State Treasurer shall cause to be deducted and paid into
29 the trust fund from the amount of any moneys due to any public
30 school entity on account of any appropriation for schools or

1 other purposes the amount due to the trust fund as certified by
2 the board and as remains unpaid on the date such appropriations
3 would otherwise be paid to the public school entity by the
4 Department of Education, and the amount shall be credited to the
5 public school entity's account in the trust fund.

6 (k) Transition.--Until any transition pursuant to section
7 323(c)(5) has been completed, the payments made by each public
8 school entity shall be no less than the total amount paid by the
9 public school entity to provide, purchase and administer health
10 care benefits to members who are school employees and their
11 eligible health care dependents in the year before
12 implementation of the program. Any contributions received by the
13 public school entity from school employees in the form of cost-
14 sharing payments for health care coverage shall be excluded from
15 the amount.

16 (l) Referendum exception.--

17 (1) In addition to the exceptions provided for in
18 section 333(f) of the act of June 27, 2006 (1st Sp.Sess.,
19 P.L.1873, No.1), known as the Taxpayer Relief Act, the costs
20 specified in paragraph (2) shall constitute an exception to
21 the referendum requirements of section 333(c) of the Taxpayer
22 Relief Act subject to department approval pursuant to section
23 333(j) of the Taxpayer Relief Act.

24 (2) Costs incurred by a school district in providing
25 health care-related benefits which are attributable to the
26 school district's participation in the program shall
27 constitute an expenditure for purposes of section 333(f)(1)
28 and (2) of the Taxpayer Relief Act to the extent the
29 anticipated increase in such costs between the current year
30 and the upcoming year is greater than the index established

1 for the school district pursuant to section 313(1)(ii) of the
2 Taxpayer Relief Act. The dollar amount of this exception
3 shall be equal to the portion of the increase which exceeds
4 the index established for the school district pursuant to
5 section 313(1)(ii) of the Taxpayer Relief Act.

6 Section 335. Powers and duties of board.

7 (a) Powers.--In addition to the powers granted by other
8 provisions of this chapter, the board shall have the powers
9 necessary or convenient to carry out this subchapter, including,
10 but not limited to, the power to:

11 (1) Determine appropriate geographic health care regions
12 for the administration of the program and make changes to the
13 regions as necessary; provided, that a school district of the
14 first class shall be designated as its own health care
15 region.

16 (2) Formulate and establish the conditions of
17 eligibility, including eligibility for health care dependent
18 coverage for members, to include consideration if a member or
19 health care dependent is covered, or eligible for coverage,
20 under another employer-sponsored group health insurance plan;
21 provisions for payment of benefits; and all other provisions
22 that may be required or necessary to carry out the intent and
23 purpose of the program.

24 (3) Determine and make necessary changes to the standard
25 benefit package and benefit structure of the program.

26 (4) Establish copayments, annual deductibles,
27 coinsurance levels, exclusions, formularies and other
28 coverage limitations and payment responsibilities of members
29 incurred at the time of service.

30 (5) Set and adjust member cost-sharing contributions to

1 be expressed as a target percentage of overall program costs
2 or individually determined as a percentage of salary. The
3 board shall determine whether member cost-sharing shall be
4 uniform on a Statewide basis or shall vary by health care
5 region.

6 (6) Impose and collect necessary fees and charges.

7 (7) Determine enrollment procedures.

8 (8) Establish procedures for coordination of benefits
9 with other plans and third-party payers, including
10 coordinating benefits or contracting directly with Medicare.

11 (9) Establish a plan with the retirement system to
12 coordinate health care coverage for annuitants between the
13 program established by this chapter and the group health
14 insurance program sponsored by the retirement system under
15 the provisions of 24 Pa.C.S. Ch. 89 (relating to group health
16 insurance program) and to coordinate the sharing of
17 information pertaining to premium assistance payment
18 transfers.

19 (10) Set and adjust contribution rates sufficient to
20 maintain the adequacy of any reserves established by this
21 chapter and to fully fund the benefits offered by and to pay
22 for the administrative expenses related to the program.

23 (11) Set and adjust costs for members electing to
24 continue coverage upon retirement or separation from
25 employment. The board may establish different cost rates to
26 be charged for different categories of members electing to
27 continue coverage.

28 (12) Purchase insurance or employ self-insurance, alone
29 or in combination, to provide benefits as shall be determined
30 by the board.

1 (13) Establish appropriate reserves based on generally
2 accepted standards as applied by Federal and State regulators
3 to similar types of plans.

4 (14) Issue self-liquidating debt or borrow against
5 contributions, payments or other accounts receivable for the
6 purposes of prepaying any health benefits, establishing
7 reserves or otherwise lowering the cost of coverage.

8 (15) Establish procedures to verify the accuracy of
9 statements and information submitted by eligible individuals
10 on enrollment forms, claim forms or other forms.

11 (16) Receive and collect all contributions due and
12 payable to the accounts or delegate to a public school entity
13 or claims processor the right to receive contributions,
14 payments or perform ministerial functions required to assert
15 the board's rights. In so doing, the board shall have the
16 right to:

17 (i) maintain any and all actions and legal
18 proceedings necessary for the collection of
19 contributions; and

20 (ii) prosecute, defend, compound, compromise,
21 settle, abandon or adjust any actions, suits,
22 proceedings, disputes, claims, details and things related
23 to the accounts and program.

24 (17) Establish procedures to hear and determine any
25 claims and controversies under this chapter.

26 (18) Promulgate rules and regulations regarding the
27 administration of the program, including the establishment of
28 the plan year.

29 (19) Ensure that a public school entity provides
30 detailed information about the program to eligible employees

1 at least 90 days before program coverage begins to be offered
2 to school employees.

3 (20) Seek and take all necessary steps to retain
4 eligibility for the members, public school entities and the
5 Commonwealth to receive tax-preferred or tax-free treatment
6 under the IRC for contributions to and earnings of the trust
7 fund.

8 (21) Enter into agreements with entities providing or
9 administering coverage for health benefits under this chapter
10 for the electronic exchange of data between the parties at a
11 frequency as determined by the board.

12 (22) Perform and do any and all such actions and things
13 that may be properly incidental to the exercising of powers,
14 rights, duties and responsibilities of the board.

15 (23) Determine best practice standards and benchmarks
16 for consortia in any selection process to build a Statewide
17 pool or regional pools, including the power to require a
18 consortium to merge with another consortium. The board shall
19 have the power to require consortia, as a condition of
20 continued participation in the program, to accept any public
21 school entity applying to join and participate in a
22 consortium.

23 (24) Enter into agreements with any public school entity
24 or consortium to implement the program developed pursuant to
25 this chapter and delegate powers necessary to administer
26 coverage for health benefits.

27 (b) Administrative duties of board.--In addition to other
28 duties of the board provided in this chapter, the following
29 duties shall be afforded to the board for the implementation of
30 this section.

1 (c) Regulations and procedures.--The board shall, with the
2 advice of the Office of General Counsel and the actuary, adopt
3 and promulgate rules and regulations for the uniform
4 administration of the program. The actuary shall approve in
5 writing all computational procedures used in the calculation of
6 contributions and the cost of benefits, and the board shall by
7 resolution adopt the computational procedures prior to their
8 application by the board. The rules, regulations and
9 computational procedures as so adopted from time to time and as
10 in force and effect at any time, together with tables that are
11 adopted as necessary for the calculation of contributions and
12 the cost of benefits, shall be effective as if fully set forth
13 in this chapter.

14 (d) Data.--The board shall keep in electronic format records
15 of claims, eligibility and other data as are stipulated by the
16 actuary in order that an annual contribution rate determination
17 for each health care region and various program options can be
18 completed within six months of the close of each plan year. The
19 board shall have final authority over the means by which data is
20 collected, maintained and stored and in so doing shall protect
21 the rights of its membership as to privacy and confidentiality.

22 (e) Annual financial statement.--The board shall prepare and
23 have published within six months following the end of each plan
24 year a financial statement showing the condition of the trust
25 fund as of the end of the previous plan year. The board shall
26 submit said financial statement to the Governor and shall make
27 copies available to public school entities for the use of the
28 school employees and the public.

29 (f) Independent audit.--The board shall provide for an
30 annual audit of the trust fund by an independent certified

1 public accounting firm.

2 (g) Manual of regulations.--The board shall, with the advice
3 of the Office of General Counsel and the actuary, prepare within
4 six months of the commencement of a program adopted under this
5 chapter a manual incorporating rules and regulations consistent
6 with the provisions of this chapter for each participating
7 public school entity that shall make information contained in
8 the manual available to school employees. The board shall
9 thereafter advise public school entities within 90 days of any
10 changes in rules and regulations due to changes in the law or
11 due to changes in administrative policies.

12 (h) Annual budget.--The board shall establish an annual
13 budget for the program and make disbursements from the trust
14 fund that are consistent with the budget.

15 (i) Program assistance.--The board may solicit and accept
16 grants, loans and other aid from any person, corporation or
17 other legal entity or from the Federal, State or local
18 government and participate in any Federal, State or local
19 government program if necessary for prudent management of the
20 program.

21 (j) Functions.--The board shall perform other functions as
22 are required for the execution of this chapter and shall have
23 the right to inspect employment records of public school
24 entities.

25 (k) Qualified majority voting provision.--A qualified
26 majority vote shall be required on any matter voted upon by the
27 board affecting the development of or any change in:

28 (1) The plan to implement the program adopted pursuant
29 to section 323(f).

30 (2) The standard benefit package, benefit options or

1 plan design offered by the program to covered employees.

2 (3) Membership eligibility criteria.

3 (4) The addition, deletion or significant change in
4 status of an insurance carrier, benefits administrator or
5 other major contractor in the administration of benefits, or
6 the addition, deletion or significant change in status of a
7 health care provider network.

8 (5) Any determination on the use of excess fund
9 payments.

10 (6) The overall per-employee cost of the standard
11 benefit package to the trust fund and any public school
12 entity funding and member cost-sharing responsibilities.

13 (7) Cost containment measures such as managed care,
14 wellness centers and large case management.

15 (8) Contracts valued at more than \$25,000,000.

16 (9) Changes in trust document, bylaws or any major
17 internal operating policies or procedures, such as claims
18 appeal procedures, not to include routine ministerial
19 functions.

20 (10) The alternative measures program created pursuant
21 to section 351(a).

22 (11) Approve employment of and contracts with
23 consultants and professional personnel.

24 (1) Duties conferred upon secretary.--The secretary of the
25 board shall supervise a staff of administrative, technical and
26 clerical employees engaged in recordkeeping and clerical
27 processing activities in maintaining files of members,
28 accounting for contributions, processing payments, preparing
29 required reports and counseling.

30 Section 336. Public School Employees' Benefit Trust Fund.

(a) Establishment of trust fund.--The Public School Employees' Benefit Trust Fund is established in the State Treasury. The moneys of the trust fund are appropriated on a continuing basis and shall be used exclusively for the purposes set forth in this chapter. All of the assets of the trust fund shall be maintained and accounted for, separate from all other funds and moneys of the Commonwealth. The Treasury Department shall credit to the trust fund all moneys received from the Department of Revenue arising from the contributions required under this chapter and all earnings from investments or moneys of the trust fund. There shall be established and maintained by the board the several ledger accounts, including:

(1) The employee benefits account shall be the ledger account to which shall be credited the payments from section 333(a), (b) and (c), payments from members for cost sharing and any additional member-paid cost associated with optional benefit packages elected by members and transfers from the employer contribution account as provided in paragraph (3). All earnings derived from investment of the assets of the employee benefits account shall be credited to this account. The board is authorized to separately invest the amounts in the employee benefits account in a prudent manner intended to maximize the safety of the capital contained in the employee benefits account. Payments for member health care benefits and the direct administrative expenses of the board related to the administration of the employee benefits program, as provided in section 312(d), shall be charged to this account.

(2) Reserve account.

(i) A restricted reserve account, or more than one account if the board determines it necessary to have

1 segregated accounts, is established within the trust fund
2 for the purpose of establishing and maintaining a reserve
3 or separate reserves sufficient:

4 (A) to pay the expected claims experience of the
5 program in the event the board elects to self-fund
6 all or a portion of the program for any plan years;

7 (B) to prefund the accrued liability for any
8 postretirement health care benefits earned by
9 employees enrolled in the program pursuant to section
10 333(a) (1) as the benefit is earned by the employees;
11 and

12 (C) to amortize the unfunded actuarial accrued
13 liability for postretirement health care benefits
14 already earned by employees and annuitants pursuant
15 to section 333(a) (1) in the event the board elects to
16 assume all or a portion of the liability. The board
17 shall use an amortization period that does not exceed
18 30 years for this purpose.

19 (ii) The board shall annually establish through an
20 actuary retained by the board the amount necessary, if
21 any, to establish and maintain a reserve or separate
22 reserves sufficient for the purposes of this paragraph.
23 Any moneys needed to maintain the reserve or separate
24 reserves established under this paragraph shall be
25 collected through the adjustment of the contribution rate
26 established pursuant to section 334(b) and (c) or through
27 other available sources.

28 (iii) The moneys in any reserve account may be
29 invested by the board separate from other moneys of the
30 trust fund. All earnings derived from investment of the

assets of any reserve account shall be credited to the reserve account.

(3) The employer contribution account shall be the ledger account to which shall be credited all contributions made by the Commonwealth as determined in accordance with section 334(e) and payments from public school entities as determined in accordance with section 334(i), as well as all earnings derived from the investment of the assets of the employer contribution account. The total amount of the Commonwealth and public school entity contributions required to provide the standard benefit package on behalf of all members who are school employees and their eligible health care dependents shall be transferred on a monthly basis to the employee benefits account.

(b) Composition.--The trust fund shall consist of:

(1) All payments made by members or received from the Commonwealth and public school entities and all interest, earnings and additions thereto.

(2) Any other money, public or private, appropriated or made available to the board for the trust fund or any reserve account from any source and all interest, earnings and additions thereto.

(c) Administration of trust and associated funds.--The assets of the trust fund shall be preserved, invested and expended solely pursuant to and for the purposes set forth in this chapter.

(d) Control and management of trust fund.--

(1) The board shall have exclusive control and management of the trust fund and full power to invest and manage the assets of each account of the trust fund as a

1 prudent investor would, by considering the purposes, terms
2 and other circumstances of each account and by pursuing an
3 overall investment strategy reasonably suited to the trust
4 fund.

5 (2) The board may invest in every kind of property and
6 type of investment, including, but not limited to, mutual
7 funds and similar investments, consistent with this
8 subsection.

9 (3) In making investment and management decisions, the
10 board shall consider, among other things, to the extent
11 relevant to the decision or action:

12 (i) the size and nature of the account;

13 (ii) the liquidity and payment requirements of the
14 account;

15 (iii) the role that each investment or course of
16 action plays in the overall investment strategy;

17 (iv) to the extent reasonably known to the board,
18 the needs for present and future payments; and

19 (v) the reasonable diversification of assets, taking
20 into account the purposes, terms and other circumstances
21 of the trust fund and the requirements of this section.

22 (e) Custodian of trust fund.--The State Treasurer shall be
23 the custodian of the trust fund.

24 (f) Name for transacting business.--By the name of "The
25 Public School Employees' Benefit Trust Fund," all of the
26 business of the trust fund shall be transacted, its fund
27 invested, all requisitions for money drawn and payments made and
28 all of its cash and securities and other property shall be held,
29 except that, any other law to the contrary notwithstanding, the
30 board may establish a nominee registration procedure for the

1 purpose of registering securities in order to facilitate the
2 purchase, sale or other disposition of securities.

3 (g) Payment from trust fund.--All payments from the trust
4 fund shall be made by the State Treasurer in accordance with
5 requisitions signed by the secretary of the board or the
6 secretary's designee. The board shall reimburse the State
7 Treasurer for the cost of making disbursements from the trust
8 fund.

9 (h) Fiduciary status of board.--Board members, employees of
10 the board and agents thereof shall stand in a fiduciary
11 relationship to the members regarding the investments and
12 disbursements of any of the moneys of the trust fund and shall
13 not profit either directly or indirectly with respect thereto.

14 (i) Transfers.--The board may transfer moneys among the
15 various accounts of the trust fund, including any reserve
16 accounts established under subsection (a)(2), as may be
17 necessary to satisfy the provisions of this chapter. Transfers
18 from funds retained in the reserve account pursuant to
19 subsection (a)(2)(i)(A) may be made only for the payment of
20 claims or expected claims as determined by the actuary retained
21 by the board. Transfers from funds retained in the reserve
22 account pursuant to subsection (a)(2)(i)(B) or (C) may be made
23 only for paying toward the cost of providing health care
24 benefits to annuitants enrolled in the program pursuant to
25 section 333(a)(1).

26 (j) Additional powers of board.--The board may:

27 (1) Adopt, from time to time, appropriate investment
28 policy guidelines and convey the same to those fiduciaries
29 who have the responsibility for the investment of funds.

30 (2) Retain such portion of the moneys of the accounts in

1 cash or cash balances as the board may deem desirable,
2 without any liability or interest thereon.

3 (3) Settle, compromise or submit to arbitration all
4 claims or damages due from or to the accounts, commence or
5 defend any legal, equitable or administrative proceedings
6 brought in connection with the program and represent the
7 trust fund in all proceedings under this paragraph.

8 (k) Additional duties of secretary.--The secretary of the
9 board shall serve as liaison to the Treasury Department, the
10 Department of the Auditor General and between the board and the
11 investment counsel and the mortgage supervisor in arranging for
12 investments to secure maximum returns to the trust fund.

13 Section 337. Misrepresentation, refusal to cooperate and fraud.

14 (a) Misrepresentation.--If the eligible individual or anyone
15 acting on behalf of an eligible individual makes a false
16 statement or withholds information on the application for
17 enrollment with intent to deceive or affect the acceptance of
18 the enrollment application or the risks assumed by the program
19 or otherwise misleads the board, the board shall be entitled to
20 recover its damages, including legal fees, from the eligible
21 individual or from any other person responsible for misleading
22 the board and from the person for whom the benefits were
23 provided. Any material misrepresentation on the part of the
24 eligible individual in making application for coverage or any
25 application for reclassification thereof or for service
26 thereunder shall render the coverage under the program null and
27 void.

28 (b) Refusal to cooperate.--The board may refuse to pay
29 benefits, or cease to pay benefits, on behalf of an eligible
30 individual who fails to sign any document deemed by the board to

1 be relevant to protecting its subrogation rights or certifying
2 eligibility or who fails to provide relevant information when
3 requested. As used in this subsection, the term "information"
4 includes any documents, insurance policies, police reports or
5 any reasonable request by the claims processor to enforce the
6 board's rights.

7 (c) Penalty for fraud.--In any case in which the board finds
8 that an eligible individual is receiving benefits based on false
9 information, the additional amounts received predicated on the
10 false information, together with interest doubled and compounded
11 and legal fees, shall be due from the member. To secure payment
12 of funds, the board shall have the right to garnish or attach
13 all or a portion of any compensation payable to the party by the
14 party's employer, any annuity payable to the party by the
15 retirement system, any accumulated deductions held by the
16 retirement system in the party's account or any process
17 whatsoever.

18 Section 338. Miscellaneous provisions.

19 (a) Construction of chapter.--

20 (1) Any termination or other modifications of the
21 program, including, but not limited to, a change in rates,
22 benefits options or structure of the provision of health care
23 benefits, shall not give rise to any contractual rights or
24 claims by any eligible individuals or any other person
25 claiming an interest, either directly or indirectly, in the
26 program. No provisions of this chapter, nor any rule or
27 regulation adopted pursuant to this chapter, shall create in
28 any person a contractual right in that provision.

29 (2) The provisions of this chapter are severable and if
30 any of its provisions shall be held to be unconstitutional,

1 the decision of the court shall not affect or impair any of
2 the remaining provisions. It is hereby declared to be the
3 legislative intent that this chapter would have been adopted
4 had the unconstitutional provisions not been included.

5 (3) This subsection shall not apply to policies designed
6 primarily to provide coverage payable on a per diem, fixed
7 indemnity or nonexpense incurred basis, or policies that
8 provide accident only coverage, where payment for such policy
9 is made solely by the school employee.

10 (b) Hold harmless.--Neither the Commonwealth nor the board,
11 including their respective officers, directors and employees,
12 shall be liable for any claims, demands, actions or liability of
13 any nature, including, but not limited to, attorney fees and
14 court costs, based upon or arising out of the operations of the
15 program, whether incurred directly or indirectly. The eligible
16 individuals who enroll and participate in the program shall be
17 deemed to agree, on behalf of themselves and their heirs,
18 successors and assigns, to hold harmless the Commonwealth and
19 the board, including their respective officers, directors and
20 employees, from any claims, demands, actions or liability of any
21 nature, whether directly or indirectly, including attorney fees
22 and court costs, based upon or arising out of the operation of
23 the program.

24 (c) No recourse.--Under no circumstances shall the assets of
25 the Commonwealth be liable for or its assets be used to pay any
26 claims, demands, actions or liability of any nature, whether
27 directly or indirectly, including, but not limited to, attorney
28 fees and court costs, based upon or arising out of the operation
29 of the program.

30 (d) Reservation of immunities.--Nothing contained in this

chapter shall be construed as a waiver of the Commonwealth's or board's immunities, defenses, rights or actions arising out of their sovereign status or from the 11th amendment to the Constitution of the United States.

(e) Collective bargaining, mediation and binding arbitration.--Except as otherwise provided in subsection (f), nothing in this chapter or in any other law shall be construed to permit, authorize or require collective bargaining, mediation or binding arbitration to create, alter or modify health benefits set forth in this chapter or administered by the board for school employees and their health care dependents. Further, except as otherwise provided in subsection (f), nothing in this chapter or in any other law shall be construed to permit, authorize or require a public school entity, through collective bargaining, mediation or binding arbitration, or otherwise, to establish, create, alter or modify a health benefits plan or pay health benefits set forth in this chapter or administered by the board that modify or supplement in any way the health benefits set forth in this chapter for school employees and their health care dependents.

(f) Exceptions.--

(1) The parties may:

(i) Continue to engage in collective bargaining with regard to health benefits until such time as the board-sponsored program, pursuant to this subchapter, is released and the standard benefit package is made available to employees of a public school entity. However, any health benefits provided under a collective bargaining agreement entered into on or after the effective date of this chapter shall contain a provision

1 that school employees covered by the agreement must join
2 the board-sponsored program as required by section 332 as
3 a condition of continuing to receive health benefits. The
4 board shall determine the appropriate timing and phase-in
5 of the program in any public school entity taking into
6 consideration the need for the public school entity to
7 properly terminate any existing health benefits
8 arrangements.

9 (ii) Negotiate or otherwise agree to provide or make
10 payment for supplemental benefits that have not been
11 included as part of the standard benefit package.

12 (2) Nothing contained in this chapter shall restrict a
13 public school entity from negotiating or otherwise agreeing
14 to make payment for postretirement health benefits for
15 members or as may be provided for in Subchapter F.

16 SUBCHAPTER E

17 ALTERNATIVE MEASURES FOR COST REDUCTION

18 Section 351. Alternative measures program.

19 (a) Creation.--Upon completing the study required under
20 section 321 with either a negative recommendation to proceed
21 with implementation of a Statewide health care program or if the
22 board fails to achieve agreement and approve a plan for
23 implementing a Statewide health benefits program by a qualified
24 majority vote, the board shall proceed to initiate and sponsor
25 an alternative measures program to reduce the costs for public
26 school entities in providing health care coverage to employees
27 and other eligible individuals.

28 (b) Program design.--In designing an alternative measures
29 program, the board may consider all of the following:

30 (1) Establishment of pools for selected areas of

1 coverage, such as pharmacy services, transplants, stop-loss
2 insurance, health care management or other possible areas
3 that in the board's judgment can be offered Statewide or
4 regionally on a more stable and cost-effective basis.

5 (2) Assistance in the formation of consortia to serve
6 public school entities that do not have the option of joining
7 an existing consortium.

8 (3) Development of best practice standards and
9 benchmarks for public school entities and consortia-
10 sponsoring health care plans for school employees.

11 (4) Requirements that public school entities and
12 consortia aggregate into larger regional pools, with opt-out
13 provisions for public school entities or consortia that meet
14 best practice standards and benchmarks.

15 (5) Requirements for public disclosure by public school
16 entities and consortia comparing their health benefits
17 purchasing to established best practice standards in their
18 region.

19 (c) Implementation.--The board shall have full authority to
20 select and contract with insurance carriers, health maintenance
21 organizations, pharmacy benefit managers, third-party
22 administrators, reinsurers and any other entities necessary to
23 provide the selected areas of coverage. The board shall have
24 full authority to determine the nature, amount and duration and
25 discontinuation of coverage to be provided.

26 (d) Mandatory and optional participation.--The board shall
27 have the authority to require public school entities and
28 consortia to participate in the alternative measures program.

29 (e) Transition plan.--If the board determines that a public
30 school entity or consortium shall be required to participate in

1 the alternative measures program, the public school entity or
2 consortium shall, within a reasonable period of time as
3 determined by the board, present to the board a transition plan
4 with a schedule for the public school entity or consortium to
5 join the alternative measures program. The board shall review
6 the transition plan with the public school entity or consortium
7 and make any necessary modifications before granting approval of
8 the plan. A public school entity or consortium shall be subject
9 to adherence to the transition plan approved by the board.

10 (f) Extensions of time.--The board shall give due
11 consideration to a transition plan submitted pursuant to
12 subsection (e) that includes a request for an extension of time.
13 Consideration shall be given to a public school entity or
14 consortium which will incur a significant financial cost or
15 penalty.

16 (g) Prohibited membership.--A public school entity that
17 participates in the Pennsylvania Employees' Benefit Trust Fund
18 shall be prohibited from participating in the alternative
19 measures program.

20 (h) Transition of employees.--A public school entity that
21 provides some or all of its employees with health benefits
22 through another health care plan by virtue of one or more
23 collective bargaining agreements entered into prior to the
24 effective date of this chapter shall not be required to join the
25 alternative measures program until expiration of the collective
26 bargaining agreements. The public school entity and some or all
27 of its employees, or bargaining representatives of its
28 employees, may, by mutual agreement and approval of the board,
29 join the program at an earlier date. Renewal or extension of a
30 collective bargaining agreement shall constitute its expiration

for the purposes of this subsection.

(i) Optional membership.--No school district of the first class, as classified pursuant to section 202 of the Public School Code, shall be required to participate in the alternative measures program, except as may be agreed upon under the terms of a collective bargaining agreement covering a majority of employees of the school district. Upon a school district of the first class entering participation in the alternative measures program pursuant to a collective bargaining agreement, continued participation in the alternative measures program shall become mandatory.

SUBCHAPTER F

RETIREMENT HEALTH SAVINGS PLAN

Section 361. Retirement health savings plan.

(a) Plan created.--The board shall establish a retirement health savings plan through which school employees can save to cover health-related expenses following retirement. For this purpose the board shall make available one or more trusts including a governmental trust or governmental trusts authorized under the IRC as eligible for tax-preferred or tax-free treatment. The board may promulgate regulations regarding the prudent and efficient operation of the retirement health savings plan, including, but not limited to:

(1) Establishment of an annual administrative budget and disbursements in accordance with the budget.

(2) Determination of the structure of the retirement health savings accounts available to eligible school employees.

(3) Determination of enrollment procedures.

(b) Contracting authorized.--The board is authorized to

1 administer the retirement health savings plan and to contract
2 with any lawfully authorized entities to provide investment
3 services, recordkeeping, benefit payments and other functions
4 necessary for the administration of the retirement health
5 savings plan. The board may contract with the retirement system
6 to invest funds in an account that shall be maintained and
7 accounted for separately from the funds of the retirement system
8 and invested in a prudent manner intended to maximize the safety
9 of the capital, with all earnings derived from investment of the
10 assets to be credited to the retirement health savings plan.
11 Costs and expenses incurred by the retirement system in
12 administering the investment option shall be paid by the
13 retirement health savings plan.

14 (c) Separate account.--All funds related to the retirement
15 health savings plan shall be maintained and accounted for
16 separately from the health benefits program sponsored by the
17 board. The assets of the retirement health savings plan shall
18 not be liable or utilized for payment of any expenses or claims
19 incurred by the health benefits program other than as may be
20 directed by the participant account holder for reimbursement of
21 an IRC-qualifying health-related expense.

22 (d) Enrollment.--The board shall establish eligibility
23 guidelines consistent with the IRC for school employees to
24 participate in the retirement health savings plan.

25 (e) Contributions.--

26 (1) The board shall determine what contributions are
27 eligible under the IRC for tax-preferred or tax-free
28 treatment and may be made into a retirement health savings
29 plan by a school employee. The board shall authorize and
30 allow contributions, subject to appropriate limits as may be

1 established by the board, to be paid by a school employee
2 electing participation in the retirement health savings plan
3 subject to the following conditions:

4 (i) A mandatory school employee contribution
5 established as a fixed percentage of compensation may be
6 established through a collective bargaining agreement
7 between a public school entity and a bargaining group
8 representing school employees. The retirement health
9 savings plan contribution rate does not have to be
10 uniform for all groups of school employees.

11 (ii) An optional employee contribution at a fixed
12 percentage of compensation may be elected by a school
13 employee during an annual election window that, once
14 elected, shall continue in effect, except to the extent
15 it may be changed or discontinued at a subsequent annual
16 election window as provided for by the board or
17 supplanted by a mandatory contribution.

18 (iii) An optional school employee contribution of
19 all or any portion of annual leave, vacation pay,
20 personal days or sick leave may be elected by a school
21 employee as so designated by the employee and agreed to
22 by the employee's employer. The board may provide that
23 the election shall be made during an annual election
24 window of no greater than 90 days as determined by the
25 board. Once the election has been made, an employee shall
26 not be allowed to change the amount or discontinue the
27 contributions until the next annual election window.

28 (2) The following contributions shall be made into a
29 retirement health savings plan on behalf of a school
30 employee:

1 (i) For an employee who elects participation in the
2 retirement health savings plan, the employee's employer
3 shall make a contribution to the employee's account equal
4 to the public school entity's savings in Social Security
5 and Medicare taxes resulting from the tax-preferred or
6 tax-free treatment of contributions made by the school
7 employee under this subsection. Additional contributions
8 by a public school entity may be established through a
9 collective bargaining agreement between a public school
10 entity and a bargaining group representing school
11 employees.

12 (ii) Any other payments by the Commonwealth or
13 public school entity, including any set-aside payments to
14 be made to school employee accounts under section 334 as
15 determined by the board.

16 (3) Contributions to the plan by a school employee or by
17 the Commonwealth or a public school entity on behalf of an
18 employee must be held in trust for reimbursement of employee
19 health-related expenses and the health-related expenses of
20 any health care dependents following retirement of the
21 employee or when otherwise determined to be benefit eligible.
22 The board shall maintain a separate account of the
23 contributions made by or on behalf of each participant and
24 the earnings thereon. The board shall make available a
25 selection of investment options for participants who wish to
26 direct the investment of the accumulations in the
27 participant's account, in addition to a default option for
28 participants to be invested in a prudent manner as determined
29 by the board.

30 (f) Reimbursement for health-related expenses.--

1 (1) Upon retirement or separation from employment with a
2 public school entity, a participant becomes eligible to seek
3 reimbursements for IRC-qualifying health-related expenses
4 from the participant's retirement health savings plan
5 account, including reimbursements for the health-related
6 expenses of the participant's eligible health care
7 dependents.

8 (2) If a school employee dies prior to exhausting the
9 balance in the employee's retirement health savings plan
10 account, the employee's health care dependents are eligible
11 to seek reimbursement for IRC-qualifying health-related
12 expenses from the account.

13 (3) The board shall pay reimbursements from a retirement
14 health savings plan account until the accumulation in the
15 account has been exhausted. If an account balance remains
16 after the death of all participant account holders, the
17 remainder of the account must be paid to the school
18 employee's beneficiaries or, if none, to the employee's
19 estate.

20 (g) Annual financial statement.--Quarterly and annually the
21 board shall prepare summary retirement health savings plan
22 statements for individual participant account holders listing
23 information on contributions, investment earnings and
24 distributions for the account holders' accounts.

25 (h) Fees.--The board is authorized to charge uniform fees to
26 participants to cover the ongoing costs of operating the plan.
27 Any fees not needed must revert to participant accounts or be
28 used to reduce plan fees the following year.

29 (i) Advisory committee.--

30 (1) The board shall establish a participant advisory

committee for the retirement health savings plan composed of:

(i) One representative appointed by each Statewide union that represents bargaining groups of school employees participating in the plan.

(ii) One representative of each Statewide organization representing at least 10% of annuitants.

(iii) One representative of the Pennsylvania Association of School Business Officials.

(iv) One representative of the Pennsylvania School Boards Association.

(2) Each participant group shall be responsible for the expenses of its own representative.

(3) The advisory committee shall meet at least two times per year and shall be consulted on plan offerings. By October 1 of each year, the board shall give the advisory committee a statement of fees collected and the use of the fees.

CHAPTER 5

MISCELLANEOUS PROVISIONS

Section 501. Feasibility Report.

Within 18 months after the Statewide health benefits program or the alternative measures program is fully implemented, the Secretary of Administration shall report to the Governor, the President pro tempore of the Senate and the Speaker of the House of Representatives the feasibility of including community college employees in the program.

Section 502. Effective date.

This act shall take effect immediately.