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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1453 Session of  
2013

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INTRODUCED BY CALTAGIRONE, COX AND COHEN, MAY 28, 2013

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REFERRED TO COMMITTEE ON EDUCATION, MAY 28, 2013

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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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17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 CHAPTER 1

20 PRELIMINARY PROVISIONS

21 Section 101. Short title.

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

24 CHAPTER 3

25 ADMINISTRATION OF BENEFITS

26 SUBCHAPTER A

27 DEFINITIONS

28 Section 301. Definitions.

29 The following words and phrases when used in this chapter  
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

7 "Alternative measures program." A program created by the  
8 Public School Employees' Benefit Board in accordance with the  
9 provisions of Subchapter E.

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

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

20 "Board." The Public School Employees' Benefit Board created  
21 in section 311.

22 "Board member." A person designated or appointed to the  
23 Public School Employees' Benefit Board pursuant to section  
24 311(a).

25 "Consortium." A coalition of two or more geographically  
26 defined public school entities, or a coalition of one or more  
27 geographically defined public school entities and one or more  
28 political subdivisions as defined by 61 Pa. Code § 315.2  
29 (relating to definitions), formed for the purpose of pooling  
30 combined purchasing of the individual participants in order to

1 increase bargaining power to obtain health care benefits.

2 "Contribution rate." The rate established by the Public  
3 School Employees' Benefit Board in accordance with section  
4 334(b) and (c) used to determine contributions by the  
5 Commonwealth and public school entities for the funding of the  
6 standard benefit package for eligible individuals in each health  
7 care region.

8 "Cost-sharing." The fee paid by the member that covers a  
9 share of the cost of providing group health benefits under the  
10 Statewide health benefits program or the fee paid by a school  
11 employee or annuitant that covers a share of the cost of  
12 providing health care coverage in a plan sponsored by the public  
13 school entity. The term shall not include:

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

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

20 "Eligible individual." An individual who is a member or the  
21 health care dependent of a member.

22 "Employee benefits account." A ledger account of the Public  
23 School Employees' Benefit Trust Fund created in section 336(a)  
24 (1).

25 "Employer contribution account." A ledger account of the  
26 Public School Employees' Benefit Trust Fund created in section  
27 336(a) (3).

28 "Health care dependent." An individual who is eligible to  
29 receive health care coverage under the Statewide health benefits  
30 program due to the individual's relation to the member, as

1 determined by the Public School Employees' Benefit Board.

2 "Health care region." The geographic regions determined by  
3 the Public School Employees' Benefit Board to be appropriate for  
4 providing health benefits for eligible individuals based on the  
5 availability of insurance carriers, benefit administrators,  
6 health care providers, health care provider networks, costs and  
7 any other factors related to health care or the financing of the  
8 benefits.

9 "IRC." The Internal Revenue Code of 1986, as designated and  
10 referred to in section 2 of the Tax Reform Act of 1986 (Public  
11 Law 99-514, 100 Stat. 2085, 2095). A reference in this chapter  
12 to "IRC § " shall be deemed to refer to the identically numbered  
13 section and subsection or other subdivision of such section in  
14 26 U.S.C. (relating to Internal Revenue Code).

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

19 "Medicare." The programs established by Title XVIII of the  
20 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.)  
21 which include: Part A, Hospital Insurance Benefits for the Aged  
22 and Disabled; Part B, Supplementary Medical Insurance Benefits  
23 for the Aged and Disabled; Part C, Medicare+ Choice Program; and  
24 Part D, Voluntary Prescription Drug Benefit Program; and  
25 including any subsequent changes or additions to those programs.

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

29 (1) A school employee.

30 (2) An annuitant.

1 (3) A transfer employee.

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

6 (5) Others as approved by the Public School Employees'  
7 Benefit Board.

8 "Optional benefit package." A plan or plan design  
9 established by the Public School Employees' Benefit Board  
10 pursuant to section 331(f)(2)(iii) which includes specific  
11 health care services that are not part of the standard benefit  
12 package.

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

23 "Phase-in period." The period of program operation in any  
24 health care region from the time the Public School Employees'  
25 Benefit Board begins implementation of mandatory participation  
26 under section 332 until the commencement of the first plan year  
27 in which 75% of school districts in that region are  
28 participating in the program.

29 "Program." The Statewide health benefits program sponsored  
30 by the Public School Employees' Benefit Board in accordance with

1 the provisions of Subchapter D.

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

4 "Public school entity." A school district of any class,  
5 intermediate unit, area vocational-technical school, charter  
6 school or other school, as provided for under the act of March  
7 10, 1949 (P.L.30, No.14), known as the Public School Code of  
8 1949. The term shall also include the Scotland School for  
9 Veterans' Children and the Scranton State School for the Deaf.

10 "Qualified majority vote." A vote by the Public School  
11 Employees' Benefit Board requiring the support of three-fourths  
12 of all the members thereof.

13 "Qualifying event." A change in marital status, death of a  
14 member or the change in a health care dependent's status,  
15 subsequent to the commencement of coverage under this chapter,  
16 or the involuntary termination of health plan coverage that was  
17 obtained through a health care dependent.

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

20 "Retirement system." The Public School Employees' Retirement  
21 System of Pennsylvania as established by the former act of July  
22 18, 1917 (P.L.1043, No.343).

23 "School employee." Any person regularly employed by or in a  
24 public school entity for which work the person is receiving  
25 regular remuneration as an officer, administrator, employee or  
26 long-term substitute. The term excludes any independent  
27 contractor, person compensated on a fee basis or, unless  
28 otherwise determined by the Public School Employees' Benefit  
29 Board, any part-time hourly school employee. The term includes  
30 any employee of a public school entity who has a position for

1 which eligibility in a health care plan sponsored by the public  
2 school entity is in effect as of the effective date of this  
3 chapter.

4 "Standard benefit package." The benefit package established  
5 by the Public School Employees' Benefit Board pursuant to  
6 section 331(f)(1).

7 "Supplemental benefits." Dental care, vision care and  
8 employee assistance program benefits that may be offered in  
9 addition to medical and hospital services and prescription drug  
10 benefits.

11 "Transfer employee." A person who is not a school employee  
12 who is regularly employed at a worksite in a public school  
13 entity, regardless of who actually employs the person, if the  
14 person is performing services previously performed by a school  
15 employee.

16 "Trust fund." The Public School Employees' Benefit Trust  
17 Fund established in section 336.

## 18 SUBCHAPTER B

### 19 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

20 Section 311. Public School Employees' Benefit Board.

21 (a) Status and membership.--The board shall be an  
22 independent administrative board and shall consist of the  
23 following board members:

24 (1) The Secretary of the Budget and the Insurance  
25 Commissioner, both of whom shall serve ex officio.

26 (2) The President Pro Tempore of the Senate or his  
27 designee, the Minority Leader of the Senate or his designee,  
28 the Majority Leader of the House of Representatives or his  
29 designee and the Minority Leader of the House of  
30 Representatives or his designee.



1           (3) Ten persons representing school employees who are  
2 covered by the program appointed in the following manner:

3           (i) Eight persons representing school employees who  
4 are covered by the program in an approximate proportion  
5 to the percentage of professional employees represented  
6 in collective bargaining by school employee unions  
7 working in public school entities that will be covered by  
8 the program when it is fully operational, appointed by  
9 the Governor and chosen from a list of candidates  
10 submitted by those school employee unions; provided that  
11 no less than one person shall be appointed by the  
12 Governor from a list of candidates submitted by any  
13 school employee union that on the effective date of this  
14 chapter represents in collective bargaining more than  
15 4,000 professional employees working in public school  
16 entities that will be covered by the program when it is  
17 fully operational. The proportional calculation of  
18 membership under this paragraph shall not include  
19 professional employees represented in collective  
20 bargaining by school employee unions working in a school  
21 district of the first class, as classified pursuant to  
22 section 202 of the Public School Code, until such school  
23 district opts to participate in the program under the  
24 terms provided pursuant to section 332(d).

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

1 employee unions within subparagraph (i).

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

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

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

16 (b) Terms.--

17 (1) Four board members appointed under subsection (a) (3)  
18 (i), as designated by the Governor, shall serve a term of  
19 four years, and four board members appointed under subsection  
20 (a) (3) (i), as designated by the Governor, shall serve a term  
21 of four years.

22 (2) One board member appointed under subsection (a) (3)  
23 (ii), as designated by the Governor, shall serve a term of  
24 two years, and one board member appointed under subsection  
25 (a) (3) (ii), as designated by the Governor, shall serve a term  
26 of four years.

27 (3) Two board members appointed under subsection (a) (3),  
28 as designated by the Governor, shall serve a term of two  
29 years, and two board members appointed under subsection (a)  
30 (3), as designated by the Governor, shall serve a term of

1 four years, except that the Pennsylvania School Boards  
2 Association shall designate for which initial term the  
3 representative who is a member of a consortium board shall  
4 serve.

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

8 (c) Meetings.--The board shall meet as needed to fulfill its  
9 duties, and seven board members shall constitute a quorum. Board  
10 members shall elect the chairman of the board. Except in  
11 instances where a qualified majority is required under this  
12 chapter, a majority of the board members present and voting  
13 shall have authority to act upon any matter. The board is  
14 authorized to establish rules of its operation, including a  
15 provision for the removal of board members for nonattendance.

16 (d) Vacancies.--A vacancy occurring during the term of any  
17 board member shall be filled for the unexpired term by a  
18 successor appointed in the same manner as his predecessor. The  
19 school employee unions and the Pennsylvania School Boards  
20 Association shall provide the Governor with their respective  
21 lists of candidates within 60 days of the end of a member's term  
22 or within 15 days of any other vacancy.

23 (e) Oath of office.--Each board member shall take an oath of  
24 office that the member will, so far as it devolves upon the  
25 member, diligently and honestly administer the affairs of the  
26 board and that the member will not knowingly violate or  
27 willfully permit to be violated any of the provisions of law  
28 applicable to this chapter. The oath shall be subscribed by the  
29 board member making it and certified by the officer before whom  
30 it is taken and shall be immediately filed in the office of the

1 Secretary of the Commonwealth.

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

21 (g) Corporate power and legal advisor.--For the purposes of  
22 this chapter, the board shall possess the power and privileges  
23 of a corporation. The Office of General Counsel shall be the  
24 legal advisor of the board.

25 (h) Duties of the board.--The board shall have the power and  
26 authority to carry out the duties established by this chapter,  
27 including the design, implementation and administration of the  
28 school employee health benefits study pursuant to Subchapter C  
29 and either the Statewide health benefits program if approved  
30 pursuant to section 323 or the alternative measures program if

1 created pursuant to section 351.

2 Section 312. Administrative duties of board.

3 (a) Employees.--The compensation of all officers and  
4 employees of the board who are not covered by a collective  
5 bargaining agreement shall be established by the board  
6 consistent with the standards of compensation established by the  
7 Executive Board.

8 (b) Secretary.--The board shall select a secretary, who  
9 shall not be a board member. The secretary shall act as chief  
10 administrative officer for the board. In addition to other  
11 powers and duties conferred upon and delegated to the secretary  
12 by the board, the secretary shall:

13 (1) Serve as the administrative agent of the board and  
14 as liaison between the board and applicable legislative  
15 committees.

16 (2) Review and analyze proposed legislation and  
17 legislative developments affecting the program and present  
18 findings to the board, legislative committees and other  
19 interested groups or individuals.

20 (3) Receive inquiries and requests for information  
21 concerning the program from the press, Commonwealth  
22 officials, public school entities, school employees and the  
23 general public and provide information as authorized by the  
24 board.

25 (c) Professional personnel.--The board may employ or  
26 contract with consultants and other professional personnel as  
27 needed to conduct the school employee health benefits study and  
28 evaluation pursuant to Subchapter C and to operate the program,  
29 including third-party administrators, managed care managers,  
30 chief medical examiners, actuaries, investment advisors and

1 managers, legal counsel and other professional personnel as it  
2 deems advisable. The board may also contract for the services of  
3 any national or State banking corporation or association having  
4 trust powers, with respect to carrying out the business and  
5 other matters of the program.

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

11 (1) from the General Fund; or

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

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

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

20 (g) Procurement.--The board shall not be subject to 62  
21 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code).

22 (h) Temporary regulations.--

23 (1) Notwithstanding any other provision of law to the  
24 contrary and in order to facilitate the prompt implementation  
25 of this chapter, regulations promulgated by the board during  
26 the two years following the effective date of this chapter  
27 shall be deemed temporary regulations which shall expire no  
28 later than three years following the effective date of this  
29 chapter or upon promulgation of regulations as generally  
30 provided by law. The temporary regulations shall not be

1 subject to:

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

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

7 (2) The authority provided to the board to adopt  
8 temporary regulations in this subsection shall expire two  
9 years from the effect date of this chapter. Regulations  
10 adopted after the two-year period shall be promulgated as  
11 provided by law.

12 (i) Postretirement benefits study.--The board shall conduct  
13 an assessment of public school entity postretirement health care  
14 liability in this Commonwealth and publish a report providing  
15 generalized data regarding the scope of the liability to be  
16 borne by public school entities and measures implemented by  
17 public school entities to prepare for this liability. This  
18 assessment may be conducted in conjunction with the study  
19 required by section 321.

20 SUBCHAPTER C

21 STUDY AND OPTIONS ELECTION

22 Section 321. School employee health benefits study and  
23 evaluation.

24 (a) Study.--The board shall conduct a thorough evaluation of  
25 existing health care arrangements covering school employees in  
26 this Commonwealth, examine future cost forecasts and collect  
27 data necessary to determine if the board could construct and  
28 sponsor a health care benefit program that would reduce long-  
29 term costs or the rate of growth of long-term costs in the  
30 aggregate for public school entities while maintaining a

1 comprehensive package of quality health care benefits for school  
2 employees. The board shall conduct the study as provided under  
3 this section.

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

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

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

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

14 (4) An explanation and estimate of any financial  
15 obligation of or funds owed to a public school entity related  
16 to the termination of coverage under a school district-  
17 sponsored health benefits plan.

18 (5) An estimate of the amount of and basis for claims  
19 which may be outstanding during the transition for public  
20 school entities which self-fund their coverage and the status  
21 of any reserves established for such outstanding claims.

22 (6) The term and effect of collective bargaining  
23 agreements governing health benefits.

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

26 (8) The total amount of employer-paid costs in  
27 aggregate.

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

30 (c) Data sources.--All entities providing health benefit



1 coverage for eligible individuals or administering coverage for  
2 health benefits under this chapter shall provide information on  
3 coverage, benefits, plan design, claims data, premiums, cost-  
4 sharing and financial arrangements as the board shall specify to  
5 meet the requirements of subsection (b). Notwithstanding any law  
6 to the contrary, any agency, authority, board, commission,  
7 council, department or office under the jurisdiction of the  
8 Governor shall cooperate with the board in its collection of  
9 health insurance or health care coverage data as specified by  
10 the board to effectuate this section in accordance with this  
11 section.

12 (d) Public school entities.--The Secretary of Education  
13 shall assist the board in obtaining the necessary data for the  
14 study from public school entities and consortia. In the event it  
15 is necessary to facilitate the collection of data from a  
16 noncooperating public school entity or consortium, the Secretary  
17 of Education may request the State Treasurer to cause the  
18 suspension of any payment of moneys due to the noncooperating  
19 public school entity or public school entities that are  
20 participants in a noncooperating consortium on account of any  
21 appropriation for schools or other purposes until the necessary  
22 information is properly provided. A public school entity shall  
23 be notified before any payments are suspended and may appeal to  
24 the secretary and request an extension of time if there have  
25 been extenuating circumstances preventing the timely submission  
26 of all necessary information. In considering an appeal, the  
27 secretary may grant an extension of time for the public school  
28 entity or consortium to provide the necessary information before  
29 the suspension is instituted. The board is authorized and shall  
30 authorize school entities and consortia to enter into agreements

1 with entities providing or administering coverage for health  
2 care benefits under this chapter for the purpose of carrying out  
3 the provisions of this section.

4 (e) Health benefit entities.--

5 (1) An entity providing or administering health  
6 insurance or health care coverage for public school  
7 employees, with the exception of public school entities or  
8 consortia as provided for in subsection (d), shall, upon the  
9 written request of the board, public school entities,  
10 consortium or insured, provide claims and loss information  
11 within 60 days of the request or sooner, if so determined by  
12 the board.

13 (2) The Insurance Commissioner, the Department of Health  
14 and any other agency, authority, board, commission, council,  
15 department or office under the jurisdiction of the Governor  
16 having regulatory authority over any entity charged under  
17 paragraph (1), hereafter known as "regulating authority,"  
18 shall cooperate with the board, if necessary, to obtain  
19 information from any insurance company, third-party  
20 administrator or other administrator or provider of health  
21 insurance benefits for school employees, other than a public  
22 school entity or consortium. Following notice and hearing,  
23 the board may impose an order assessing a penalty of up to  
24 \$1,000 per day upon any entity, other than a public school  
25 entity or consortium, that willfully fails to comply with the  
26 obligations imposed by this section. If the entity does not  
27 comply with the obligations imposed by this section within 15  
28 days of an order being imposed, the board shall notify the  
29 regulating authority of the failure of an entity under its  
30 jurisdiction to provide data as set forth in this section.

1 Upon notification, the regulating authority shall suspend or  
2 revoke the license of the entity or otherwise suspend or  
3 revoke the entity's ability to operate until such time as the  
4 board notifies the regulating authority that the entity is in  
5 compliance. The board shall have standing to petition the  
6 Commonwealth Court to seek enforcement of the order.

7 (3) This subsection shall apply to every entity  
8 providing or administering group health coverage in  
9 connection with providing health care benefits to school  
10 employees within this Commonwealth, including plans,  
11 policies, contracts or certificates issued by:

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

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

19 (iii) A professional health services plan  
20 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to  
21 professional health services plan corporations).

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

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

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

29 (vii) Health care plans subject to the Employee  
30 Retirement Income Security Act of 1974 (Public Law 93-

1 406, 88 Stat. 829), to the maximum extent permitted by  
2 Federal law.

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

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

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

15 (f) Confidentiality.--Any data requested by or provided to  
16 the board pursuant to this section shall comply with the  
17 standards for privacy established pursuant to the Health  
18 Insurance Portability and Accountability Act of 1996 (Public Law  
19 104-191, 110 Stat. 1936).

20 (g) Prepared materials.--Any documents, materials or  
21 information solely prepared or created for the purpose of  
22 implementation of subsection (b) are confidential and shall not  
23 be discoverable or admissible as evidence in any civil or  
24 administrative action or proceeding. Any documents, materials,  
25 records or information that would otherwise be available from  
26 original sources shall not be construed as immune from discovery  
27 or use in any civil or administrative action or proceeding  
28 merely because they were presented to the board. Nothing in this  
29 subsection shall be construed to prevent publication or  
30 dissemination of the aggregate study findings.

1 (h) Received materials.--Any documents, materials or  
2 information received by the board or by a department under the  
3 jurisdiction of the Governor on the board's behalf for the  
4 purpose of implementation of subsection (b) shall not be  
5 discoverable from the board, any department or the submitting  
6 entity, nor shall they be admissible as evidence in any civil or  
7 administrative action or proceeding. Any documents, materials,  
8 records or information that would otherwise be available from  
9 original sources shall not be construed as immune from discovery  
10 or use in any civil or administrative action or proceeding  
11 merely because they were received by the board or any  
12 department.

13 (i) Document review.--No current or former member or  
14 employee of the board or any department shall be allowed to  
15 testify as to any matters by reason of the member's or  
16 employee's review of documents, materials, records or  
17 information submitted to the board by the entity providing  
18 health insurance or health care coverage pursuant to subsection  
19 (b). The enjoinder of testimony does not apply to findings or  
20 actions by the board or any department that are public records.

21 (j) Original source document.--In the event an original  
22 source document as set forth in subsection (g) is determined by  
23 a court of competent jurisdiction to be unavailable from the  
24 entity providing health insurance or health care coverage in a  
25 civil action or proceeding, then, in that circumstance alone,  
26 the board may be required pursuant to a court order to release  
27 that original source document to the party identified in the  
28 court order.

29 (k) Right-to-know requests.--Any documents, materials or  
30 information made confidential by subsection (f) shall not be

1 subject to requests under the act of act of February 14, 2008  
2 (P.L.6, No.3), known as the Right-to-Know Law, or any successor  
3 statute.

4 (1) Liability.--Notwithstanding any other provision of law,  
5 no person or entity providing any documents, materials or  
6 information to the board, any department or other entity on the  
7 board's behalf shall be held by reason of having provided the  
8 documents, materials or information to have violated any  
9 criminal law, or to be civilly liable under any law, unless the  
10 information is false and the person providing the information  
11 knew or had reason to believe that the information was false and  
12 was motivated by malice toward any person directly affected by  
13 the action.

14 Section 322. Board review and election.

15 (a) Options assessment.--Upon collection of the necessary  
16 information, the board shall evaluate existing public school  
17 entity health care arrangements, examine options that would  
18 aggregate, either Statewide or regionally, health care coverage  
19 for public school employees, assess possible cost-management  
20 improvements and solicit input from public school entities and  
21 consortia identified with best practice standards. The board  
22 shall investigate the creation of a Statewide health benefits  
23 program as provided for in section 331 with the goal of  
24 improving the overall affordability of providing health care  
25 coverage for public school employees. The cost projections shall  
26 be predicated on a plan that provides quality health care  
27 benefits at a level consistent with those now provided to most  
28 school employees through existing collective bargaining  
29 contracts and offers coverage to school employees and other  
30 eligible individuals.

1 (b) Election to proceed with program.--No later than ten  
2 months after the board is constituted, unless a request by the  
3 board for an extension is granted by the Governor, the board  
4 shall decide whether to implement a Statewide health benefits  
5 program, as provided for in section 331, or to implement an  
6 alternative measures program, as provided for in section 351, to  
7 reduce health coverage costs for public school entities. The  
8 board's election to implement a Statewide health benefits  
9 program or to implement an alternative measures program shall  
10 require approval by a qualified majority vote. Upon election to  
11 proceed with a Statewide health benefits program, the board  
12 shall develop a plan for adoption, pursuant to section 323.

13 (c) Alternative election.--If the board decides that a  
14 Statewide health benefits program cannot be created in  
15 accordance with subsection (a), or the board fails to achieve  
16 agreement and approve a plan for implementing a Statewide health  
17 benefits program, the board will proceed with consideration of  
18 an alternative measures program that will reduce long-term costs  
19 or the rate of growth of such costs in the aggregate for public  
20 school entities in accordance with Subchapter E.

21 Section 323. Plan adoption.

22 (a) Statewide health benefits program adoption.--Within  
23 three months of electing to proceed with the Statewide health  
24 benefits program, pursuant to section 322(b), the board shall  
25 verify that implementation of a Statewide health care program  
26 will result in reduction in the Statewide aggregate cost of the  
27 purchase of benefits or the rate of growth of such costs and  
28 adopt a proposed plan for the implementation of the program. The  
29 proposed plan shall be in writing and shall include a detailed  
30 description of the program and the transition procedures

1 necessary to phase in and implement the program. The board's  
2 adoption of a proposed plan shall require approval by a  
3 qualified majority vote.

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

6 (1) The eligibility requirements for a school employee  
7 and the employee's health care dependents to qualify for  
8 participation in the program.

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

11 (3) Disclosure of any member cost-sharing contributions,  
12 whether expressed as a target percentage of overall program  
13 costs or individually determined as a percentage of salary  
14 and whether the cost-sharing is uniform on a Statewide basis  
15 or varies by health care region.

16 (4) The designation of health care regions.

17 (5) The design of the Statewide pool or regional pools  
18 that would be established to aggregate public school entities  
19 for the purpose of purchasing services and managing health  
20 insurance risks.

21 (6) The requirements for electronic eligibility  
22 transmission between the board and other participating  
23 entities, including public school entities, consortia and the  
24 retirement system.

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

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



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

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

8           (3) The interim steps to aggregate public school  
9 entities into a Statewide pool or regional pools, including  
10 any best practice standards and benchmarks to be applied to  
11 new or existing consortia, or public school entities, or in  
12 any selection process to build a Statewide or regional pool.

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

16           (5) Transition rules to limit any negative financial  
17 impact on a public school entity required to purchase health  
18 care coverage through a Statewide or regional pool and to  
19 normalize contribution rates for all participating public  
20 school entities within the same health care region.

21       (d) Alternative measures program adoption.--Within three  
22 months of proceeding with consideration of an alternative  
23 measures program pursuant to section 322(c), the board shall  
24 adopt a proposed plan for the implementation of an alternative  
25 measures program, pursuant to Subchapter E, that will result in  
26 reduction in the Statewide aggregate cost of the purchase of  
27 benefits or the rate of growth of such costs. The proposed plan  
28 shall be in writing and shall include a detailed description and  
29 the transition procedures necessary to phase in and implement  
30 the alternative measures program. The board's adoption of a

1 proposed plan for implementation of an alternative measures  
2 program shall require approval by a qualified majority vote.

3 (e) Legislative and public review.--

4 (1) The board shall publish the provisions of any  
5 proposed plan adopted pursuant to this section in the  
6 Pennsylvania Bulletin and make it available on the board's  
7 Internet website. Following publication, the board shall  
8 schedule at least eight public hearings to solicit public  
9 input on the plan. The hearings shall be conducted in  
10 Philadelphia County; Allegheny County; and the Northeast,  
11 Northwest, Southeast, Southwest, North Central and South  
12 Central regions of this Commonwealth.

13 (2) The board shall submit the provisions of any  
14 proposed plan adopted pursuant to this section to the  
15 chairman and minority chairman of the Education Committee of  
16 the Senate and the chairman and minority chairman of the  
17 Education Committee of the House of Representatives. The  
18 committees shall have 45 days to review the proposed plan and  
19 submit comments to the board.

20 (f) Final plan adoption.--Upon completion of the public  
21 hearings pursuant to subsection (e)(1) and expiration of the  
22 committee review pursuant to subsection (e)(2), the board shall  
23 review all the testimony and comments received regarding the  
24 proposed plan. The board may, subject to a qualified majority  
25 vote, make changes and adjustments to the plan to effectuate  
26 this chapter. Within 90 days of publishing the proposed plan,  
27 pursuant to subsection (e)(1), the board shall publish the final  
28 plan, as adopted by the board, in the Pennsylvania Bulletin and  
29 on the Internet website of the Department of Education.

30 (g) Legislative oversight.--The board shall proceed with

1 implementation unless a resolution to the contrary has been  
2 adopted within 45 days after publication of the plan, in  
3 accordance with this subsection. Upon publication of the final  
4 adopted plan in the Pennsylvania Bulletin, the board shall  
5 submit the plan to the Education Committee of the Senate and the  
6 Education Committee of the House of Representatives. Either  
7 committee may recommend to its respective chamber whether the  
8 board shall be prevented from implementing the plan. If the  
9 committee recommends the plan not be implemented, the Secretary  
10 of the Senate or the Chief Clerk of the House of Representatives  
11 shall place on the calendar for the next legislative day the  
12 question, in the form of a resolution, of whether the board  
13 shall proceed with implementation. If the resolution is adopted  
14 in either chamber, it shall be referred to the Education  
15 Committee in the opposite chamber which may recommend the board  
16 not implement the plan. Upon the recommendation, the resolution  
17 shall be placed on the calendar of the chamber. If a majority of  
18 the members elected to each House approve the resolution, the  
19 resolution shall be presented to the Governor for approval or  
20 disapproval in accordance with section 9 of Article III of the  
21 Constitution of Pennsylvania.

22 (h) Failure to reach consensus.--If the board fails to  
23 achieve agreement and approve a plan for implementing a  
24 Statewide health benefits program by a qualified majority vote  
25 or if the board fails to achieve agreement and approve a plan  
26 for implementing an alternative measures program by a qualified  
27 majority vote, the board shall report as to its findings and  
28 reasons preventing agreement on a plan to the Governor, the  
29 President pro tempore of the Senate and the Speaker of the House  
30 of Representatives.

1 SUBCHAPTER D

2 STATEWIDE HEALTH BENEFITS PROGRAM

3 Section 331. Health benefits program.

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

7 (b) Program design.--The board shall design a program which  
8 follows the parameters of the plan and transition procedures as  
9 established in section 323. The board may develop and administer  
10 the program itself or operate through any legal entity  
11 authorized by law to do so, including consortia, and the program  
12 may be developed and administered differently within each health  
13 care region as long as a standard benefit package that is  
14 substantially equivalent in coverage, as determined by the  
15 board, is available to eligible individuals. The program may  
16 also be administered in whole or in part on a fully insured or  
17 self-funded basis at the board's sole discretion.

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

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

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

28 (d) Eligibility requirements.--The board shall have full  
29 authority to determine eligibility requirements for benefits and  
30 to adopt rules and regulations setting forth the same which will

1 be binding on all eligible individuals. No coverage shall be  
2 provided for eligible individuals without payment being made,  
3 except under circumstances as may be established by the board  
4 under reasonable guidelines.

5 (e) Coverage and plan selection.--The board shall have full  
6 authority to select and contract with insurance carriers, health  
7 maintenance organizations, pharmacy benefit managers, third-  
8 party administrators, reinsurers and any other entities  
9 necessary to provide a range of benefit packages to eligible  
10 individuals through the program. The board shall have full  
11 authority to determine the nature, amount and duration and  
12 discontinuation of coverage to be provided.

13 (f) Standard and optional benefits.--

14 (1) A standard benefit package shall be established by  
15 the board that shall include coverage for medical and  
16 hospital services, prescription drugs and may include  
17 supplemental and other benefits in amounts to be determined  
18 by the board.

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

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

26 (ii) One or more alternate health care plans or plan  
27 designs which in the board's judgment contain benefits  
28 equivalent to the standard benefit package in paragraph  
29 (1). The deductibles and copayments for each alternate  
30 health care plan shall be set and annually adjusted so

1 that the cost of providing the coverage for the  
2 Commonwealth and a public school entity is no greater  
3 than the cost incurred for the health plan in  
4 subparagraph (i).

5 (iii) One or more optional benefit plans, as  
6 approved by the board, which allow an eligible individual  
7 to purchase coverage that is not included in the standard  
8 benefit package, provided that any cost over and above  
9 the cost of the health care plan in subparagraph (i) is  
10 to be paid by the member except as otherwise provided in  
11 section 338(f)(1)(ii).

12 (3) The detailed basis on which payment of benefits is  
13 to be made shall be specified in writing. The benefits  
14 provided in this chapter are subject to change or  
15 modification by the board from time to time as the board, in  
16 its discretion, may determine. All changes or modifications  
17 shall be specified in writing and communicated to members  
18 within a reasonable period of time.

19 Section 332. Mandatory participation and optional membership.

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

27 (b) Transition plan.--When the board determines pursuant to  
28 subsection (a) that a public school entity shall be required to  
29 participate in the program, the public school entity or  
30 consortium in which the public school entity is a participant

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

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

14 (1) A public school entity that participates in a  
15 consortium where an extension of time is necessary for the  
16 rundown and proper termination of the consortium's health  
17 care program.

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

21 (3) A public school entity or a consortium which will  
22 incur a significant financial penalty under terms of a  
23 contract with an insurance carrier or other provider of  
24 health care coverage for a contract in existence on or before  
25 January 1, 2013.

26 (4) A public school entity or consortium which will  
27 incur a significant financial cost, including fees, penalties  
28 or other contractual financial obligations, related to the  
29 termination of coverage under a contract of insurance or, in  
30 the case of a public school entity that self-insures,

1 insufficient reserves to pay claims incurred during the  
2 previous coverage year, if the obligation relates to a plan  
3 of coverage that was in existence on or before January 1,  
4 2013, and the public school entity or consortium provides the  
5 board with a financial plan for meeting these obligations.

6 (d) Optional membership.--No school district of the first  
7 class, as classified pursuant to section 202 of the Public  
8 School Code, shall be required to participate in the program,  
9 except as may be agreed upon under terms of a collective  
10 bargaining agreement covering a majority of employees of a  
11 school district of the first class. Upon a school district of  
12 the first class entering participation in the program pursuant  
13 to a collective bargaining agreement, continued participation in  
14 the program shall become mandatory.

15 (e) Prohibited membership.--A public school entity that, on  
16 the effective date of this chapter, participates in the  
17 Pennsylvania Employees' Benefit Trust Fund shall be prohibited  
18 from participating in the program, and employees of the public  
19 school entity shall not have the right to elect membership in  
20 the program.

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



1 agreement shall constitute its expiration for the purpose of  
2 this subsection.

3 Section 333. Continuation of coverage and transfer employees.

4 (a) Annuitants.--Upon retirement, an annuitant eligible  
5 under paragraph (1) or (2) shall have the option to elect  
6 coverage in the program, including coverage for any eligible  
7 health care dependent. The annuitant shall be responsible to pay  
8 the full cost of the coverage, unless a public school entity has  
9 agreed, separate from any requirements of the program, to pay  
10 toward the coverage pursuant to an award of health benefits  
11 under a written policy or agreement collectively bargained or  
12 otherwise entered into by the public school entity. The board  
13 shall annually determine the cost of coverage as follows:

14 (1) For an annuitant who is enrolled in the program  
15 pursuant to section 513 of the Public School Code or an  
16 annuitant who pursuant to any award of health benefits for  
17 annuitants under a written policy or agreement collectively  
18 bargained or otherwise entered into by the public school  
19 entity prior to the effective date of this section, payments  
20 shall be based on the total contribution rate established  
21 pursuant to section 334(b) and (c) for a school employee in  
22 the same health care region, plus a 2% administrative fee.

23 (2) For an annuitant, other than an annuitant qualified  
24 for coverage under paragraph (1), payments shall be made on  
25 the same basis as an annuitant qualified for coverage under  
26 paragraph (1), except as determined as follows:

27 (i) The board shall periodically have the actuary  
28 review and determine the separate cost of providing  
29 continuation of coverage to annuitants under this  
30 paragraph, along with an assessment of its impact on the

1 cost of providing coverage to members who are school  
2 employees and annuitants qualified for coverage under  
3 paragraph (1). The review and assessment shall first  
4 occur as part of the school employee health benefits  
5 study and evaluation conducted pursuant to section 321  
6 and its results shall be considered in the development of  
7 parameters under section 323(b).

8 (ii) The board shall consider the findings of the  
9 actuary in subparagraph (i) to determine if there is a  
10 substantial impact on the cost of providing coverage to  
11 members who are school employees and annuitants qualified  
12 for coverage under paragraph (1). If there is a  
13 substantial cost impact, the board shall require payments  
14 for an annuitant qualified to elect coverage in the  
15 program under this paragraph to be separately determined  
16 and the contribution rate to be based on the  
17 disaggregated cost of providing the coverage, plus a 2%  
18 administrative fee.

19 (b) Separation from service.--The board shall determine the  
20 eligibility of members, other than annuitants covered by  
21 subsection (a), to elect continuation of coverage in the program  
22 upon separation from service as a school employee. The member  
23 shall be responsible to pay the full cost of the coverage in the  
24 member's health care region, plus an administrative fee to be  
25 set by the board. The board shall, at minimum, provide  
26 continuation of coverage eligibility that meets the requirements  
27 of Title X of the Employee Retirement Income Security Act of  
28 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide  
29 the continuation of coverage options required pursuant to 51  
30 Pa.C.S. § 7309 (relating to employment discrimination for

1 military membership or duty) for members on military leave.

2 (c) Transfer employees.--The board may, in its discretion,  
3 approve the participation of transfer employees in the program,  
4 provided that any position for which a transfer employee who is  
5 provided health benefits in a health care plan sponsored by a  
6 public school entity through an agreement that was in existence  
7 on or before January 1, 2013, with the transfer employee's  
8 employer shall be allowed to participate in the program. The  
9 board shall set the terms and conditions necessary for  
10 participation in the program, including the cost of coverage to  
11 be paid by the third-party entity which shall be based on the  
12 full cost of coverage in the health care region as determined by  
13 the board, plus an administrative fee. The sponsoring public  
14 school entity shall be responsible to the board for the  
15 collection of the payments for transfer employees from the  
16 third-party entity.

17 Section 334. Partnership for stable benefits funding.

18 (a) Basis of partnership.--In recognition that the long-term  
19 viability and stability of the program will require public  
20 school entity employers, members and the Commonwealth to be  
21 partners both in sustaining the health benefits program as well  
22 as managing the costs of a reasonable and appropriate standard  
23 benefit package, the board shall determine for each plan year  
24 and in each region the payments due from public school entities,  
25 from members and from the Commonwealth.

26 (b) Determination of contribution rate.--The board shall  
27 determine for each plan year the total amount of the  
28 contributions by the Commonwealth, public school entities and  
29 school employees required to provide projected benefits for that  
30 plan year under the standard benefit package on behalf of each

1 school employee member and the employee's eligible health care  
2 dependents. The contribution rate shall consist of the amount  
3 required to provide the standard benefit package, including  
4 appropriate reserves and administrative expenses, and shall be  
5 adjusted for each health care region to reflect the cost of  
6 benefits in that region. The contribution rates may  
7 differentiate between single coverage for members only and types  
8 of family coverage, as determined by the board.

9 (c) Certification of rate.--The board shall certify the  
10 contribution rate for each health care region to the  
11 Commonwealth and public school entities, including the payments  
12 that shall be due from public school entities, from members and  
13 from the Commonwealth. The certifications shall be regarded as  
14 final and not subject to modification by the Secretary of the  
15 Budget.

16 (d) Commonwealth cost share.--The Commonwealth shall make a  
17 contribution to offset a portion of the cost increase consistent  
18 with subsections (e) and (f) for any plan year in which the  
19 board determines that the aggregate cost of providing the  
20 standard benefit package on behalf of members who are school  
21 employees and their eligible health care dependents exceeds the  
22 sum of:

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

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

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

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

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

14       (f) Limitation on Commonwealth contribution.--

15           (1) The Commonwealth shall not be obligated to pay any  
16 amount beyond that which is appropriated by the General  
17 Assembly. The amount requested by the board pursuant to  
18 subsection (e) (1) shall not exceed the sum of any amount paid  
19 by the Commonwealth for the fiscal year preceding the plan  
20 year for which funds are requested and the lesser of:

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

25           (ii) the product of the total revenue transferred in  
26 the prior plan year from the employer contribution  
27 account to the employee benefits account and the most  
28 recent annual percent change in the per enrollee private  
29 health insurance premium for all benefits, as defined in  
30 the National Health Expenditure Data published by the

1 Centers for Medicare and Medicaid Services, Department of  
2 Health and Human Services.

3 (2) If any excess revenue in the employer contribution  
4 account is to be applied to payments for the plan year, then  
5 the excess revenue shall be used to reduce the calculation  
6 under this subsection in proportion to the Commonwealth's  
7 share of the total increase in the contribution rate on  
8 behalf of active members for the plan year.

9 (g) Additional optional contribution.--Notwithstanding the  
10 limitation in subsection (f), the General Assembly may  
11 appropriate additional revenue to the employer contribution  
12 account in any fiscal year.

13 (h) Allocation of Commonwealth contribution.--Any  
14 contribution made by the Commonwealth under this section shall  
15 be used to offset an increase in the contribution rate paid in a  
16 health care region by public school entities on behalf of  
17 members who are school employees and their eligible health care  
18 dependents and to maintain any offset that was paid in a prior  
19 year. The Commonwealth contribution shall be allocated to offset  
20 a portion of each participating public school entity's cost of  
21 coverage on a per-member basis, for members who are school  
22 employees and their eligible health care dependents, based on  
23 the public school entity's market value/income aid ratio using  
24 the most recent data provided by the Department of Education.  
25 For any public school entity that is not assigned a market  
26 value/income aid ratio by the Department of Education, the  
27 Commonwealth contribution shall not be adjusted based on a  
28 market value/income aid ratio. For the purpose of this  
29 subsection, "market value/income aid ratio" shall have the same  
30 meaning given to it in the Public School Code.

1 (i) Contributions on behalf of school employees.--Consistent  
2 with any transition procedure pursuant to section 323(c)(5),  
3 each public school entity shall be required to make payments to  
4 the trust fund on behalf of members who are school employees and  
5 their eligible health care dependents based on the contribution  
6 rate certified by the board in subsection (c). The increase in  
7 payments made from one year to the next by public school  
8 entities on behalf of school employees shall be equal to or  
9 greater than the increase in payment from one year to the next  
10 made pursuant to subsection (d), excluding any additional  
11 optional contribution made by the Commonwealth pursuant to  
12 subsection (g).

13 (j) Deduction from appropriations.--In the event a public  
14 school entity does not make the required payment in the time  
15 allotted, as determined by the board, the Secretary of Education  
16 and the State Treasurer shall cause to be deducted and paid into  
17 the trust fund from the amount of any moneys due to any public  
18 school entity on account of any appropriation for schools or  
19 other purposes the amount due to the trust fund as certified by  
20 the board and as remains unpaid on the date such appropriations  
21 would otherwise be paid to the public school entity by the  
22 Department of Education, and the amount shall be credited to the  
23 public school entity's account in the trust fund.

24 (k) Transition.--Until any transition pursuant to section  
25 323(c)(5) has been completed, the payments made by each public  
26 school entity shall be no less than the total amount paid by the  
27 public school entity to provide, purchase and administer health  
28 care benefits to members who are school employees and their  
29 eligible health care dependents in the year before  
30 implementation of the program. Any contributions received by the

1 public school entity from school employees in the form of cost-  
2 sharing payments for health care coverage shall be excluded from  
3 the amount.

4 (1) Referendum exception.--

5 (1) In addition to the exceptions provided for in  
6 section 333(f) of the act of June 27, 2006 (1st Sp.Sess.,  
7 P.L.1873, No.1), known as the Taxpayer Relief Act, the costs  
8 specified in paragraph (2) shall constitute an exception to  
9 the referendum requirements of section 333(c) of the Taxpayer  
10 Relief Act subject to department approval pursuant to section  
11 333(j) of the Taxpayer Relief Act.

12 (2) Costs incurred by a school district in providing  
13 health care-related benefits which are attributable to the  
14 school district's participation in the program shall  
15 constitute an expenditure for purposes of section 333(f) (1)  
16 and (2) of the Taxpayer Relief Act to the extent the  
17 anticipated increase in such costs between the current year  
18 and the upcoming year is greater than the index established  
19 for the school district pursuant to section 313(1)(ii) of the  
20 Taxpayer Relief Act. The dollar amount of this exception  
21 shall be equal to the portion of the increase which exceeds  
22 the index established for the school district pursuant to  
23 section 313(1)(ii) of the Taxpayer Relief Act.

24 Section 335. Powers and duties of board.

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

29 (1) Determine appropriate geographic health care regions  
30 for the administration of the program and make changes to the



1 regions as necessary.

2 (2) Formulate and establish the conditions of  
3 eligibility, including eligibility for health care dependent  
4 coverage for members, to include consideration if a member or  
5 health care dependent is covered, or eligible for coverage,  
6 under another employer-sponsored group health insurance plan;  
7 provisions for payment of benefits; and all other provisions  
8 that may be required or necessary to carry out the intent and  
9 purpose of the program.

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

12 (4) Establish copayments, annual deductibles,  
13 coinsurance levels, exclusions, formularies and other  
14 coverage limitations and payment responsibilities of members  
15 incurred at the time of service.

16 (5) Set and adjust member cost-sharing contributions to  
17 be expressed as a target percentage of overall program costs  
18 or individually determined as a percentage of salary. The  
19 board shall determine whether member cost-sharing shall be  
20 uniform on a Statewide basis or shall vary by health care  
21 region.

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

23 (7) Determine enrollment procedures.

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

27 (9) Establish a plan with the retirement system to  
28 coordinate health care coverage for annuitants between the  
29 program established by this chapter and the group health  
30 insurance program sponsored by the retirement system under

1 the provisions of 24 Pa.C.S. Ch. 89 (relating to group health  
2 insurance program) and to coordinate the sharing of  
3 information pertaining to premium assistance payment  
4 transfers.

5 (10) Set and adjust contribution rates sufficient to  
6 maintain the adequacy of any reserves established by this  
7 chapter and to fully fund the benefits offered by and to pay  
8 for the administrative expenses related to the program.

9 (11) Set and adjust costs for members electing to  
10 continue coverage upon retirement or separation from  
11 employment. The board may establish different cost rates to  
12 be charged for different categories of members electing to  
13 continue coverage.

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

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

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

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

27 (16) Receive and collect all contributions due and  
28 payable to the accounts or delegate to a public school entity  
29 or claims processor the right to receive contributions,  
30 payments or perform ministerial functions required to assert

1 the board's rights. In so doing, the board shall have the  
2 right to:

3 (i) maintain any and all actions and legal  
4 proceedings necessary for the collection of  
5 contributions; and

6 (ii) prosecute, defend, compound, compromise,  
7 settle, abandon or adjust any actions, suits,  
8 proceedings, disputes, claims, details and things related  
9 to the accounts and program.

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

12 (18) Promulgate rules and regulations regarding the  
13 administration of the program, including the establishment of  
14 the plan year.

15 (19) Ensure that a public school entity provides  
16 detailed information about the program to eligible employees  
17 at least 90 days before program coverage begins to be offered  
18 to school employees.

19 (20) Seek and take all necessary steps to retain  
20 eligibility for the members, public school entities and the  
21 Commonwealth to receive tax-preferred or tax-free treatment  
22 under the IRC for contributions to and earnings of the trust  
23 fund.

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

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

1           (23) Determine best practice standards and benchmarks  
2 for consortia in any selection process to build a Statewide  
3 pool or regional pools, including the power to require a  
4 consortium to merge with another consortium. The board shall  
5 have the power to require consortia, as a condition of  
6 continued participation in the program, to accept any public  
7 school entity applying to join and participate in a  
8 consortium.

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

13       (b) Administrative duties of board.--In addition to other  
14 duties of the board provided in this chapter, the following  
15 duties shall be afforded to the board for the implementation of  
16 this section.

17       (c) Regulations and procedures.--The board shall, with the  
18 advice of the Office of General Counsel and the actuary, adopt  
19 and promulgate rules and regulations for the uniform  
20 administration of the program. The actuary shall approve in  
21 writing all computational procedures used in the calculation of  
22 contributions and the cost of benefits, and the board shall by  
23 resolution adopt the computational procedures prior to their  
24 application by the board. The rules, regulations and  
25 computational procedures as so adopted from time to time and as  
26 in force and effect at any time, together with tables that are  
27 adopted as necessary for the calculation of contributions and  
28 the cost of benefits, shall be effective as if fully set forth  
29 in this chapter.

30       (d) Data.--The board shall keep in electronic format records

1 of claims, eligibility and other data as are stipulated by the  
2 actuary in order that an annual contribution rate determination  
3 for each health care region and various program options can be  
4 completed within six months of the close of each plan year. The  
5 board shall have final authority over the means by which data is  
6 collected, maintained and stored and in so doing shall protect  
7 the rights of its membership as to privacy and confidentiality.

8 (e) Annual financial statement.--The board shall prepare and  
9 have published within six months following the end of each plan  
10 year a financial statement showing the condition of the trust  
11 fund as of the end of the previous plan year. The board shall  
12 submit said financial statement to the Governor and shall make  
13 copies available to public school entities for the use of the  
14 school employees and the public.

15 (f) Independent audit.--The board shall provide for an  
16 annual audit of the trust fund by an independent certified  
17 public accounting firm.

18 (g) Manual of regulations.--The board shall, with the advice  
19 of the Office of General Counsel and the actuary, prepare within  
20 six months of the commencement of a program adopted under this  
21 chapter a manual incorporating rules and regulations consistent  
22 with the provisions of this chapter for each participating  
23 public school entity that shall make information contained in  
24 the manual available to school employees. The board shall  
25 thereafter advise public school entities within 90 days of any  
26 changes in rules and regulations due to changes in the law or  
27 due to changes in administrative policies.

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

1 (i) Program assistance.--The board may solicit and accept  
2 grants, loans and other aid from any person, corporation or  
3 other legal entity or from the Federal, State or local  
4 government and participate in any Federal, State or local  
5 government program if necessary for prudent management of the  
6 program.

7 (j) Functions.--The board shall perform other functions as  
8 are required for the execution of this chapter and shall have  
9 the right to inspect employment records of public school  
10 entities.

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

14 (1) The plan to implement the program adopted pursuant  
15 to section 323(f).

16 (2) The standard benefit package, benefit options or  
17 plan design offered by the program to covered employees.

18 (3) Membership eligibility criteria.

19 (4) The addition, deletion or significant change in  
20 status of an insurance carrier, benefits administrator or  
21 other major contractor in the administration of benefits, or  
22 the addition, deletion or significant change in status of a  
23 health care provider network.

24 (5) Any determination on the use of excess fund  
25 payments.

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

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

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

2 (9) Changes in trust document, bylaws or any major  
3 internal operating policies or procedures, such as claims  
4 appeal procedures, not to include routine ministerial  
5 functions.

6 (10) The alternative measures program created pursuant  
7 to section 351(a).

8 (11) Approve employment of and contracts with  
9 consultants and professional personnel.

10 (1) Duties conferred upon secretary.--The secretary of the  
11 board shall supervise a staff of administrative, technical and  
12 clerical employees engaged in recordkeeping and clerical  
13 processing activities in maintaining files of members,  
14 accounting for contributions, processing payments, preparing  
15 required reports and counseling.

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

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

29 (1) The employee benefits account shall be the ledger  
30 account to which shall be credited the payments from section

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

14 (2) Reserve account.

15 (i) A restricted reserve account, or more than one  
16 account if the board determines it necessary to have  
17 segregated accounts, is established within the trust fund  
18 for the purpose of establishing and maintaining a reserve  
19 or separate reserves sufficient:

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

23 (B) to prefund the accrued liability for any  
24 postretirement health care benefits earned by  
25 employees enrolled in the program pursuant to section  
26 333(a)(1) as the benefit is earned by the employees;  
27 and

28 (C) to amortize the unfunded actuarial accrued  
29 liability for postretirement health care benefits  
30 already earned by employees and annuitants pursuant



1 to section 333(a)(1) in the event the board elects to  
2 assume all or a portion of the liability. The board  
3 shall use an amortization period that does not exceed  
4 30 years for this purpose.

5 (ii) The board shall annually establish through an  
6 actuary retained by the board the amount necessary, if  
7 any, to establish and maintain a reserve or separate  
8 reserves sufficient for the purposes of this paragraph.  
9 Any moneys needed to maintain the reserve or separate  
10 reserves established under this paragraph shall be  
11 collected through the adjustment of the contribution rate  
12 established pursuant to section 334(b) and (c) or through  
13 other available sources.

14 (iii) The moneys in any reserve account may be  
15 invested by the board separate from other moneys of the  
16 trust fund. All earnings derived from investment of the  
17 assets of any reserve account shall be credited to the  
18 reserve account.

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

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

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

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

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

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

14 (1) The board shall have exclusive control and  
15 management of the trust fund and full power to invest and  
16 manage the assets of each account of the trust fund as a  
17 prudent investor would, by considering the purposes, terms  
18 and other circumstances of each account and by pursuing an  
19 overall investment strategy reasonably suited to the trust  
20 fund.

21 (2) The board may invest in every kind of property and  
22 type of investment, including, but not limited to, mutual  
23 funds and similar investments, consistent with this  
24 subsection.

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

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

29 (ii) the liquidity and payment requirements of the  
30 account;

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

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

5 (v) the reasonable diversification of assets, taking  
6 into account the purposes, terms and other circumstances  
7 of the trust fund and the requirements of this section.

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

10 (f) Name for transacting business.--By the name of "The  
11 Public School Employees' Benefit Trust Fund," all of the  
12 business of the trust fund shall be transacted, its fund  
13 invested, all requisitions for money drawn and payments made and  
14 all of its cash and securities and other property shall be held,  
15 except that, any other law to the contrary notwithstanding, the  
16 board may establish a nominee registration procedure for the  
17 purpose of registering securities in order to facilitate the  
18 purchase, sale or other disposition of securities.

19 (g) Payment from trust fund.--All payments from the trust  
20 fund shall be made by the State Treasurer in accordance with  
21 requisitions signed by the secretary of the board or the  
22 secretary's designee. The board shall reimburse the State  
23 Treasurer for the cost of making disbursements from the trust  
24 fund.

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

30 (i) Transfers.--The board may transfer moneys among the

1 various accounts of the trust fund, including any reserve  
2 accounts established under subsection (a) (2), as may be  
3 necessary to satisfy the provisions of this chapter. Transfers  
4 from funds retained in the reserve account pursuant to  
5 subsection (a) (2) (i) (A) may be made only for the payment of  
6 claims or expected claims as determined by the actuary retained  
7 by the board. Transfers from funds retained in the reserve  
8 account pursuant to subsection (a) (2) (i) (B) or (C) may be made  
9 only for paying toward the cost of providing health care  
10 benefits to annuitants enrolled in the program pursuant to  
11 section 333(a) (1) .

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

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

16 (2) Retain such portion of the moneys of the accounts in  
17 cash or cash balances as the board may deem desirable,  
18 without any liability or interest thereon.

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

24 (k) Additional duties of secretary.--The secretary of the  
25 board shall serve as liaison to the Treasury Department, the  
26 Department of the Auditor General and between the board and the  
27 investment counsel and the mortgage supervisor in arranging for  
28 investments to secure maximum returns to the trust fund.

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

30 (a) Misrepresentation.--If the eligible individual or anyone

1 acting on behalf of an eligible individual makes a false  
2 statement or withholds information on the application for  
3 enrollment with intent to deceive or affect the acceptance of  
4 the enrollment application or the risks assumed by the program  
5 or otherwise misleads the board, the board shall be entitled to  
6 recover its damages, including legal fees, from the eligible  
7 individual or from any other person responsible for misleading  
8 the board and from the person for whom the benefits were  
9 provided. Any material misrepresentation on the part of the  
10 eligible individual in making application for coverage or any  
11 application for reclassification thereof or for service  
12 thereunder shall render the coverage under the program null and  
13 void.

14 (b) Refusal to cooperate.--The board may refuse to pay  
15 benefits, or cease to pay benefits, on behalf of an eligible  
16 individual who fails to sign any document deemed by the board to  
17 be relevant to protecting its subrogation rights or certifying  
18 eligibility or who fails to provide relevant information when  
19 requested. As used in this subsection, the term "information"  
20 includes any documents, insurance policies, police reports or  
21 any reasonable request by the claims processor to enforce the  
22 board's rights.

23 (c) Penalty for fraud.--In any case in which the board finds  
24 that an eligible individual is receiving benefits based on false  
25 information, the additional amounts received predicated on the  
26 false information, together with interest doubled and compounded  
27 and legal fees, shall be due from the member. To secure payment  
28 of funds, the board shall have the right to garnish or attach  
29 all or a portion of any compensation payable to the party by the  
30 party's employer, any annuity payable to the party by the

1 retirement system, any accumulated deductions held by the  
2 retirement system in the party's account or any process  
3 whatsoever.

4 Section 338. Miscellaneous provisions.

5 (a) Construction of chapter.--

6 (1) Any termination or other modifications of the  
7 program, including, but not limited to, a change in rates,  
8 benefits options or structure of the provision of health care  
9 benefits, shall not give rise to any contractual rights or  
10 claims by any eligible individuals or any other person  
11 claiming an interest, either directly or indirectly, in the  
12 program. No provisions of this chapter, nor any rule or  
13 regulation adopted pursuant to this chapter, shall create in  
14 any person a contractual right in that provision.

15 (2) The provisions of this chapter are severable and if  
16 any of its provisions shall be held to be unconstitutional,  
17 the decision of the court shall not affect or impair any of  
18 the remaining provisions. It is hereby declared to be the  
19 legislative intent that this chapter would have been adopted  
20 had the unconstitutional provisions not been included.

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

26 (b) Hold harmless.--Neither the Commonwealth nor the board,  
27 including their respective officers, directors and employees,  
28 shall be liable for any claims, demands, actions or liability of  
29 any nature, including, but not limited to, attorney fees and  
30 court costs, based upon or arising out of the operations of the

1 program, whether incurred directly or indirectly. The eligible  
2 individuals who enroll and participate in the program shall be  
3 deemed to agree, on behalf of themselves and their heirs,  
4 successors and assigns, to hold harmless the Commonwealth and  
5 the board, including their respective officers, directors and  
6 employees, from any claims, demands, actions or liability of any  
7 nature, whether directly or indirectly, including attorney fees  
8 and court costs, based upon or arising out of the operation of  
9 the program.

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

16 (d) Reservation of immunities.--Nothing contained in this  
17 chapter shall be construed as a waiver of the Commonwealth's or  
18 board's immunities, defenses, rights or actions arising out of  
19 their sovereign status or from the 11th amendment to the  
20 Constitution of the United States.

21 (e) Collective bargaining, mediation and binding  
22 arbitration.--Except as otherwise provided in subsection (f),  
23 nothing in this chapter or in any other law shall be construed  
24 to permit, authorize or require collective bargaining, mediation  
25 or binding arbitration to create, alter or modify health  
26 benefits set forth in this chapter or administered by the board  
27 for school employees and their health care dependents. Further,  
28 except as otherwise provided in subsection (f), nothing in this  
29 chapter or in any other law shall be construed to permit,  
30 authorize or require a public school entity, through collective

1 bargaining, mediation or binding arbitration, or otherwise, to  
2 establish, create, alter or modify a health benefits plan or pay  
3 health benefits set forth in this chapter or administered by the  
4 board that modify or supplement in any way the health benefits  
5 set forth in this chapter for school employees and their health  
6 care dependents.

7 (f) Exceptions.--

8 (1) The parties may:

9 (i) Continue to engage in collective bargaining with  
10 regard to health benefits until such time as the board-  
11 sponsored program, pursuant to this subchapter, is  
12 released and the standard benefit package is made  
13 available to employees of a public school entity.

14 However, any health benefits provided under a collective  
15 bargaining agreement entered into on or after the  
16 effective date of this chapter shall contain a provision  
17 that school employees covered by the agreement must join  
18 the board-sponsored program as required by section 332 as  
19 a condition of continuing to receive health benefits. The  
20 board shall determine the appropriate timing and phase-in  
21 of the program in any public school entity taking into  
22 consideration the need for the public school entity to  
23 properly terminate any existing health benefits  
24 arrangements.

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

28 (2) Nothing contained in this chapter shall restrict a  
29 public school entity from negotiating or otherwise agreeing  
30 to make payment for postretirement health benefits for



1 members or as may be provided for in Subchapter F.

2 (g) Initial qualified majority vote requirement.--A  
3 qualified majority vote of the board that occurs on or before  
4 December 31, 2015, must include the support of either the  
5 Secretary of the Budget or the Insurance Commissioner.

6 SUBCHAPTER E

7 ALTERNATIVE MEASURES FOR COST REDUCTION

8 Section 351. Alternative measures program.

9 (a) Creation.--Upon completing the study required under  
10 section 321 with either a negative recommendation to proceed  
11 with implementation of a Statewide health care program or if the  
12 board fails to achieve agreement and approve a plan for  
13 implementing a Statewide health benefits program by a qualified  
14 majority vote, the board shall proceed to initiate and sponsor  
15 an alternative measures program to reduce the costs for public  
16 school entities in providing health care coverage to employees  
17 and other eligible individuals.

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

20 (1) Establishment of pools for selected areas of  
21 coverage, such as pharmacy services, transplants, stop-loss  
22 insurance, health care management or other possible areas  
23 that in the board's judgment can be offered Statewide or  
24 regionally on a more stable and cost-effective basis.

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

28 (3) Development of best practice standards and  
29 benchmarks for public school entities and consortia-  
30 sponsoring health care plans for school employees.

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

5           (5) Requirements for public disclosure by public school  
6 entities and consortia comparing their health benefits  
7 purchasing to established best practice standards in their  
8 region.

9           (c) Implementation.--The board shall have full authority to  
10 select and contract with insurance carriers, health maintenance  
11 organizations, pharmacy benefit managers, third-party  
12 administrators, reinsurers and any other entities necessary to  
13 provide the selected areas of coverage. The board shall have  
14 full authority to determine the nature, amount and duration and  
15 discontinuation of coverage to be provided.

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

19           (e) Transition plan.--If the board determines that a public  
20 school entity or consortium shall be required to participate in  
21 the alternative measures program, the public school entity or  
22 consortium shall, within a reasonable period of time as  
23 determined by the board, present to the board a transition plan  
24 with a schedule for the public school entity or consortium to  
25 join the alternative measures program. The board shall review  
26 the transition plan with the public school entity or consortium  
27 and make any necessary modifications before granting approval of  
28 the plan. A public school entity or consortium shall be subject  
29 to adherence to the transition plan approved by the board.

30           (f) Extensions of time.--The board shall give due

1 consideration to a transition plan submitted pursuant to  
2 subsection (e) that includes a request for an extension of time.  
3 Consideration shall be given to a public school entity or  
4 consortium which will incur a significant financial cost or  
5 penalty.

6 (g) Prohibited membership.--A public school entity that  
7 participates in the Pennsylvania Employees' Benefit Trust Fund  
8 shall be prohibited from participating in the alternative  
9 measures program.

10 (h) Transition of employees.--A public school entity that  
11 provides some or all of its employees with health benefits  
12 through another health care plan by virtue of one or more  
13 collective bargaining agreements entered into prior to the  
14 effective date of this chapter shall not be required to join the  
15 alternative measures program until expiration of the collective  
16 bargaining agreements. The public school entity and some or all  
17 of its employees, or bargaining representatives of its  
18 employees, may, by mutual agreement and approval of the board,  
19 join the program at an earlier date. Renewal or extension of a  
20 collective bargaining agreement shall constitute its expiration  
21 for the purposes of this subsection.

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

1 mandatory.

2 SUBCHAPTER F

3 RETIREMENT HEALTH SAVINGS PLAN

4 Section 361. Retirement health savings plan.

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

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

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

19 (3) Determination of enrollment procedures.

20 (b) Contracting authorized.--The board is authorized to  
21 administer the retirement health savings plan and to contract  
22 with any lawfully authorized entities to provide investment  
23 services, recordkeeping, benefit payments and other functions  
24 necessary for the administration of the retirement health  
25 savings plan. The board may contract with the retirement system  
26 to invest funds in an account that shall be maintained and  
27 accounted for separately from the funds of the retirement system  
28 and invested in a prudent manner intended to maximize the safety  
29 of the capital, with all earnings derived from investment of the  
30 assets to be credited to the retirement health savings plan.

1 Costs and expenses incurred by the retirement system in  
2 administering the investment option shall be paid by the  
3 retirement health savings plan.

4 (c) Separate account.--All funds related to the retirement  
5 health savings plan shall be maintained and accounted for  
6 separately from the health benefits program sponsored by the  
7 board. The assets of the retirement health savings plan shall  
8 not be liable or utilized for payment of any expenses or claims  
9 incurred by the health benefits program other than as may be  
10 directed by the participant account holder for reimbursement of  
11 an IRC-qualifying health-related expense.

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

15 (e) Contributions.--

16 (1) The board shall determine what contributions are  
17 eligible under the IRC for tax-preferred or tax-free  
18 treatment and may be made into a retirement health savings  
19 plan by a school employee. The board shall authorize and  
20 allow contributions, subject to appropriate limits as may be  
21 established by the board, to be paid by a school employee  
22 electing participation in the retirement health savings plan  
23 subject to the following conditions:

24 (i) A mandatory school employee contribution  
25 established as a fixed percentage of compensation may be  
26 established through a collective bargaining agreement  
27 between a public school entity and a bargaining group  
28 representing school employees. The retirement health  
29 savings plan contribution rate does not have to be  
30 uniform for all groups of school employees.

1           (ii) An optional employee contribution at a fixed  
2 percentage of compensation may be elected by a school  
3 employee during an annual election window that, once  
4 elected, shall continue in effect, except to the extent  
5 it may be changed or discontinued at a subsequent annual  
6 election window as provided for by the board or  
7 supplanted by a mandatory contribution.

8           (iii) An optional school employee contribution of  
9 all or any portion of annual leave, vacation pay,  
10 personal days or sick leave may be elected by a school  
11 employee as so designated by the employee and agreed to  
12 by the employee's employer. The board may provide that  
13 the election shall be made during an annual election  
14 window of no greater than 90 days as determined by the  
15 board. Once the election has been made, an employee shall  
16 not be allowed to change the amount or discontinue the  
17 contributions until the next annual election window.

18           (2) The following contributions shall be made into a  
19 retirement health savings plan on behalf of a school  
20 employee:

21           (i) For an employee who elects participation in the  
22 retirement health savings plan, the employee's employer  
23 shall make a contribution to the employee's account equal  
24 to the public school entity's savings in Social Security  
25 and Medicare taxes resulting from the tax-preferred or  
26 tax-free treatment of contributions made by the school  
27 employee under this subsection. Additional contributions  
28 by a public school entity may be established through a  
29 collective bargaining agreement between a public school  
30 entity and a bargaining group representing school

1 employees.

2 (ii) Any other payments by the Commonwealth or  
3 public school entity, including any set-aside payments to  
4 be made to school employee accounts under section 334 as  
5 determined by the board.

6 (3) Contributions to the plan by a school employee or by  
7 the Commonwealth or a public school entity on behalf of an  
8 employee must be held in trust for reimbursement of employee  
9 health-related expenses and the health-related expenses of  
10 any health care dependents following retirement of the  
11 employee or when otherwise determined to be benefit eligible.  
12 The board shall maintain a separate account of the  
13 contributions made by or on behalf of each participant and  
14 the earnings thereon. The board shall make available a  
15 selection of investment options for participants who wish to  
16 direct the investment of the accumulations in the  
17 participant's account, in addition to a default option for  
18 participants to be invested in a prudent manner as determined  
19 by the board.

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

21 (1) Upon retirement or separation from employment with a  
22 public school entity, a participant becomes eligible to seek  
23 reimbursements for IRC-qualifying health-related expenses  
24 from the participant's retirement health savings plan  
25 account, including reimbursements for the health-related  
26 expenses of the participant's eligible health care  
27 dependents.

28 (2) If a school employee dies prior to exhausting the  
29 balance in the employee's retirement health savings plan  
30 account, the employee's health care dependents are eligible

1 to seek reimbursement for IRC-qualifying health-related  
2 expenses from the account.

3 (3) The board shall pay reimbursements from a retirement  
4 health savings plan account until the accumulation in the  
5 account has been exhausted. If an account balance remains  
6 after the death of all participant account holders, the  
7 remainder of the account must be paid to the school  
8 employee's beneficiaries or, if none, to the employee's  
9 estate.

10 (g) Annual financial statement.--Quarterly and annually the  
11 board shall prepare summary retirement health savings plan  
12 statements for individual participant account holders listing  
13 information on contributions, investment earnings and  
14 distributions for the account holders' accounts.

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

19 (i) Advisory committee.--

20 (1) The board shall establish a participant advisory  
21 committee for the retirement health savings plan composed of:

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

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

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

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



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

3 (3) The advisory committee shall meet at least two times  
4 per year and shall be consulted on plan offerings. By October  
5 1 of each year, the board shall give the advisory committee a  
6 statement of fees collected and the use of the fees.

7 CHAPTER 5

8 MISCELLANEOUS PROVISIONS

9 Section 501. Feasibility report.

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

16 Section 502. Effective date.

17 This act shall take effect July 1, 2014.