
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 348 Session of
2015

INTRODUCED BY O'NEILL, KAVULICH, DEASY, GOODMAN, GREINER,
HARKINS, McCARTER, MILLARD, READSHAW AND TOEPEL,
FEBRUARY 5, 2015

REFERRED TO COMMITTEE ON EDUCATION, FEBRUARY 5, 2015

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.

8 TABLE OF CONTENTS

9 Chapter 1. Preliminary Provisions

10 Section 101. Short title.

11 Chapter 3. Administration of Benefits

12 Subchapter A. Definitions

13 Section 301. Definitions.

14 Subchapter B. Public School Employees' Benefit Board

15 Section 311. Public School Employees' Benefit Board.

16 Section 312. Administrative duties of board.

17 Subchapter C. Study and Options Election

18 Section 321. School employee health benefits study and
19 evaluation.

20 Section 322. Board review and election.

1 Section 323. Plan adoption.
2 Subchapter D. Statewide Health Benefits Program
3 Section 331. Health benefits program.
4 Section 332. Participation.
5 Section 333. Continuation of coverage and transfer employees.
6 Section 334. Partnership for stable benefits funding.
7 Section 335. Powers and duties of board.
8 Section 336. Public School Employees' Benefit Trust Fund.
9 Section 337. Misrepresentation, refusal to cooperate and fraud.
10 Section 338. Miscellaneous provisions.

11 Subchapter E. Alternative Measures for Cost Reduction

12 Section 351. Alternative measures program.

13 Subchapter F. Retirement Health Savings Plan

14 Section 361. Retirement health savings plan.

15 Chapter 5. Miscellaneous Provisions

16 Section 501. Feasibility report.

17 Section 502. Effective date.

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

20 CHAPTER 1

21 PRELIMINARY PROVISIONS

22 Section 101. Short title.

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

25 CHAPTER 3

26 ADMINISTRATION OF BENEFITS

27 SUBCHAPTER A

28 DEFINITIONS

29 Section 301. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

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

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

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

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

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

23 "Board member." A person designated or appointed to the
24 Public School Employees' Benefit Board pursuant to section
25 311(a).

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

1 combined purchasing of the individual participants in order to
2 increase bargaining power to obtain health care benefits.

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

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

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

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

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

23 "Employee benefits account." A ledger account of the Public
24 School Employees' Benefit Trust Fund created in section 336(a)
25 (1).

26 "Employer contribution account." A ledger account of the
27 Public School Employees' Benefit Trust Fund created in section
28 336(a) (3).

29 "Health care dependent." An individual who is eligible to
30 receive health care coverage under the Statewide health benefits

1 program due to the individual's relation to the member, as
2 determined by the Public School Employees' Benefit Board.

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

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

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

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

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

30 (1) A school employee.

1 (2) An annuitant.

2 (3) A transfer employee.

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

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

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

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

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

30 "Program." The Statewide health benefits program sponsored

1 by the Public School Employees' Benefit Board in accordance with
2 the provisions of Subchapter D.

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

5 "Public school entity." A school district of any class,
6 intermediate unit, area vocational-technical school, charter
7 school or other school, as provided for under the Public School
8 Code. The term shall also include the former Scotland School for
9 Veterans' Children and the former Scranton State School for the
10 Deaf.

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

19 "Qualifying event." A change in marital status, death of a
20 member or the change in a health care dependent's status,
21 subsequent to the commencement of coverage under this chapter,
22 or the involuntary termination of health plan coverage that was
23 obtained through a health care dependent.

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

26 "Retirement system." The term shall have the same meaning as
27 "system" in 24 Pa.C.S. § 8102 (relating to definitions).

28 "School employee." Any person regularly employed by or in a
29 public school entity for which work the person is receiving
30 regular remuneration as an officer, administrator, employee or

1 long-term substitute. The term excludes any independent
2 contractor, person compensated on a fee basis or, unless
3 otherwise determined by the Public School Employees' Benefit
4 Board, any part-time hourly school employee. The term includes
5 any employee of a public school entity who has a position for
6 which eligibility in a health care plan sponsored by the public
7 school entity is in effect as of the effective date of this
8 chapter.

9 "Standard benefit package." The benefit package established
10 by the Public School Employees' Benefit Board pursuant to
11 section 331(f)(1).

12 "Supplemental benefits." Dental care, vision care and
13 employee assistance program benefits that may be offered in
14 addition to medical and hospital services and prescription drug
15 benefits.

16 "Transfer employee." A person who is not a school employee
17 who is regularly employed at a worksite in a public school
18 entity, regardless of who actually employs the person, if the
19 person is performing services previously performed by a school
20 employee.

21 "Trust fund." The Public School Employees' Benefit Trust
22 Fund established in section 336.

23 SUBCHAPTER B

24 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

25 Section 311. Public School Employees' Benefit Board.

26 (a) Status and membership.--The board shall be an
27 independent administrative board and shall consist of the
28 following board members:

29 (1) The Secretary of the Budget, the Secretary of
30 Education, the Secretary of Administration and the Insurance

1 Commissioner, who shall serve ex officio.

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

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

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

23 (B) no less than one person shall be appointed
24 from a list of candidates submitted by any school
25 employee union that on the effective date of this
26 chapter represents in collective bargaining more than
27 4,000 professional employees working in public school
28 entities that will be covered by the program when it
29 is fully operational.

30 (ii) Two persons representing school employees who

1 are covered by the program represented in collective
2 bargaining by school employee unions other than school
3 employee unions within subparagraph (i) appointed by the
4 Governor and chosen from a list of candidates submitted
5 by those school employee unions other than school
6 employee unions within subparagraph (i).

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

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

16 The school employee unions and the Pennsylvania School Boards
17 Association shall provide the Governor with their respective
18 lists of candidates within 15 days following the effective date
19 of this section. The Governor shall make his appointments within
20 45 days following receipt of the lists.

21 (b) Terms.--

22 (1) Three board members appointed under subsection (a)
23 (2) (i), as designated by the Governor, shall serve a term of
24 two years, and three board members appointed under subsection
25 (a) (2) (i), as designated by the Governor, shall serve a term
26 of four years.

27 (2) One board member appointed under subsection (a) (2)
28 (ii), as designated by the Governor, shall serve a term of
29 two years, and one board member appointed under subsection
30 (a) (2) (ii), as designated by the Governor, shall serve a term

1 of four years.

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

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

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

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

28 (e) Oath of office.--Each board member shall take an oath of
29 office that the member will, so far as it devolves upon the
30 member, diligently and honestly administer the affairs of the

1 board and that the member will not knowingly violate or
2 willfully permit to be violated any of the provisions of law
3 applicable to this chapter. The oath shall be subscribed by the
4 board member making it and certified by the officer before whom
5 it is taken and shall be immediately filed in the office of the
6 Secretary of the Commonwealth.

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

26 (g) Corporate power and legal advisor.--For the purposes of
27 this chapter, the board shall possess the power and privileges
28 of a corporation. The Office of General Counsel shall be the
29 legal advisor of the board.

30 (h) Duties of the board.--The board shall have the power and

1 authority to carry out the duties established by this chapter,
2 including the design, implementation and administration of the
3 school employee health benefits study pursuant to Subchapter C
4 and either the Statewide health benefits program if approved
5 pursuant to section 323 or the alternative measures program if
6 created pursuant to section 351.

7 Section 312. Administrative duties of board.

8 (a) Employees.--The compensation of all officers and
9 employees of the board who are not covered by a collective
10 bargaining agreement shall be established by the board
11 consistent with the standards of compensation established by the
12 Executive Board.

13 (b) Secretary.--The board shall select a secretary, who
14 shall not be a board member. The secretary shall act as chief
15 administrative officer for the board. In addition to other
16 powers and duties conferred upon and delegated to the secretary
17 by the board, the secretary shall:

18 (1) Serve as the administrative agent of the board and
19 as liaison between the board and applicable legislative
20 committees.

21 (2) Review and analyze proposed legislation and
22 legislative developments affecting the program and present
23 findings to the board, legislative committees and other
24 interested groups or individuals.

25 (3) Receive inquiries and requests for information
26 concerning the program from the press, Commonwealth
27 officials, public school entities, school employees and the
28 general public and provide information as authorized by the
29 board.

30 (c) Professional personnel.--The board may employ or

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

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

16 (1) from the General Fund; or

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

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

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

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

27 (h) Temporary regulations.--

28 (1) Notwithstanding any other provision of law to the
29 contrary and in order to facilitate the prompt implementation
30 of this chapter, regulations promulgated by the board during

1 the two years following the effective date of this chapter
2 shall be deemed temporary regulations which shall expire no
3 later than three years following the effective date of this
4 chapter or upon promulgation of regulations as generally
5 provided by law. The temporary regulations shall not be
6 subject to:

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

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

12 (2) The authority provided to the board to adopt
13 temporary regulations in this subsection shall expire two
14 years from the effect date of this chapter. Regulations
15 adopted after the two-year period shall be promulgated as
16 provided by law.

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

25 SUBCHAPTER C

26 STUDY AND OPTIONS ELECTION

27 Section 321. School employee health benefits study and
28 evaluation.

29 (a) Study.--The board shall conduct a thorough evaluation of
30 existing health care arrangements covering school employees in

1 this Commonwealth, examine future cost forecasts and collect
2 data necessary to determine if the board could construct and
3 sponsor a health care benefit program that would reduce long-
4 term costs or the rate of growth of long-term costs in the
5 aggregate for public school entities while maintaining a
6 comprehensive package of quality health care benefits for school
7 employees. The board shall conduct the study as provided under
8 this section.

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

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

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

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

19 (4) An explanation and estimate of any financial
20 obligation of or funds owed to a public school entity related
21 to the termination of coverage under a school district-
22 sponsored health benefits plan.

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

27 (6) The term and effect of collective bargaining
28 agreements governing health benefits.

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

1 (8) The total amount of employer-paid costs in
2 aggregate.

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

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

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

1 of all necessary information. In considering an appeal, the
2 secretary may grant an extension of time for the public school
3 entity or consortium to provide the necessary information before
4 the suspension is instituted. The board is authorized and shall
5 authorize school entities and consortia to enter into agreements
6 with entities providing or administering coverage for health
7 care benefits under this chapter for the purpose of carrying out
8 the provisions of this section.

9 (e) Health benefit entities.--

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

18 (2) The Insurance Commissioner, the Department of Health
19 and any other agency, authority, board, commission, council,
20 department or office under the jurisdiction of the Governor
21 having regulatory authority over any entity charged under
22 paragraph (1), hereafter known as "regulating authority,"
23 shall cooperate with the board, if necessary, to obtain
24 information from any insurance company, third-party
25 administrator or other administrator or provider of health
26 insurance benefits for school employees, other than a public
27 school entity or consortium. Following notice and hearing,
28 the board may impose an order assessing a penalty of up to
29 \$1,000 per day upon any entity, other than a public school
30 entity or consortium, that willfully fails to comply with the

1 obligations imposed by this section. If the entity does not
2 comply with the obligations imposed by this section within 15
3 days of an order being imposed, the board shall notify the
4 regulating authority of the failure of an entity under its
5 jurisdiction to provide data as set forth in this section.
6 Upon notification, the regulating authority shall suspend or
7 revoke the license of the entity or otherwise suspend or
8 revoke the entity's ability to operate until such time as the
9 board notifies the regulating authority that the entity is in
10 compliance. The board shall have standing to petition the
11 Commonwealth Court to seek enforcement of the order.

12 (3) This subsection shall apply to every entity
13 providing or administering group health coverage in
14 connection with providing health care benefits to school
15 employees within this Commonwealth, including plans,
16 policies, contracts or certificates issued by:

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

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

24 (iii) A professional health service corporation as
25 defined in 40 Pa.C.S. Ch. 63 (relating to professional
26 health services plan corporations).

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

30 (v) A fraternal benefit society as defined in

1 section 2403 of The Insurance Company Law of 1921.

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

4 (vii) Health care plans subject to the Employee
5 Retirement Income Security Act of 1974 (Public Law 93-
6 406, 88 Stat. 829), to the maximum extent permitted by
7 Federal law.

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

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

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

20 (f) Confidentiality.--Any data requested by or provided to
21 the board pursuant to this section shall comply with the
22 standards for privacy established pursuant to the Health
23 Insurance Portability and Accountability Act of 1996 (Public Law
24 104-191, 110 Stat. 1936).

25 (g) Prepared materials.--Any documents, materials or
26 information solely prepared or created for the purpose of
27 implementation of subsection (b) are confidential and shall not
28 be discoverable or admissible as evidence in any civil or
29 administrative action or proceeding. Any documents, materials,
30 records or information that would otherwise be available from

1 original sources shall not be construed as immune from discovery
2 or use in any civil or administrative action or proceeding
3 merely because they were presented to the board. Nothing in this
4 subsection shall be construed to prevent publication or
5 dissemination of the aggregate study findings.

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

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

26 (j) Original source document.--In the event an original
27 source document as set forth in subsection (g) is determined by
28 a court of competent jurisdiction to be unavailable from the
29 entity providing health insurance or health care coverage in a
30 civil action or proceeding, then, in that circumstance alone,

1 the board may be required pursuant to a court order to release
2 that original source document to the party identified in the
3 court order.

4 (k) Right-to-know requests.--Any documents, materials or
5 information made confidential by subsection (f) shall not be
6 subject to requests under the act of February 14, 2008 (P.L.6,
7 No.3), known as the Right-to-Know Law, or any successor statute.

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

18 Section 322. Board review and election.

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

1 benefits at a level consistent with those now provided to most
2 school employees through existing collective bargaining
3 contracts and offers coverage to school employees and other
4 eligible individuals.

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

17 (c) Alternative election.--If the board decides that a
18 Statewide health benefits program cannot be created in
19 accordance with subsection (a), or the board fails to achieve
20 agreement and approve a plan for implementing a Statewide health
21 benefits program, the board will proceed with consideration of
22 an alternative measures program that will reduce long-term costs
23 or the rate of growth of such costs in the aggregate for public
24 school entities in accordance with Subchapter E.
25 Section 323. Plan adoption.

26 (a) Statewide health benefits program adoption.--Within
27 three months of electing to proceed with the Statewide health
28 benefits program, pursuant to section 322(b), the board shall
29 verify that implementation of a Statewide health care program
30 will result in reduction in the Statewide aggregate cost of the

1 purchase of benefits or the rate of growth of such costs and
2 adopt a proposed plan for the implementation of the program. The
3 proposed plan shall be in writing and shall include a detailed
4 description of the program and the transition procedures
5 necessary to phase in and implement the program. The board's
6 adoption of a proposed plan shall require approval by a
7 qualified majority vote.

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

10 (1) The eligibility requirements for a school employee
11 and the employee's health care dependents to qualify for
12 participation in the program.

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

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

20 (4) The designation of health care regions.

21 (5) The design of the Statewide pool or regional pools
22 that would be established to aggregate public school entities
23 for the purpose of purchasing services and managing health
24 insurance risks.

25 (6) The requirements for electronic eligibility
26 transmission between the board and other participating
27 entities, including public school entities, consortia and the
28 retirement system.

29 (7) Financial and accounting plans, including the
30 establishment of any necessary reserves or escrow accounts

1 with carriers.

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

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

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

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

14 (3) The interim steps to aggregate public school
15 entities into a Statewide pool or regional pools, including
16 any best practice standards and benchmarks to be applied to
17 new or existing consortia, or public school entities, or in
18 any selection process to build a Statewide or regional pool.

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

22 (5) Transition rules to limit any negative financial
23 impact on a public school entity required to purchase health
24 care coverage through a Statewide or regional pool and to
25 normalize contribution rates for all participating public
26 school entities within the same health care region.

27 (d) Alternative measures program adoption.--Within three
28 months of proceeding with consideration of an alternative
29 measures program pursuant to section 322(c), the board shall
30 adopt a proposed plan for the implementation of an alternative

1 measures program, pursuant to Subchapter E, that will result in
2 reduction in the Statewide aggregate cost of the purchase of
3 benefits or the rate of growth of such costs. The proposed plan
4 shall be in writing and shall include a detailed description and
5 the transition procedures necessary to phase in and implement
6 the alternative measures program. The board's adoption of a
7 proposed plan for implementation of an alternative measures
8 program shall require approval by a qualified majority vote.

9 (e) Legislative and public review.--

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

19 (2) The board shall submit the provisions of any
20 proposed plan adopted pursuant to this section to the
21 chairman and minority chairman of the Education Committee of
22 the Senate and the chairman and minority chairman of the
23 Education Committee of the House of Representatives. The
24 committees shall have 45 days to review the proposed plan and
25 submit comments to the board.

26 (f) Final plan adoption.--Upon completion of the public
27 hearings pursuant to subsection (e)(1) and expiration of the
28 committee review pursuant to subsection (e)(2), the board shall
29 review all the testimony and comments received regarding the
30 proposed plan. The board may, subject to a qualified majority

1 vote, make changes and adjustments to the plan to effectuate
2 this chapter. Within 90 days of publishing the proposed plan,
3 pursuant to subsection (e)(1), the board shall publish the final
4 plan, as adopted by the board, in the Pennsylvania Bulletin and
5 on the Internet website of the Department of Education.

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

28 (h) Failure to reach consensus.--If the board fails to
29 achieve agreement and approve a plan for implementing a
30 Statewide health benefits program by a qualified majority vote

1 or if the board fails to achieve agreement and approve a plan
2 for implementing an alternative measures program by a qualified
3 majority vote, the board shall report as to its findings and
4 reasons preventing agreement on a plan to the Governor, the
5 President pro tempore of the Senate and the Speaker of the House
6 of Representatives.

7 SUBCHAPTER D

8 STATEWIDE HEALTH BENEFITS PROGRAM

9 Section 331. Health benefits program.

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

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

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

27 (1) Establish pools for selected areas of coverage, such
28 as pharmacy services, transplants, stop-loss insurance,
29 health care management or other possible areas that in the
30 board's judgment can be offered Statewide or regionally on a

1 more stable and cost-effective basis. The board may offer
2 separate plans to public school entities and consortia prior
3 to the phase-in of the standard benefit package.

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

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

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

21 (f) Standard and optional benefits.--

22 (1) A standard benefit package shall be established by
23 the board that shall include coverage for medical and
24 hospital services, prescription drugs and may include
25 supplemental and other benefits in amounts to be determined
26 by the board.

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

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

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

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

20 (3) The detailed basis on which payment of benefits is
21 to be made shall be specified in writing. The benefits
22 provided in this chapter are subject to change or
23 modification by the board from time to time as the board, in
24 its discretion, may determine. All changes or modifications
25 shall be specified in writing and communicated to members
26 within a reasonable period of time.

27 Section 332. Participation.

28 (a) Mandatory participation.--The board shall have the
29 authority to require public school entities to participate in
30 the program on a Statewide basis or may phase in and require

1 participation on a regional basis. Except as provided under
2 subsections (c), (d), (e) and (f), public school entities in any
3 health care region designated by the board shall be required to
4 participate in the program.

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

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

22 (1) A public school entity that participates in a
23 consortium where an extension of time is necessary for the
24 rundown and proper termination of the consortium's health
25 care program.

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

29 (3) A public school entity or a consortium which will
30 incur a significant financial penalty under terms of a

1 contract with an insurance carrier or other provider of
2 health care coverage for a contract in existence on or before
3 January 1, 2015.

4 (4) A public school entity or consortium which will
5 incur a significant financial cost, including fees, penalties
6 or other contractual financial obligations, related to the
7 termination of coverage under a contract of insurance or, in
8 the case of a public school entity that self-insures,
9 insufficient reserves to pay claims incurred during the
10 previous coverage year, if the obligation relates to a plan
11 of coverage that was in existence on or before January 1,
12 2015, and the public school entity or consortium provides the
13 board with a financial plan for meeting these obligations.

14 (d) Rejection of participation.--Within 60 days of creation
15 of the health benefits program under section 331(a), a public
16 school entity may reject participation in the program under the
17 following conditions:

18 (1) the governing body of the school entity and the
19 school employee union representing the greatest number of
20 school employees in the school entity that would be covered
21 by the program when it is fully operational execute a
22 memorandum of understanding rejecting participation in the
23 program that is approved by a majority of the members of the
24 governing body and a majority of the employees that would be
25 covered by the program; and

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

28 (i) payment by the school entity on behalf of school
29 employees and their eligible health care dependents that
30 would exceed the cost, excluding any employee cost-

1 sharing, of providing, purchasing and administering
2 health care benefits to members who are school employees
3 and their eligible health care dependents in the year
4 before implementation of the program;

5 (ii) a reduction in the coverage of health care
6 benefits for school employees; provided that, if more
7 than one plan is available to school employees in the
8 school entity, this comparison shall be with the health
9 care plan that covers the greatest number of bargaining
10 unit members; or

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

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

21 (f) Prohibited membership.--A public school entity that, on
22 the effective date of this chapter, participates in the
23 Pennsylvania Employees' Benefit Trust Fund shall be prohibited
24 from participating in the program, and employees of the public
25 school entity shall not have the right to elect membership in
26 the program.

27 (g) Transition of employees.--A public school entity that
28 provides some or all of its employees with health benefits
29 through another health care plan by virtue of one or more
30 collective bargaining agreements, entered into prior to the

1 effective date of this chapter, shall not be required to join
2 the program until expiration of the collective bargaining
3 agreements. The public school entity and some or all of its
4 employees or bargaining representatives of its employees may by
5 mutual agreement and approval of the board join the program at
6 an earlier date. Renewal or extension of a collective bargaining
7 agreement shall constitute its expiration for the purpose of
8 this subsection.

9 Section 333. Continuation of coverage and transfer employees.

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

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

29 (2) For an annuitant, other than an annuitant qualified
30 for coverage under paragraph (1), payments shall be made on

1 the same basis as an annuitant qualified for coverage under
2 paragraph (1), except as determined as follows:

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

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

25 (b) Separation from service.--The board shall determine the
26 eligibility of members, other than annuitants covered by
27 subsection (a), to elect continuation of coverage in the program
28 upon separation from service as a school employee. The member
29 shall be responsible to pay the full cost of the coverage in the
30 member's health care region, plus an administrative fee to be

1 set by the board. The board shall, at minimum, provide
2 continuation of coverage eligibility that meets the requirements
3 of Title 1, Subtitle B, Part 6 of the Employee Retirement Income
4 Security Act of 1974 (Public Law 93-406, 88 Stat. 829) and
5 provide the continuation of coverage options required pursuant
6 to 51 Pa.C.S. § 7309 (relating to employment discrimination for
7 military membership or duty) for members on military leave.

8 (c) Transfer employees.--The board may, in its discretion,
9 approve the participation of transfer employees in the program,
10 provided that any position for which a transfer employee who is
11 provided health benefits in a health care plan sponsored by a
12 public school entity through an agreement that was in existence
13 on or before January 1, 2015, with the transfer employee's
14 employer shall be allowed to participate in the program. The
15 board shall set the terms and conditions necessary for
16 participation in the program, including the cost of coverage to
17 be paid by the third-party entity which shall be based on the
18 full cost of coverage in the health care region as determined by
19 the board, plus an administrative fee. The sponsoring public
20 school entity shall be responsible to the board for the
21 collection of the payments for transfer employees from the
22 third-party entity.

23 Section 334. Partnership for stable benefits funding.

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

1 from members and from the Commonwealth.

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

15 (c) Certification of rate.--The board shall certify the
16 contribution rate for each health care region to the
17 Commonwealth and public school entities, including the payments
18 that shall be due from public school entities, from members and
19 from the Commonwealth. The certifications shall be regarded as
20 final and not subject to modification by the Secretary of the
21 Budget.

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

29 (1) the projected carry-over balance for the plan year
30 in the employer contribution account after all required

1 transfers have been made to the employee benefits account for
2 the prior year; and

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

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

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

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

20 (f) Limitation on Commonwealth contribution.--

21 (1) The Commonwealth shall not be obligated to pay any
22 amount beyond that which is appropriated by the General
23 Assembly. The amount requested by the board pursuant to
24 subsection (e) (1) shall not exceed the sum of any amount paid
25 by the Commonwealth for the fiscal year preceding the plan
26 year for which funds are requested and the lesser of:

27 (i) fifty percent of the amount that the board
28 determines is necessary to meet the increase in the
29 contribution rate on behalf of members who are school
30 employees determined pursuant to subsection (b); and

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

9 (2) If any excess revenue in the employer contribution
10 account is to be applied to payments for the plan year, then
11 the excess revenue shall be used to reduce the calculation
12 under this subsection in proportion to the Commonwealth's
13 share of the total increase in the contribution rate on
14 behalf of active members for the plan year.

15 (g) Additional optional contribution.--Notwithstanding the
16 limitation in subsection (f), the General Assembly may
17 appropriate additional revenue to the employer contribution
18 account in any fiscal year.

19 (h) Allocation of Commonwealth contribution.--Any
20 contribution made by the Commonwealth under this section shall
21 be used to offset an increase in the contribution rate paid in a
22 health care region by public school entities on behalf of
23 members who are school employees and their eligible health care
24 dependents and to maintain any offset that was paid in a prior
25 year. The Commonwealth contribution shall be allocated to offset
26 a portion of each participating public school entity's cost of
27 coverage on a per-member basis, for members who are school
28 employees and their eligible health care dependents, based on
29 the public school entity's market value/income aid ratio using
30 the most recent data provided by the Department of Education.

1 For any public school entity that is not assigned a market
2 value/income aid ratio by the Department of Education, the
3 Commonwealth contribution shall not be adjusted based on a
4 market value/income aid ratio. For the purpose of this
5 subsection, "market value/income aid ratio" shall have the same
6 meaning given to it in the Public School Code.

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

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

30 (k) Transition.--Until any transition pursuant to section

1 323(c) (5) has been completed, the payments made by each public
2 school entity shall be no less than the total amount paid by the
3 public school entity to provide, purchase and administer health
4 care benefits to members who are school employees and their
5 eligible health care dependents in the year before
6 implementation of the program. Any contributions received by the
7 public school entity from school employees in the form of cost-
8 sharing payments for health care coverage shall be excluded from
9 the amount.

10 (1) Referendum exception.--

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

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

30 Section 335. Powers and duties of board.

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

5 (1) Determine appropriate geographic health care regions
6 for the administration of the program and make changes to the
7 regions as necessary; provided, that a school district of the
8 first class shall be designated as its own health care
9 region.

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

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

20 (4) Establish copayments, annual deductibles,
21 coinsurance levels, exclusions, formularies and other
22 coverage limitations and payment responsibilities of members
23 incurred at the time of service.

24 (5) Set and adjust member cost-sharing contributions to
25 be expressed as a target percentage of overall program costs
26 or individually determined as a percentage of salary. The
27 board shall determine whether member cost-sharing shall be
28 uniform on a Statewide basis or shall vary by health care
29 region.

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

1 (7) Determine enrollment procedures.

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

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

13 (10) Set and adjust contribution rates sufficient to
14 maintain the adequacy of any reserves established by this
15 chapter and to fully fund the benefits offered by and to pay
16 for the administrative expenses related to the program.

17 (11) Set and adjust costs for members electing to
18 continue coverage upon retirement or separation from
19 employment. The board may establish different cost rates to
20 be charged for different categories of members electing to
21 continue coverage.

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

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

28 (14) Issue self-liquidating debt or borrow against
29 contributions, payments or other accounts receivable for the
30 purposes of prepaying any health benefits, establishing

1 reserves or otherwise lowering the cost of coverage.

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

5 (16) Receive and collect all contributions due and
6 payable to the accounts or delegate to a public school entity
7 or claims processor the right to receive contributions,
8 payments or perform ministerial functions required to assert
9 the board's rights. In so doing, the board shall have the
10 right to:

11 (i) maintain any and all actions and legal
12 proceedings necessary for the collection of
13 contributions; and

14 (ii) prosecute, defend, compound, compromise,
15 settle, abandon or adjust any actions, suits,
16 proceedings, disputes, claims, details and things related
17 to the accounts and program.

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

20 (18) Promulgate rules and regulations regarding the
21 administration of the program, including the establishment of
22 the plan year.

23 (19) Ensure that a public school entity provides
24 detailed information about the program to eligible employees
25 at least 90 days before program coverage begins to be offered
26 to school employees.

27 (20) Seek and take all necessary steps to retain
28 eligibility for the members, public school entities and the
29 Commonwealth to receive tax-preferred or tax-free treatment
30 under the IRC for contributions to and earnings of the trust

1 fund.

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

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

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

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

21 (b) Administrative duties of board.--In addition to other
22 duties of the board provided in this chapter, the following
23 duties shall be afforded to the board for the implementation of
24 this section.

25 (c) Regulations and procedures.--The board shall, with the
26 advice of the Office of General Counsel and the actuary, adopt
27 and promulgate rules and regulations for the uniform
28 administration of the program. The actuary shall approve in
29 writing all computational procedures used in the calculation of
30 contributions and the cost of benefits, and the board shall by

1 resolution adopt the computational procedures prior to their
2 application by the board. The rules, regulations and
3 computational procedures as so adopted from time to time and as
4 in force and effect at any time, together with tables that are
5 adopted as necessary for the calculation of contributions and
6 the cost of benefits, shall be effective as if fully set forth
7 in this chapter.

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

16 (e) Annual financial statement.--The board shall prepare and
17 have published within six months following the end of each plan
18 year a financial statement showing the condition of the trust
19 fund as of the end of the previous plan year. The board shall
20 submit the financial statement to the Governor and shall make
21 copies available to public school entities for the use of the
22 school employees and the public.

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

26 (g) Manual of regulations.--The board shall, with the advice
27 of the Office of General Counsel and the actuary, prepare within
28 six months of the commencement of a program adopted under this
29 chapter a manual incorporating rules and regulations consistent
30 with the provisions of this chapter for each participating

1 public school entity that shall make information contained in
2 the manual available to school employees. The board shall
3 thereafter advise public school entities within 90 days of any
4 changes in rules and regulations due to changes in the law or
5 due to changes in administrative policies.

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

9 (i) Program assistance.--The board may solicit and accept
10 grants, loans and other aid from any person, corporation or
11 other legal entity or from the Federal, State or local
12 government and participate in any Federal, State or local
13 government program if necessary for prudent management of the
14 program.

15 (j) Functions.--The board shall perform other functions as
16 are required for the execution of this chapter and shall have
17 the right to inspect employment records of public school
18 entities.

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

22 (1) The plan to implement the program adopted pursuant
23 to section 323(f).

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

26 (3) Membership eligibility criteria.

27 (4) The addition, deletion or significant change in
28 status of an insurance carrier, benefits administrator or
29 other major contractor in the administration of benefits, or
30 the addition, deletion or significant change in status of a

1 health care provider network.

2 (5) Any determination on the use of excess fund
3 payments.

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

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

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

10 (9) Changes in trust document, bylaws or any major
11 internal operating policies or procedures, such as claims
12 appeal procedures, not to include routine ministerial
13 functions.

14 (10) The alternative measures program created pursuant
15 to section 351(a).

16 (11) Approve employment of and contracts with
17 consultants and professional personnel.

18 (1) Duties conferred upon secretary.--The secretary of the
19 board shall supervise a staff of administrative, technical and
20 clerical employees engaged in recordkeeping and clerical
21 processing activities in maintaining files of members,
22 accounting for contributions, processing payments, preparing
23 required reports and counseling.

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

25 (a) Establishment of trust fund.--The Public School
26 Employees' Benefit Trust Fund is established in the State
27 Treasury. The money of the trust fund are appropriated on a
28 continuing basis and shall be used exclusively for the purposes
29 set forth in this chapter. All of the assets of the trust fund
30 shall be maintained and accounted for, separate from all other

1 funds and money of the Commonwealth. The Treasury Department
2 shall credit to the trust fund all money received from the
3 Department of Revenue arising from the contributions required
4 under this chapter and all earnings from investments or money of
5 the trust fund. There shall be established and maintained by the
6 board the several ledger accounts, including:

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

22 (2) The reserve account. The following shall apply:

23 (i) A restricted reserve account, or more than one
24 account if the board determines it necessary to have
25 segregated accounts, is established within the trust fund
26 for the purpose of establishing and maintaining a reserve
27 or separate reserves sufficient:

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

1 (B) to prefund the accrued liability for any
2 postretirement health care benefits earned by
3 employees enrolled in the program pursuant to section
4 333(a) (1) as the benefit is earned by the employees;
5 and

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

13 (ii) The board shall annually establish through an
14 actuary retained by the board the amount necessary, if
15 any, to establish and maintain a reserve or separate
16 reserves sufficient for the purposes of this paragraph.
17 Any money needed to maintain the reserve or separate
18 reserves established under this paragraph shall be
19 collected through the adjustment of the contribution rate
20 established pursuant to section 334(b) and (c) or through
21 other available sources.

22 (iii) The money in any reserve account may be
23 invested by the board separate from other money of the
24 trust fund. All earnings derived from investment of the
25 assets of any reserve account shall be credited to the
26 reserve account.

27 (3) The employer contribution account shall be the
28 ledger account to which shall be credited all contributions
29 made by the Commonwealth as determined in accordance with
30 section 334(e) and payments from public school entities as

1 determined in accordance with section 334(i), as well as all
2 earnings derived from the investment of the assets of the
3 employer contribution account. The total amount of the
4 Commonwealth and public school entity contributions required
5 to provide the standard benefit package on behalf of all
6 members who are school employees and their eligible health
7 care dependents shall be transferred on a monthly basis to
8 the employee benefits account.

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

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

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

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

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

22 (1) The board shall have exclusive control and
23 management of the trust fund and full power to invest and
24 manage the assets of each account of the trust fund as a
25 prudent investor would, by considering the purposes, terms
26 and other circumstances of each account and by pursuing an
27 overall investment strategy reasonably suited to the trust
28 fund.

29 (2) The board may invest in every kind of property and
30 type of investment, including, but not limited to, mutual

1 funds and similar investments, consistent with this
2 subsection.

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

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

7 (ii) the liquidity and payment requirements of the
8 account;

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

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

13 (v) the reasonable diversification of assets, taking
14 into account the purposes, terms and other circumstances
15 of the trust fund and the requirements of this section.

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

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

27 (g) Payment from trust fund.--All payments from the trust
28 fund shall be made by the State Treasurer in accordance with
29 requisitions signed by the secretary of the board or the
30 secretary's designee. The board shall reimburse the State

1 Treasurer for the cost of making disbursements from the trust
2 fund.

3 (h) Fiduciary status of board.--Board members, employees of
4 the board and agents thereof shall stand in a fiduciary
5 relationship to the members regarding the investments and
6 disbursements of any of the money of the trust fund and shall
7 not profit either directly or indirectly with respect thereto.

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

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

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

24 (2) Retain such portion of the money of the accounts in
25 cash or cash balances as the board may deem desirable,
26 without any liability or interest thereon.

27 (3) Settle, compromise or submit to arbitration all
28 claims or damages due from or to the accounts, commence or
29 defend any legal, equitable or administrative proceedings
30 brought in connection with the program and represent the

1 trust fund in all proceedings under this paragraph.

2 (k) Additional duties of secretary.--The secretary of the
3 board shall serve as liaison to the Treasury Department, the
4 Department of the Auditor General and between the board and the
5 investment counsel and the mortgage supervisor in arranging for
6 investments to secure maximum returns to the trust fund.

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

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

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

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

12 Section 338. Miscellaneous provisions.

13 (a) Construction of chapter.--

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

23 (2) The provisions of this chapter are severable and if
24 any of its provisions shall be held to be unconstitutional,
25 the decision of the court shall not affect or impair any of
26 the remaining provisions. It is hereby declared to be the
27 legislative intent that this chapter would have been adopted
28 had the unconstitutional provisions not been included.

29 (3) This subsection shall not apply to policies designed
30 primarily to provide coverage payable on a per diem, fixed

1 indemnity or nonexpense incurred basis, or policies that
2 provide accident only coverage, where payment for such policy
3 is made solely by the school employee.

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

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

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

29 (e) Collective bargaining, mediation and binding
30 arbitration.--Except as otherwise provided in subsection (f),

1 nothing in this chapter or in any other law shall be construed
2 to permit, authorize or require collective bargaining, mediation
3 or binding arbitration to create, alter or modify health
4 benefits set forth in this chapter or administered by the board
5 for school employees and their health care dependents. Further,
6 except as otherwise provided in subsection (f), nothing in this
7 chapter or in any other law shall be construed to permit,
8 authorize or require a public school entity, through collective
9 bargaining, mediation or binding arbitration, or otherwise, to
10 establish, create, alter or modify a health benefits plan or pay
11 health benefits set forth in this chapter or administered by the
12 board that modify or supplement in any way the health benefits
13 set forth in this chapter for school employees and their health
14 care dependents.

15 (f) Exceptions.--

16 (1) The parties may:

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

22 However, any health benefits provided under a collective
23 bargaining agreement entered into on or after the
24 effective date of this chapter shall contain a provision
25 that school employees covered by the agreement must join
26 the board-sponsored program as required by section 332 as
27 a condition of continuing to receive health benefits. The
28 board shall determine the appropriate timing and phase-in
29 of the program in any public school entity taking into
30 consideration the need for the public school entity to

1 properly terminate any existing health benefits
2 arrangements.

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

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

10 SUBCHAPTER E

11 ALTERNATIVE MEASURES FOR COST REDUCTION

12 Section 351. Alternative measures program.

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

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

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

29 (2) Assistance in the formation of consortia to serve
30 public school entities that do not have the option of joining

1 an existing consortium.

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

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

9 (5) Requirements for public disclosure by public school
10 entities and consortia comparing their health benefits
11 purchasing to established best practice standards in their
12 region.

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

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

23 (e) Transition plan.--If the board determines that a public
24 school entity or consortium shall be required to participate in
25 the alternative measures program, the public school entity or
26 consortium shall, within a reasonable period of time as
27 determined by the board, present to the board a transition plan
28 with a schedule for the public school entity or consortium to
29 join the alternative measures program. The board shall review
30 the transition plan with the public school entity or consortium

1 and make any necessary modifications before granting approval of
2 the plan. A public school entity or consortium shall be subject
3 to adherence to the transition plan approved by the board.

4 (f) Extensions of time.--The board shall give due
5 consideration to a transition plan submitted pursuant to
6 subsection (e) that includes a request for an extension of time.
7 Consideration shall be given to a public school entity or
8 consortium which will incur a significant financial cost or
9 penalty.

10 (g) Prohibited membership.--A public school entity that
11 participates in the Pennsylvania Employees' Benefit Trust Fund
12 shall be prohibited from participating in the alternative
13 measures program.

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

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

1 employees of the school district. Upon a school district of the
2 first class entering participation in the alternative measures
3 program pursuant to a collective bargaining agreement, continued
4 participation in the alternative measures program shall become
5 mandatory.

6 SUBCHAPTER F

7 RETIREMENT HEALTH SAVINGS PLAN

8 Section 361. Retirement health savings plan.

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

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

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

23 (3) Determination of enrollment procedures.

24 (b) Contracting authorized.--The board is authorized to
25 administer the retirement health savings plan and to contract
26 with any lawfully authorized entities to provide investment
27 services, recordkeeping, benefit payments and other functions
28 necessary for the administration of the retirement health
29 savings plan. The board may contract with the retirement system
30 to invest funds in an account that shall be maintained and

1 accounted for separately from the funds of the retirement system
2 and invested in a prudent manner intended to maximize the safety
3 of the capital, with all earnings derived from investment of the
4 assets to be credited to the retirement health savings plan.
5 Costs and expenses incurred by the retirement system in
6 administering the investment option shall be paid by the
7 retirement health savings plan.

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

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

19 (e) Contributions.--

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

28 (i) A mandatory school employee contribution
29 established as a fixed percentage of compensation may be
30 established through a collective bargaining agreement

1 between a public school entity and a bargaining group
2 representing school employees. The retirement health
3 savings plan contribution rate does not have to be
4 uniform for all groups of school employees.

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

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

22 (2) The following contributions shall be made into a
23 retirement health savings plan on behalf of a school
24 employee:

25 (i) For an employee who elects participation in the
26 retirement health savings plan, the employee's employer
27 shall make a contribution to the employee's account equal
28 to the public school entity's savings in Social Security
29 and Medicare taxes resulting from the tax-preferred or
30 tax-free treatment of contributions made by the school

1 employee under this subsection. Additional contributions
2 by a public school entity may be established through a
3 collective bargaining agreement between a public school
4 entity and a bargaining group representing school
5 employees.

6 (ii) Any other payments by the Commonwealth or
7 public school entity, including any set-aside payments to
8 be made to school employee accounts under section 334 as
9 determined by the board.

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

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

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

1 dependents.

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

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

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

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

23 (i) Advisory committee.--

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

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

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

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

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

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

7 (3) The advisory committee shall meet at least two times
8 per year and shall be consulted on plan offerings. By October
9 1 of each year, the board shall give the advisory committee a
10 statement of fees collected and the use of the fees.

11 CHAPTER 5

12 MISCELLANEOUS PROVISIONS

13 Section 501. Feasibility report.

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

20 Section 502. Effective date.

21 This act shall take effect immediately.