

ENROLLED SENATE
BILL NO. 591

BY: ROBERTS of the SENATE

and

BENSON, SATTERFIELD and COX
of the HOUSE

AN ACT RELATING TO STATE EMPLOYEE BENEFITS;
AMENDING 74 O.S. 1991, SECTIONS 1304, AS AMENDED
BY SECTION 1 OF ENROLLED HOUSE BILL NO. 2171 OF
THE 2ND SESSION OF THE 43RD OKLAHOMA
LEGISLATURE, 1306, 1320 AND SECTION 2 OF
ENROLLED SENATE BILL NO. 685 OF THE 2ND SESSION
OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATE
TO STATE EMPLOYEE BENEFITS AND THE STATE AND
EDUCATION EMPLOYEES GROUP INSURANCE BOARD;
CREATING THE STATE EMPLOYEES BENEFITS ACT AND
PROVIDING SHORT TITLE; STATING PURPOSES;
PROVIDING DEFINITIONS; CREATING THE OKLAHOMA
STATE EMPLOYEES BENEFITS COUNCIL; PROVIDING FOR
APPOINTMENT, DUTIES AND TERMS OF MEMBERS OF THE
COUNCIL; PLACING RESTRICTIONS ON COUNCIL
MEMBERSHIP; PROVIDING FOR VACANCIES; PROVIDING
FOR ELECTION OF OFFICERS; PROVIDING FOR MEETING
PLACE; AUTHORIZING SPECIAL MEETINGS AND
PROVIDING PROCEDURES; ESTABLISHING A QUORUM;
SETTING REQUIREMENT FOR OFFICIAL ACTION;
PROVIDING FOR CERTAIN RECORDS; PROVIDING FOR
REIMBURSEMENT; STATING EXCLUSION FROM OKLAHOMA
SUNSET LAW; OUTLINING DUTIES; PROVIDING FOR
APPOINTMENTS, QUALIFICATIONS, AND DUTIES OF
EXECUTIVE DIRECTOR; PROVIDING FOR EMPLOYEES;
SUBJECTING COUNCIL MEMBERS AND OTHER FIDUCIARIES
TO CERTAIN DUTIES AND RESPONSIBILITIES;
REQUIRING ESTABLISHMENT OF FLEXIBLE BENEFITS
PLAN; REQUIRING CERTAIN PARTICIPATION; PROVIDING
FOR INTERPRETATIONS; AUTHORIZING ADOPTION OF
RULES; ALLOWING FOR OUTSIDE CONTRACTS; REQUIRING
COMPETITIVE BIDDING ON CERTAIN CONTRACTS;
REQUIRING REPORT; LIMITING CERTAIN EXPENSES;
EXCLUDING CERTAIN INCOME ADJUSTMENTS FROM
WITHHOLDING; PROVIDING FOR LEGAL SERVICES;
REQUIRING CERTAIN EMPLOYEES TO BE EMPLOYEES OF
THE OFFICE OF PERSONNEL MANAGEMENT FOR CERTAIN
PURPOSES; CREATING THE EMPLOYEE BENEFITS
REVOLVING FUND; MAKING FUNDS NONFISCAL;
PROVIDING FOR DISBURSEMENT OF FUNDS; CREATING
THE BENEFITS COUNCIL ADMINISTRATION REVOLVING
FUND; RESTRICTING EXPENDITURES; STATING
ELIGIBILITY REQUIREMENTS; PROVIDING FOR
TERMINATION OF BENEFITS; DEFINING FLEXIBLE
BENEFITS ALLOWANCE; ALLOWING FOR THE CONVERSION
OF CERTAIN MONIES; ALLOWING FOR PAYMENT OF
TAXABLE COMPENSATION; REQUIRING CERTAIN
COVERAGES IN CERTAIN AMOUNTS; PROVIDING FOR

RESPONSIBILITIES OF THE OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP HEALTH INSURANCE BOARD; ALLOWING PARTICIPATION IN HEALTH MAINTENANCE ORGANIZATION; REQUIRING CERTAIN BIDDING PROCEDURES; PROVIDING FOR AND PLACING RESTRICTIONS ON ANNUAL BENEFITS ELECTION; PROVIDING FOR DEFAULT BENEFITS; PROVIDING RISK ADJUSTMENT FACTOR; PLACING REQUIREMENTS ON COUNCIL FOR CLAIMS PAYMENT; ESTABLISHING APPEALS PROCESS; AUTHORIZING THE TRANSFER OF CERTAIN FUNDS FOR CERTAIN PURPOSES; EXEMPTING CERTAIN EXPENDITURES AND EMPLOYEES FROM CERTAIN LIMITS; PROVIDING FOR CERTAIN BOARD MEMBERS TO APPOINT A DESIGNEE; MODIFYING FEE; PROVIDING FOR TRANSFER OF CERTAIN DUTIES; CHANGING CERTAIN DATES; REQUIRING REPORT; AUTHORIZING EMPLOYMENT OF ATTORNEYS; AUTHORIZING CERTAIN ENTITIES TO PARTICIPATE IN CERTAIN PROGRAM; REPEALING 74 O.S. 1991, SECTION 1304 (SECTION 10, CHAPTER 288, O.S.L. 1991), WHICH IS A DUPLICATE SECTION WHICH RELATES TO STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD; PROVIDING FOR CODIFICATION; PROVIDING FOR NONCODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1361 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma State Employees Benefits Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1362 of Title 74, unless there is created a duplication in numbering, reads as follows:

It is hereby declared that the purpose of this act is:

1. To recognize that the employee benefit needs of individual state employees differ, depending on the age, salary and family status of the employee, and that it is needful to permit participating employees to select and tailor the benefits they receive in a manner calculated to best meet the particular needs of themselves and their families;

2. To furnish state employees with choices among various employee benefits or cash compensation;

3. To provide state employees and their dependents with basic group health insurance, basic group term life insurance, and basic long-term disability insurance;

4. To provide state employees and their dependents with optional employee benefits, to include, but not be limited to, enhanced health insurance coverage, health maintenance organization services, life insurance, dental insurance and enhanced long-term disability insurance;

5. To provide state employees with reimbursement for qualifying dependent care expenses for which a dependent care tax credit is not taken, reimbursement for qualifying health care expenses not reimbursed by any other insurance plan or taken as a tax deduction,

additional benefits which are currently taxable, additional benefits which are not currently taxable, and cash compensation;

6. To provide state employees with tax sheltered income deferment plans;

7. To provide uniform benefit options for all state employees regardless of their place of residence within the State of Oklahoma;

8. To manage the provision of health care benefits in a manner that allows for the long term control of costs;

9. To provide for the coordination and design, in accordance with applicable law, of all employee benefits offered to state employees so as to increase the efficient delivery and effectiveness of those benefits;

10. To enable the state to attract and retain qualified employees by providing employee benefits which are competitive with those provided private industry;

11. To ensure compliance with the Health Maintenance Organization Act of 1973 pursuant to 42 U.S.C., Section 300e et seq.;

12. To recognize and protect the state's investment in each employee by promoting and preserving good health and longevity among state employees;

13. To recognize the service to the state by elected and appointed officials by extending to them the same benefits as are provided under the flexible benefits program to state employees; and

14. To recognize long and faithful service, and to encourage employees to remain in state service until eligible for retirement by providing employee benefits.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1363 of Title 74, unless there is created a duplication in numbering, reads as follows:

The following words and phrases as used in this act, unless a different meaning is clearly required by the context, shall have the following meanings:

1. "Basic plan" means the plan that provides the least amount of benefits each participant is required to purchase pursuant to the provisions of the plan. The basic plan shall include only health, dental, disability and life benefits;

2. "Benefit" means any of the benefits which may be purchased or is required to be purchased under the plan;

3. "Benefit plan" means the specific terms and conditions regarding a benefit which may be purchased under the plan, including the terms and conditions of any separate plan document, group insurance policy or administrative services contract entered into by the Council;

4. "Benefit price" means the number of flexible benefit dollars needed to purchase a benefit under the plan;

5. "Board" means the State and Education Employees Group Insurance Board, as created by the State and Education Employees Group Insurance Act;

6. "Code" means the Internal Revenue Code of 1986, as amended, from time to time;

7. "Compensation" means the remuneration directly paid to a participating employee by a participating employer exclusive of overtime pay, and longevity pay, calculated prior to and without regard to adjustments arising out of an employee's participation in the plan authorized pursuant to this act, or amounts deferred under the tax sheltered income deferment plans as authorized by Section 1701 et seq. of this title;

8. "Council" means the Oklahoma State Employees Benefits Council, as created by this act;

9. "Default benefit" means any benefit a participant who fails to make a proper election under the plan shall be deemed to have purchased;

10. "Dependent" means a participant's spouse or any of his or her dependents as defined in Code Section 152 and regulations promulgated thereunder;

11. "Flexible benefit allowance" means the annual amounts credited by the participating employer for each participant for the purchase of benefits under the plan;

12. "Flexible benefit dollars" means the sum of the flexible benefit allowance and pay conversion dollars allocated by a participant pursuant to provisions of the plan;

13. "Participant" means any officer or employee of a participating employer who is a member of the Oklahoma Law Enforcement Retirement System, the Oklahoma Public Employees Retirement System or the Uniform Retirement System for Justices and Judges, any officer or employee of a participating employer, whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year and whose salary and wage is equal to or greater than the hourly wage for state employees as provided in Section 284 of this title, and any employee of a participating employer who is a member of the Teachers' Retirement System of Oklahoma;

14. "Participating employer" means any state agency, board, commission, department, institution, authority, officer, bureau, council, office or other entity created by the Oklahoma Constitution or statute that is a participating employer of the Oklahoma Law Enforcement Retirement System, the Oklahoma Public Employees Retirement System or the Uniform Retirement System for Justices and Judges, but shall not include any county, county hospital, city or town, conservation district, any private or public trust in which a county, city or town participates and is the primary beneficiary, the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any school district or vocational-technical school district, or political subdivision of the state, but shall include the State Department of Education, the Oklahoma Department of Wildlife Conservation, the Oklahoma Employment Security Commission, the Teachers' Retirement System of Oklahoma and the State Department of Vocational and Technical Education;

15. "Pay conversion dollars" means amounts by which a participant elects to reduce his compensation to purchase benefits under the plan;

16. "Plan" means the flexible benefits plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions of this act;

17. "Plan year" means the twelve-month period commencing on July 1 and ending on the following June 30;

18. "Salary Adjustment Agreement" means a written agreement between a participant and participating employer whereby the employer agrees to adjust the salary of the participant by a stated amount or an amount equal to the cost of benefits selected under the plan and the participating employer agrees to contribute such amount to cover certain costs of the benefits selected by the participant to the Council; and

19. "Termination" means the termination of a participant's employment as an employee of a participating employer, whether by reasons of discharge, voluntary termination, retirement, death or reduction-in-force.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1364 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Office of Personnel Management the Oklahoma State Employees Benefits Council. The Oklahoma State Employees Benefits Council shall be composed of the five (5) following individuals:

1. The Administrator of the Office of Personnel Management;
2. Two members appointed by the Governor;
3. One member appointed by the President Pro Tempore of the Senate; and
4. One member appointed by the Speaker of the House of Representatives.

B. The initial term of office of the members appointed by the Governor shall expire on January 9, 1995. The members thereafter appointed by the Governor shall serve a term of office of four (4) years which is coterminous with the term of office of the office of the appointing authority. The initial term of office of the member appointed by the Speaker of the House of Representatives shall expire on January 11, 1994. The initial term of office of the member appointed by the President Pro Tempore of the State Senate shall expire on January 9, 1996. The members thereafter appointed by the Speaker of the House of Representatives and the President Pro Tempore of the State Senate shall serve a term of office of four (4) years.

C. No member of the Council shall be a lobbyist registered in this state as provided by law, or be employed, directly or indirectly, by any firm or health care provider under contract to the Council or Board, or any benefit program under its jurisdiction, for any goods or services whatsoever.

D. Any vacancy that occurs on the Council shall be filled for the unexpired term in the same manner as the office was previously filled.

E. The general administration and responsibility for the proper design, selection or operation of the benefits offered under the plan and for making effective the provisions of this act are hereby vested in the Council, which shall be organized immediately after a majority of the council members provided for in this section shall have been qualified and taken the oath of office.

F. The Council shall at its first meeting elect one of its members as chairman. The chairman shall preside over meetings of the Council and perform such other duties as may be required by the Council. The Council shall elect one of its members to serve as vice-chairman who shall perform the duties of the chairman in the absence of the latter or upon his inability or refusal to act. The Council shall elect one of its members to serve as secretary.

G. The Council shall hold regular meetings at least once each month in Oklahoma City, the date, time, and place thereof to be fixed by the Council. The Council shall, in July of each year, hold a regular meeting which shall be the annual meeting, at which meeting it shall elect officers.

H. Special meetings may be called upon written notice by the chairman or by agreement of any three (3) members of the Council. Notice of a special meeting shall be delivered to all members in person or by registered or certified United States mail not less than seven (7) days prior to the date fixed for the meeting; provided, however, that notice of such meeting may be waived by any member either before or after such meeting and attendance at such meeting shall constitute a waiver of notice of such meeting, unless a member participates therein solely to object to the transaction of

any business because the meeting has not been legally called or convened.

I. The majority of the members of the Council shall constitute a quorum for the transaction of business. Each Council member shall be entitled to one vote on the Council. Any official action of the Council must have three (3) votes of the members of the Council present.

J. All resolutions, proceedings, acts and determinations of the Council shall be recorded and all such records, together with such documents and instruments as may be necessary for the administration of the plan, shall be preserved in the custody of the executive director.

K. Each member of the Council shall serve without compensation except that each of the council members shall receive travel expenses in accordance with the State Travel Reimbursement Act.

L. The Council shall not be subject to the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1365 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Employees Benefits Council shall have the following duties, responsibilities and authority with respect to the administration of the plan:

1. To construe and interpret the plan, and decide all questions of eligibility in accordance with this act and the Code;

2. To select those benefits which shall be made available to participants under the plan, according to this act, and other applicable laws and regulations;

3. To retain or employ qualified agencies, persons or entities to design, develop, communicate, implement or administer the plan;

4. To prescribe procedures to be followed by participants in making elections and filing claims under the plan;

5. To prepare and distribute information communicating and explaining the plan to participating employers and participants; provided that neither the Board, health maintenance organizations, nor other third-party insurance vendors shall be directly or indirectly involved in the distribution of said communicated information to participating employers and participants;

6. To receive from participating employers and participants such information as shall be necessary for the proper administration of the plan, and any of the benefits offered thereunder;

7. To furnish the participating employers and participants such annual reports with respect to the administration of the plan as are reasonable and appropriate;

8. To keep reports of benefit elections, claims and disbursements for claims under the plan;

9. To appoint an executive director who shall serve at the pleasure of the Council. The executive director shall employ or retain such persons in accordance with this act and the requirements of other applicable law, including but not limited to actuaries and certified public accountants, as he or she deems appropriate to perform such duties as may from time to time be required under this act and to render advice upon request with regard to any matters arising under the plan subject to the approval of the Council. The executive director shall have not less than seven (7) years of group insurance administration experience on a senior managerial level or not less than three (3) years of flexible benefits experience on a senior managerial level. Any actuary or certified public accountant employed or retained under contract by the Council shall have not less than three (3) years' experience in group insurance or employee

benefits administration. The compensation of all persons employed or retained by the Council and all other expenses of the Council shall be paid at such rates and in such amounts as the Council shall approve, subject to the provisions of applicable law;

10. For plan year beginning July 1, 1993, and all future plan years, to select and contract with federally qualified health maintenance organizations under the provisions of 42 U.S.C., Section 300e et seq. or with health maintenance organizations licensed by the Department of Health pursuant to Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes for consideration by participants as an alternative to the health plans offered by the Board, and to transfer to the health maintenance organizations such funds as may be approved for a participant electing health maintenance organization alternative services;

11. To purchase any insurance deemed necessary for providing benefits under the plan, provided that the only indemnity plan selected by the Council shall be the indemnity plan offered by the Board, and to transfer to the Board such funds as may be approved for a participant electing a benefit plan offered by the Board;

12. For the plan year beginning July 1, 1993, and all future plan years, to assess and collect reasonable fees from the Board, and from such contracted health maintenance organizations and third party insurance vendors to offset the costs of administration as determined by the Council;

13. To accept, modify or reject elections under the plan in accordance with this act and the Code;

14. To promulgate election and claim forms to be used by participants; and

15. To take all steps deemed necessary to properly administer the plan in accordance with this act and the requirements of other applicable law.

B. The Council members shall discharge their duties as fiduciaries with respect to the participants and their dependents of the plan, and all fiduciaries shall be subject to the following definitions and provisions:

1. A person or organization is a fiduciary with respect to the Council to the extent that the person or organization:

- a. exercises any discretionary authority or discretionary control respecting administration or management of the Council,
- b. exercises any authority or control respecting disposition of the assets of the Council,
- c. renders advice for a fee or other compensation, direct or indirect, with respect to any participant or dependent benefits, monies or other property of the Council, or has any authority or responsibility to do so, or
- d. has any discretionary authority or discretionary responsibility in the administration of the Council;

2. The Council may purchase insurance for its fiduciaries or for itself to cover potential liability or losses occurring by reason of the act or omission of a fiduciary, but any such insurance purchased by the Council must permit recourse by the insurer against a fiduciary in the case of a breach of fiduciary obligation by such fiduciary. Nothing in this subsection shall be construed as requiring the purchase of any insurance;

3. Except for a breach of fiduciary obligation, a Council member shall not be individually or personally responsible for any action of the Council;

4. Any person who is a fiduciary with respect to the Council shall be entitled to rely on representations made by participants, participating employers, third party administrators and beneficiaries with respect to age and other personal facts concerning a participant or beneficiaries, unless said fiduciary knows said representations to be false;

5. Each fiduciary shall discharge his or her duties and responsibilities with respect to the Council and the plan solely in the interest of the participants and beneficiaries of the plan according to the terms hereof, for the exclusive purpose of providing benefits to participants and their beneficiaries, with the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

6. The duties and responsibilities allocated to each fiduciary by this act or by the Council shall be the several and not joint responsibility of each, and no fiduciary shall be liable for the act or omission of any other fiduciary unless:

- a. by his or her failure to properly administer his or her specific responsibility he or she enabled such other person or organization to commit a breach of fiduciary responsibility, or
- b. he or she knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person or organization, knowing such act or omission to be a breach, or
- c. having knowledge of the breach of another person or organization, he or she fails to make reasonable efforts under the circumstances to remedy said breach.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1366 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Council shall establish a flexible benefits plan in accordance with the provisions of this act. All participating employers shall offer the plan to their eligible employees.

B. The Council shall interpret the plan and decide any matters arising thereunder and may adopt such rules and procedures as it deems necessary, desirable or appropriate in the administration of the plan subject to the Administrative Procedures Act. All rules and decisions of the Council shall be uniformly and consistently applied to all participants in similar circumstances and shall be conclusive and binding on all persons having an interest in the plan. When making any decision or determination, the Council shall be entitled to rely upon such information as may be furnished to it by a participant, a participating employer, legal counsel, third party administrator or the management of any individual benefit plan which is incorporated in the plan.

C. The executive director, under the direction of the Council, may contract with one or more firms or organizations to administer or provide consulting services in regard to all or any portion of the plan.

The Council shall solicit proposals on a competitive bid basis from such firms or organizations according to the standards set out in the Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes. When requested by the Council, the Department of Central Services shall assist the Council in the process of selecting any contracts for the design, development, communication or implementation of the plan.

When awarding a contract for services pursuant to this subsection, the Council shall satisfy itself that the contractor has no interests which would impair its ability to perform the tasks and services required and that the contractor will exercise proper independent judgment when performing its responsibilities under this act and under the contract.

D. The Council shall implement the plan created by this act for the fiscal year beginning July 1, 1993. The Council shall submit to the Director of the Legislative Service Bureau and the Director of the Office of State Finance a report detailing the procedures and operations performed or to be performed by the Council along with the associated costs for implementing and operating the plan prior to December 1, 1992. Said report, written in cooperation with the Board, shall make specific reference to the duties and responsibilities to be transferred from the Board to the Council by identifying and listing said duties and responsibilities, the actions of the Board that have facilitated or will facilitate the transfer of said duties and responsibilities, and what actions, if any, the Council desires the Board to take in order to further the efficient and effective transfer of said duties and responsibilities.

E. Expenses included in an employee's salary adjustment agreement pursuant to the flexible benefits plan shall be limited to expenses for:

1. Premiums for any health insurance, health maintenance organization, life insurance, long term disability insurance or dental insurance offered to employees and their dependents;
2. Insurance premiums or retirement plan premiums or payments which are supplemental to insurance or retirement programs offered by the State of Oklahoma or which are paid for under salary adjustment agreements pursuant to the provisions of paragraph 1 or 2 of subsection D of Section 7.10 of Title 62 of the Oklahoma Statutes;
3. Dependent care;
4. Medical care, as defined by the Council; and
5. All other eligible benefit programs offered under Code Section 125.

F. The amount by which an employee's salary is adjusted pursuant to a salary adjustment agreement shall be excluded from income in computation of income tax withholding, federal insurance contributions act taxes, unemployment payments and workers' compensation coverage. Such amount shall be included as income in computation of state retirement contributions and benefits. Provided, if the inclusions and exclusions provided in this subsection conflict with the provisions of federal law or regulations pertaining to flexible benefits plans, the Council is authorized to modify or abolish such inclusions and exclusions.

G. The Office of Personnel Management shall provide the Council with the necessary services and facilities required to administer the programs of the Council. Legal representation shall be provided by the Office of the Attorney General through the Office of Personnel Management as provided for in Section 18 1 of Title 74 of the Oklahoma Statutes. The Office of Personnel Management shall be reimbursed by the Council for the cost of such services and facilities.

For budgetary purposes only, employees of the Council shall be considered employees of the Office of Personnel Management; however, such employees shall not for any other reason be considered employees of the Office of Personnel Management. The executive director shall be the appointing authority and agency head. All

other positions and employees shall be classified and subject to the provisions of the Merit System of Personnel Administration except actuaries and other personnel and positions in the unclassified service as provided in Sections 840.8 and 840.10 of this title.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1367 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Employee Benefits Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all flexible benefit dollars. Disbursements from this fund shall be limited solely to the payment of participant benefits as provided under this act and as determined by the Council.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1368 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Benefits Council Administration Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies properly credited and paid to the Council other than flexible benefit dollars. Disbursements from the fund shall be limited solely to the direct administrative costs of and as authorized solely by the Council.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1369 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A state employee shall be eligible to participate in the plan commencing July 1 of any plan year, provided such employee qualifies as a participant as provided in this act.

B. Except to the extent a benefit plan provides otherwise, each participant's eligibility to participate in the plan and each benefit plan shall terminate on the participant's termination.

C. Each of the benefit plans incorporated in the plan may have its own eligibility requirements for participation which differ from those set forth in the plan to govern participation in the plan. The eligibility requirements set forth in the plan relate only to participation in the plan and shall have no effect on such eligibility requirements.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1370 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Subject to the requirement that a participant must elect at least the default benefits, or the basic plan, flexible benefit dollars may be used to purchase any of the benefits offered by the Council under the flexible benefits plan. A participant's flexible benefit dollars for a plan year shall consist of the sum of (1) flexible benefit allowance credited to a participant by the participating employer, and (2) pay conversion dollars elected by a participant.

B. Each participant will be credited annually with a specified amount as a flexible benefit allowance which will be available for the purchase of benefits. The amount of the flexible benefit allowance credited to each participant shall be communicated to him or her prior to the enrollment period for each plan year. The amount of a participant's benefit allowance shall be an amount as determined by law or the amount determined by the Council based on a formula for determining a participant's benefit credits consistent

with the requirements of Code Section 125(g)(2) and regulations thereunder.

C. If a participant desires to buy benefits whose sum total of benefit prices is in excess of his or her flexible benefit allowance, the participant may elect to use pay conversion dollars to purchase such excess benefits. Pay conversion dollars may be elected through a salary reduction agreement made pursuant to the election procedures of Section 11 of this act. The elected amount shall be deducted from the participant's compensation in equal amounts each pay period over the plan year. On termination of employment during a plan year, a participant shall have no obligation to pay the participating employer any pay conversion dollars allocated to the portion of the plan year after the participant's termination of employment.

D. If a participant elects benefits whose sum total of benefit prices is less than his or her flexible benefit allowance, he or she shall receive any excess flexible benefit allowance as taxable compensation. Such taxable compensation will be paid in substantially equal amounts each pay period over the plan year. On termination during a plan year, a participant shall have no right to receive any such taxable cash compensation allocated to the portion of the plan year after the participant's termination. Nothing herein shall affect a participant's obligation to elect the minimum benefits or to accept the default benefits of the plan with corresponding reduction in the sum of his or her flexible benefit allowance equal to the sum total benefit price of such minimum benefits or default benefits.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1371 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. All participants must use a portion or all of their flexible benefit allowance to purchase at least the basic plan. On or before January 1 of each year, the Council shall design the basic plan for the next plan year to insure that the basic plan provides adequate coverage to all participants. All benefit plans, whether offered by the Board, a health maintenance organization or other vendors shall at least meet the minimum requirements set by the Council for the basic plan.

B. The Board shall offer health, dental, disability, life and dental coverage to all participants and their dependents. For health, dental, disability and life coverage, the Board shall offer plans at the basic benefit level established by the Council, and in addition, may offer benefit plans that provide an enhanced level of benefits. The Board shall be responsible for determining the plan design and the benefit price for the plans that they offer. The benefits price for the basic plan during a plan year shall not exceed the flexible benefits allowance for the same plan year. The Council shall approve the plan designs to assure that they meet the minimum benefit levels.

Nothing in this subsection shall be construed as prohibiting the Board from offering additional medical plans, provided that any medical plan offered to participants shall meet or exceed the benefits provided in the medical portion of the basic plan.

C. In lieu of electing any of the preceding medical benefit plans, a participant may elect medical coverage by any health maintenance organization made available to participants by the Council. The benefit price of any health maintenance organization shall be determined annually by a sealed bid process conducted through the Central Purchasing Division of the Department of Central Services. All plans offered by health maintenance organizations

meeting the bid requirements as determined by the Council shall be accepted. All bidders shall submit along with their bid a notarized, sworn statement as provided by Section 85.22 of this title. The Council shall have the authority to reject any plan that does not meet the bid requirements.

D. Nothing in this section shall be construed as prohibiting the Council from offering additional qualified benefit plans or currently taxable benefit plans.

E. Each employee of a participating employer who meets the eligibility requirements for participation in the flexible benefits plan shall make an annual election of benefits under the plan during an enrollment period to be held prior to the beginning of each plan year. The enrollment period dates will be determined annually and will be announced by the Council, providing the enrollment period shall end no later than thirty (30) days before the beginning of the plan year.

Each such employee shall make an irrevocable advance election for the plan year or the remainder thereof pursuant to such procedures as the Council shall prescribe. Any such employee who fails to make a proper election under the plan shall, nevertheless, be a participant in the plan and shall be deemed to have purchased the default benefits described in this section.

F. The Council shall prescribe the forms that participants will be required to use in making their elections, and may prescribe deadlines and other procedures for filing the elections.

G. Any participant who, in the first year for which he or she is eligible to participate in the plan, fails to make a proper election under the plan in conformance with the procedures set forth in this section or as prescribed by the Council shall be deemed automatically to have purchased the default benefits. The default benefits shall be the same as the basic plan benefits. Any participant who, after having participated in the plan during the previous plan year, fails to make a proper election under the plan in conformance with the procedures set forth in this section or prescribed by the Council, shall be deemed automatically to have purchased the same benefits which the participant purchased in the immediately preceding plan year, except that the participant shall not be deemed to have elected coverage under the health care reimbursement account plan or the dependent care reimbursement account plan;

H. Benefit plan contracts with the Board, health maintenance organizations, and other third party insurance vendors shall provide for a risk adjustment factor for adverse selection that may occur, as determined by the Council, based on generally accepted actuarial principles.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1372 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Council shall be responsible for making all determinations as to the rights of any participant or any beneficiary of a participant to receive amounts under the plan except to the extent a benefit plan provides to the contrary. The Council may prescribe forms and procedures for making claims for benefits under the plan to the extent such forms or procedures are not prescribed by the terms of a benefit plan. Each person making a claim for benefits under the plan shall also furnish the Council with such documents, evidence, data or information in support of such claim as the Council considers necessary or desirable. If any claim for benefits under the plan is wholly or partially denied, the claimant shall be given notice in writing of such denial within a reasonable period of

time, but no later than forty-five (45) days after the claim is filed. Such notice shall set forth the following information:

1. The specific reason or reasons for the denial;
2. Specific reference to pertinent plan provisions on which the denial is based;
3. A description of any additional materials or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
4. An explanation that a full and fair review by the Council of the decision denying the claim may be requested by the claimant or his or her authorized representative by filing with the Council, within ninety (90) days after notice of denial has been received, a written request for such hearing; and
5. If such request is so filed, the claimant or his authorized representative may review pertinent documents and submit issues and comments in writing within the same ninety-day period specified in paragraph 4 of this section. The hearing before the Council reviewing the Council's claim denial shall be held no later than sixty (60) days after the Council's receipt of the request for hearing, unless special circumstances require an extension of time by the claimant, in which case a hearing shall be held not later than one hundred twenty (120) days after receipt of the request for hearing. The decision on the hearing shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and shall include specific references to the pertinent plan provisions on which the decision is based.

SECTION 13. For the fiscal year ending June 30, 1993, the Legislative Service Bureau, upon authorization of the President Pro Tempore of the Senate and the Speaker of the House of Representatives, is authorized to transfer funds to the Office of Personnel Management to be used for making modifications to the agency payroll system necessary for the orderly implementation of the provisions of the Oklahoma State Employees Benefits Act. Expenditures made by the Office of Personnel Management from any funds transferred pursuant to this section shall be in addition to budgetary limitations on expenditures established by law.

SECTION 14. For the fiscal year ending June 30, 1993, employees of the Council and expenditures of the Council shall be in addition to budgetary limitations on employees and expenditures established by law.

SECTION 15. AMENDATORY 74 O.S. 1991, Section 1304, as amended by Section 1 of Enrolled House Bill No. 2171 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1304. (1) There is hereby created the State and Education Employees Group Insurance Board which shall consist of seven (7) members as follows: The State Insurance Commissioner, or his or her designee who shall be an employee of the Insurance Department, two members appointed by the Governor, two members appointed by the Speaker of the House of Representatives, and two members appointed by the President Pro Tempore of the Senate. The appointed members shall each receive compensation of Five Hundred Dollars (\$500.00) per month. Appointed members who fail to attend a regularly scheduled monthly meeting of the Board shall not receive the related monthly compensation. In the event an appointed member does not attend at least seventy-five percent (75%) of the regularly scheduled monthly meetings of the Board during a calendar year, the appointing authority may remove said member. A member may also be removed for any other cause as provided by law. A vacancy in the

office of the appointed member shall be filled for the unexpired term of office in the same manner as the original appointment.

(2) The initial term of office of the members appointed by the Governor shall expire on January 14, 1991. The members thereafter appointed by the Governor shall serve a term of office of four (4) years which is coterminous with the term of office of the office of the appointing authority.

(3) The initial term of office of one of the members appointed each by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate shall be for the period ending June 30, 1992. The initial term of office of the other member appointed each by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate shall be for the period ending June 30, 1994. Thereafter, the term of office of the members appointed by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate shall be four (4) years.

(4) The appointed members shall:

(a) have demonstrated professional experience in investment or funds management, public funds management, public or private group health or pension fund management, or group health insurance management; or

(b) be licensed to practice law in this state and have demonstrated professional experience in commercial matters; or

(c) be licensed by the Oklahoma State Board of Public Accountancy to practice in this state as a public accountant or a certified public accountant.

In making appointments that conform to the requirements of this subsection, at least one (1) but not more than two (2) members shall be appointed each from paragraphs (b) and (c) of this subsection by the combined appointing authorities.

(5) No appointed member of the State and Education Employees Group Insurance Board shall be a lobbyist registered in this state as provided by law, a health care provider, a plan participant, be employed, directly or indirectly, by any insurance company or carrier, or health care provider, or be employed directly or indirectly, by any firm under contract to the Board for any goods or services whatsoever.

(6) The State and Education Employees Group Insurance Board shall not be subject to the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of this title.

(7) The Attorney General shall furnish the Board with legal representation.

(8) The Court Administrator shall designate grievance panel members as shall be necessary. The members of the grievance panel shall consist of two attorneys licensed to practice law in this state and one state licensed health care professional or health care administrator who has at least three (3) years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career. The state health care professional shall be appointed by the Governor.

(9) The Board shall at its first meeting elect one of its members as chairman. He shall preside over meetings of the Board and perform such other duties as may be required by the Board.

(10) The Board shall elect another member to serve as vice-chairman who shall perform the duties of the chairman in the absence of the latter or upon his inability or refusal to act.

(11) The Board shall also elect a secretary who shall keep minutes of all meetings and who shall certify to actions of the Board.

(12) The Board shall adopt rules and regulations requiring payment for medical and dental services and treatment rendered by duly licensed hospitals, physicians and dentists.

(13) The State and Education Employees Group Insurance Board may enter into a contract with out-of-state providers in connection with any PPO or hospital or medical network plan which shall include, but not be limited to, special care facilities and hospitals outside the borders of the State of Oklahoma. The contract for out-of-state providers shall be identical to the in-state provider contracts.

(14) The Board shall contract with the Oklahoma Medical Center and the George Nigh Rehabilitation Institute for the provision of their services, on the same basis as other hospitals and providers in the state network, provided however the Board shall have discretion to reduce the co-payment and the deductibles up to fifty percent (50%) at the Oklahoma Medical Center and the George Nigh Rehabilitation Institute, and their medical staffs. For purposes of this subsection, the phrase "Oklahoma Medical Center" shall be limited to the Oklahoma Memorial Hospital, the Children's Hospital of Oklahoma, the O'Donoghue Rehabilitation Institute, and the Child Study Center.

(15) The Administrator shall appoint an advisory committee to the State and Education Employees Group Insurance Board. The advisory committee shall consist of seven (7) members. Of the members appointed to the advisory committee, at least one member must be an active state employee, at least one member must be a retired state employee, at least one member must be an active education employee, at least one member must be a retired education employee, and at least one member must be either an active county employee or a retired county employee.

SECTION 16. AMENDATORY 74 O.S. 1991, Section 1306, is amended to read as follows:

Section 1306. (1) The State and Education Employees Group Insurance Board shall administer and manage the group insurance plans and the flexible benefits plan and, subject to the provisions of the State and Education Employees Group Insurance Act, Section 1301 et seq. and the State Employees Flexible Benefits Act, Section 1341 et seq. of this title, shall have the following powers and duties:

(a) The preparation of specifications for such insurance plans as the Board may be directed to offer;

(b) The authority and duty to request bids through the Purchasing Division of the Office of Public Affairs, for a contract to be the claims administrator for all or any part of such insurance and benefit plans as the Board may be directed to offer;

(c) The determination of the methods of claims administration under such insurance and benefit plans as the Board may be directed to offer;

(d) The determination of the eligibility of employees and their dependents to participate in each of the Group Insurance Plans and in such other insurance and benefit plans as the Board may be directed to offer and the eligibility of employees other than education employees to participate in the Life Insurance Plan provided that evidence of insurability shall not be a requirement in determining an employee's initial eligibility;

(e) The determination of the amount of employee payroll deductions and the responsibility of establishing the procedure by which such deduction shall be made;

(f) The establishment of a grievance procedure by which a three-member grievance panel shall act as an appeals body for

complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters. Except for grievances settled to the satisfaction of both parties prior to a hearing, any person who requests in writing a hearing before the grievance panel shall receive a hearing before the panel. The grievance procedure provided by this paragraph shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, Sections 301 through 325 of Title 75 of the Oklahoma Statutes including provisions thereof for review of agency decisions by the district court. The grievance panel shall schedule a hearing regarding the allowance and payment of claims, eligibility and other matters within sixty (60) days from the date the grievance panel receives a written request for a hearing unless the panel orders a continuance for good cause shown. Upon written request by the insured employee to the grievance panel and received not less than ten (10) days before the hearing date, the grievance panel shall cause a full stenographic record of the proceedings to be made by a competent court reporter at the insured employee's expense;

(g) The continuing study of the operation of such insurance and benefit plans as the Board may be directed to offer including such matters as gross and net costs, administrative costs, benefits, utilization of benefits, and claims administration;

(h) The administration of the Health, Dental and Life Insurance Reserve Fund or Funds, the Flexible Benefits Revolving Fund and the Education Employees Group Insurance Reserve Fund;

(i) The auditing of the claims paid pursuant to the provisions of the State and Education Employees Group Insurance Act, the State Employees Flexible Benefits Act and the State Employees Disability Program Act;

(j) (1) To select and contract with federally qualified Health Maintenance Organizations under the provisions of 42 U.S.C., Section 300e et seq. for consideration by employees as an alternative to the state self-insured health plan, and to transfer to the HMOs such funds as may be approved for an employee electing HMO alternative services.

(2) HMO contracts shall provide for a risk adjustment factor for adverse selection, that may occur as determined by the Board, based on generally accepted actuarial principles;

(k) ~~To~~ For the fiscal year beginning July 1, 1992, to assess and collect reasonable fees a four percent (4%) fee from such contracted and federally qualified HMOs to offset the costs of administration, and to appropriate and pay to the Benefits Council Administration Fund an amount equal to fifty percent (50%) of said fee within ten (10) days of collection;

(l) To contract for re-insurance, catastrophic insurance, or any other type of insurance deemed necessary by the Board;

(m) The Board, pursuant to the provisions of Sections 301 through 325 of Title 75 of the Oklahoma Statutes, shall adopt such rules and regulations consistent with the provisions of the State and Education Employees Group Insurance Act as it deems necessary to carry out its statutory duties and responsibilities;

(n) The Board shall contract for claims administration services with a private insurance carrier or a company experienced in claims administration of any insurance that the Board may be directed to offer. No contract for claims administration services shall be made unless such contract has been offered for bids through the Purchasing Division of the Office of Public Affairs. ~~By July 1, 1991, the~~ The Board shall contract with a private insurance carrier

or other experienced claims administrator to process claims with software that is normally used for its customers;

(o) The Board shall contract for utilization review services with a company experienced in utilization review, data base evaluation, market research, and planning and performance of the health insurance plan;

(p) The Board shall approve the amount of employee premiums and dependent premiums for such insurance plans as the Board shall be directed to offer for each fiscal year no later than ~~December~~ March 1 of the previous fiscal year. The Board shall submit notice of the amount of employee premiums and dependent premiums along with an actuarial projection of the upcoming fiscal year's enrollment, employee contributions, employer contributions, investment earnings, paid claims, internal expenses, external expenses and changes in liabilities to the Director of the Office of State Finance and the Director of the Legislative ~~Services~~ Service Bureau no later than ~~December~~ March 1 of the previous fiscal year.

(q) Before December 1 of each year the Board shall submit to the Director of the Office of State Finance a report outlining the financial condition for the previous fiscal year of all insurance plans offered by the Board. The report shall include a complete explanation of all reserve funds and the actuarial projections on the need for such reserves. The actuarial projection report shall include and disclose an estimate of the future trend of medical costs, the impact from HMO enrollment, antiselection, changes in law, and other contingencies that could impact the financial status of the plan. The Director of the Office of State Finance shall make written comment on the report and shall provide such comment, along with the report submitted by the Board, to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Chairman of the Oklahoma State Employees Benefits Council by January 15;

~~(q)~~ (r) The Board shall establish a prescription drug card network for the fiscal year beginning July 1, 1990;

~~(r)~~ (s) The Board shall have the authority to intercept monies owing to plan participants from other state agencies, when those participants in turn, owe money to the Board. The Board shall be required to adopt rules and regulations ensuring the participants due process of law;

~~(s)~~ (t) The Board is authorized to make available to eligible employees supplemental health care benefit plans to include but not be limited to long-term care, deductible reduction plans and employee co-payment reinsurance. Premiums for said plans shall be actuarially based and the cost for such supplemental plans shall be paid by the employee; and

~~(t)~~ (u) There is hereby created as a joint committee of the State Legislature, the Joint Liaison Committee on State and Education Employees Group Insurance Benefits, which Joint Committee shall consist of three members of the Senate to be appointed by the President Pro Tempore thereof and three members of the House of Representatives to be appointed by the Speaker thereof. The Chairman and Vice Chairman of the Joint Committee shall be appointed from the membership thereof by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, respectively, one of whom shall be a member of the Senate and the other shall be a member of the House of Representatives. At the beginning of the first regular session of each Legislature, starting in 1991, the Chairman shall be from the Senate; thereafter the chairmanship shall alternate every two (2) years between the Senate and the House of Representatives.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall function as a committee of the State Legislature when the Legislature is in session and when the Legislature is not in session. Each appointed member of said committee shall serve until his or her successor is appointed.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefit shall serve as a liaison with the State and Education Employees Group Insurance Board regarding advice, guidance, policy, management, operations, plans, programs and fiscal needs of said Board. Said Board shall not be bound by any action of the Joint Committee.

(v) For the fiscal year beginning July 1, 1993, certain duties and responsibilities of the Board shall be transferred to the Oklahoma State Employees Benefits Council pursuant to the provisions of the Oklahoma State Employees Benefits Act. During the fiscal year beginning July 1, 1992, the Board shall cease activities related to the implementation of said transferred duties and responsibilities for the next fiscal year and implement all reasonable actions to ensure the effective and efficient transfer of said duties and responsibilities to the Oklahoma State Employees Benefits Council.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 1320, is amended to read as follows:

Section 1320. A. The Board is authorized to hire and appoint an administrator who shall be in the unclassified service.

The Board may hire a director of internal audit and ~~attorneys~~ one attorney licensed to practice law in this state, which positions shall be in the unclassified service. ~~Attorneys~~ The attorney hired by the Board shall have not less than five (5) years of experience in matters related to the insurance industry. The Board shall directly supervise the duties of the director of internal audit, and shall not delegate said supervision to the Administrator or any other employee of the Board. In addition to duties assigned by the Board, the director of internal audit is authorized to audit all records of health providers and pharmacists who enter into any contract with the Board in order to ensure compliance with said contract provisions.

B. The administrator shall employ such persons as are necessary to administer the provisions of the State and Education Employees Group Insurance Act, the State Employees Flexible Benefits Act and the State Employees Disability Program Act. The administrator shall hire two (2) deputy administrators, a maximum of two (2) attorneys, and seven (7) assistant administrators, which positions shall be in the unclassified service. The administrator or one of the deputy administrators shall have not less than seven (7) years of group health insurance administration experience on a senior managerial level.

C. The Board shall not contract for private legal counsel except for extraordinary situations other than normal day to day situations, and when approved by the Attorney General. The Board may contract with a nonemployee consulting actuary, a nonemployee medical consultant and a nonemployee dental consultant subject to competitive bid at least every three (3) years. The Board may contract with health care providers for a level of reimbursement for the payment of claims incurred by the plan participants. The Board may at its request use the services of the office of the Attorney General and the actuarial services of any actuary employed by the State Board for Property and Casualty Rates and may also seek the advice and counsel of the Insurance Commissioner of the State of Oklahoma or any employee of the Insurance Commissioner's office.

SECTION 18. AMENDATORY Section 2 of Enrolled Senate Bill No. 685 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 2. The Board shall develop a flexible benefits plan, in accordance with the provisions of Section 1344 of Title 74 of the Oklahoma Statutes, to be made available to the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, counties, municipalities, political subdivisions or school districts. If the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any individual county, municipality, political subdivision or school district chooses to participate in the plan, it must, by a resolution adopted by the governing body, adopt a written flexible benefits plan and notify the Board in order to participate in the program. All full-time employees of a participating entity shall be given the option of participating in the program. The Board is authorized to contract with the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any county, municipality, political subdivision or school district within this state for providing a flexible benefits plan and is authorized to assess charges to participating entities to cover the costs associated with administering this program.

Section 19. REPEALER 74 O.S. 1991, Section 1304 (Section 10, Chapter 288, O.S.L. 1991), is hereby repealed.

SECTION 20. The provisions of Sections 13 and 14 shall not be codified in the Oklahoma Statutes.

SECTION 21. This act shall become effective July 1, 1992.

SECTION 22. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 29th day of May, 1992.

President of the Senate

Passed the House of Representatives the 29th day of May, 1992.

Speaker of the House of Representatives