

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1841

Session of  
2007

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INTRODUCED BY SURRA, NICKOL, SHIMKUS, McILVAINE SMITH, WANSACZ, DePASQUALE, McILHATTAN, McCALL, ARGALL, BELFANTI, BENNINGHOFF, BEYER, BIANCUCCI, BUXTON, CAPPELLI, COSTA, CRUZ, DeWEESE, FREEMAN, GIBBONS, GILLESPIE, GINGRICH, GODSHALL, GRUCELA, HARKINS, JAMES, JOSEPHS, KING, KORTZ, KOTIK, LENTZ, MACKERETH, MICOZZIE, R. MILLER, MOUL, PETRONE, RAMALEY, SAINATO, SAYLOR, SOLOBAY, SONNEY, THOMAS, WALKO, WATSON, YOUNGBLOOD, YUDICHAK, GERGELY, SCAVELLO, STURLA, SCHRODER, HORNAMAN, GOODMAN, KESSLER, CUTLER, PAYTON, GEORGE AND GERBER, OCTOBER 4, 2007

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AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 4, 2008

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AN ACT

1 Amending Title 24 (Education) of the Pennsylvania Consolidated  
2 Statutes, further providing for taxation, attachment and  
3 assignment of funds; establishing the Public School  
4 Employees' Benefit Board and providing for its powers and  
5 duties; requiring a school employee benefits study and  
6 evaluation; providing for a Statewide health benefits program  
7 for public school employees, for alternative measures for  
8 cost reduction and for a retirement health savings plan; and  
9 establishing the Public School Employees' Benefit Trust Fund.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 8533(a) of Title 24 of the Pennsylvania  
13 Consolidated Statutes is amended to read:

14 § 8533. Taxation, attachment and assignment of funds.

15 (a) General rule.--Except as provided in subsections (b),  
16 (c) and (d)[,] and section 9337(c) (relating to

1 misrepresentation, refusal to cooperate and fraud), the right of  
2 a person to a member's annuity, a State annuity, or retirement  
3 allowance, to the return of contributions, any benefit or right  
4 accrued or accruing to any person under the provisions of this  
5 part, and the moneys in the fund are hereby exempt from any  
6 State or municipal tax, and exempt from levy and sale,  
7 garnishment, attachment, or any other process whatsoever, and  
8 shall be unassignable.

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10 Section 2. Title 24 is amended by adding a chapter to read:

11 CHAPTER 93

12 SCHOOL EMPLOYEE BENEFITS

13 Subchapter

14 A. Preliminary Provisions

15 B. Public School Employees' Benefit Board

16 C. Study and Options Election

17 D. Statewide Health Benefits Program

18 E. Alternative Measures for Cost Reduction

19 F. Retirement Health Savings Plan

20 SUBCHAPTER A

21 PRELIMINARY PROVISIONS

22 Sec.

23 9301. Short title of chapter.

24 9302. Definitions.

25 § 9301. Short title of chapter.

26 This chapter shall be known and may be cited as the Public  
27 School Employees' Benefit Act.

28 § 9302. Definitions.

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

1 context clearly indicates otherwise:

2 "Alternate health care plan." A plan or plan design  
3 established by the Public School Employees' Benefit Board  
4 pursuant to section 9331(f)(2)(ii) (relating to health benefits  
5 program) which the board in its exclusive authority determines  
6 to contain benefits equivalent to the standard benefit package.

7 "Alternative measures program." A program created by the  
8 Public School Employees' Benefit Board in accordance with the  
9 provisions of Subchapter E (relating to alternative measures for  
10 cost reduction).

11 "Annuitant." Any "annuitant" or "disability annuitant" as  
12 defined in section 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 9311 (relating to Public School Employees' Benefit  
23 Board).

24 "Board member." A person designated or appointed to the  
25 Public School Employees' Benefit Board pursuant to section  
26 9311(a) (relating to Public School Employees' Benefit Board).

27 "Consortium." A coalition of two or more geographically  
28 defined public school entities, or a coalition of one or more  
29 geographically defined public school entities and one or more  
30 political subdivisions as defined by 61 Pa. Code § 315.2

(relating to definitions), formed for the purpose of pooling combined purchasing of the individual participants in order to increase bargaining power to obtain health care benefits.

"Contribution rate." The rate established by the Public School Employees' Benefit Board in accordance with section 9334(b) and (c) (relating to partnership for stable benefits funding) used to determine contributions by the Commonwealth and public school entities for the funding of the standard benefit package for eligible individuals in each health care region.

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

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

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

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

"Employee benefits account." A ledger account of the Public School Employees' Benefit Trust Fund created in section 9336(a)(1) (relating to Public School Employees' Benefit Trust Fund).

"Employer contribution account." A ledger account of the Public School Employees' Benefit Trust Fund created in section 9336(a)(3) (relating to Public School Employees' Benefit Trust

1 Fund).

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

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

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

19 "Long-term substitute." A school employee who is  
20 substituting for a ~~professional or temporary professional~~ AN <—  
21 OFFICER, ADMINISTRATOR OR employee of a public school entity for  
22 a qualifying period of time to be determined by the Public  
23 School Employees' Benefit Board.

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

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

4             (1) A school employee.

5             (2) An annuitant.

6             (3) A transfer employee.

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

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

13    "Optional benefit package." A plan or plan design  
14    established by the Public School Employees' Benefit Board  
15    pursuant to section 9331(f)(2)(iii) (relating to health benefits  
16    program) which includes specific health care services that are  
17    not part of the standard benefit package.

18    "Participant account holder." A school employee  
19    participating in a retirement health savings plan or a school  
20    employee who retires or otherwise terminates employment with a  
21    public school entity and becomes eligible to be reimbursed from  
22    the employee's retirement health savings plan account for the  
23    Internal Revenue Code of 1986 qualified health-related expenses.  
24    The term shall also include the health care dependent of a  
25    school employee who succeeds in interest to a deceased school  
26    employee and becomes eligible to be reimbursed for health-  
27    related expenses from the school employee's account.

28    "Phase-in period." The period of program operation in any  
29    health care region from the time the Public School Employees'  
30    Benefit Board begins implementation of mandatory participation

1 under section 9332 (relating to mandatory participation and  
2 optional membership) until the commencement of the first plan  
3 year in which 75% of school districts in that region are  
4 participating in the program.

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

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

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

17 "Qualified majority vote." A vote by the Public School  
18 Employees' Benefit Board requiring the support of a majority of <—  
19 the members of the board present and voting, with the support of  
20 at least two board members described in section 9311(a)(1)  
21 (relating to Public School Employees' Benefit Board), at least  
22 two board members appointed under section 9311(a)(2) and at  
23 least two board members appointed under section 9311(a)(3) to  
24 pass. THREE-FOURTHS OF ALL THE MEMBERS THEREOF. <—

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

30 "Reserve account." A ledger account of the Public School

Employees' Benefit Trust Fund created in section 9336(a)(2)  
(relating to Public School Employees' Benefit Trust Fund).

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

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

"Standard benefit package." The benefit package established  
by the Public School Employees' Benefit Board pursuant to  
section 9331(f)(1) (relating to health benefits program).

"SUPPLEMENTAL BENEFITS." DENTAL CARE, VISION CARE AND  
EMPLOYEE ASSISTANCE PROGRAM BENEFITS THAT MAY BE OFFERED IN  
ADDITION TO MEDICAL AND HOSPITAL SERVICES AND PRESCRIPTION DRUG  
BENEFITS.

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

"Trust fund." The Public School Employees' Benefit Trust  
Fund created in section 9336 (relating to Public School



1 Employees' Benefit Trust Fund).

2 SUBCHAPTER B

3 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

4 Sec.

5 9311. Public School Employees' Benefit Board.

6 9312. Administrative duties of board.

7 § 9311. Public School Employees' Benefit Board.

8 (a) Status and membership.--The board shall be an  
9 independent administrative board and shall consist of the  
10 following board members:

11 (1) The Secretary of the Budget, the Secretary of <—  
12 Education, the Secretary of Administration and the Insurance  
13 Commissioner, all of whom shall serve ex officio.

14 (2) Four persons representing school employees who are <—  
15 covered by the program in an approximate proportion to the  
16 percentage of actual members of those unions working as  
17 school employees in public school entities that will be  
18 covered by the program when it is fully operational,  
19 appointed by the Governor and chosen from a list of  
20 candidates submitted by those school employee unions. The  
21 proportional calculation of membership under this paragraph  
22 shall not include members of those unions working as school  
23 employees in a school district of the first class, as  
24 classified pursuant to section 202 of the Public School Code,  
25 until such school district opts to participate in the program  
26 under the terms provided pursuant to section 9332(d)  
27 (relating to mandatory participation and optional  
28 membership).

29 (2) THE PRESIDENT PRO TEMPORE OF THE SENATE OR HIS <—  
30 DESIGNEE, THE MINORITY LEADER OF THE SENATE OR HIS DESIGNEE,

1 THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR HIS  
2 DESIGNEE AND THE MINORITY LEADER OF THE HOUSE OF  
3 REPRESENTATIVES OR HIS DESIGNEE.

4 (3) TEN PERSONS REPRESENTING SCHOOL EMPLOYEES WHO ARE  
5 COVERED BY THE PROGRAM APPOINTED IN THE FOLLOWING MANNER:

6 (I) EIGHT PERSONS REPRESENTING SCHOOL EMPLOYEES WHO  
7 ARE COVERED BY THE PROGRAM IN AN APPROXIMATE PROPORTION  
8 TO THE PERCENTAGE OF PROFESSIONAL EMPLOYEES REPRESENTED  
9 IN COLLECTIVE BARGAINING BY SCHOOL EMPLOYEE UNIONS  
10 WORKING IN PUBLIC SCHOOL ENTITIES THAT WILL BE COVERED BY  
11 THE PROGRAM WHEN IT IS FULLY OPERATIONAL, APPOINTED BY  
12 THE GOVERNOR AND CHOSEN FROM A LIST OF CANDIDATES  
13 SUBMITTED BY THOSE SCHOOL EMPLOYEE UNIONS; PROVIDED THAT  
14 NO LESS THAN ONE PERSON SHALL BE APPOINTED BY THE  
15 GOVERNOR FROM A LIST OF CANDIDATES SUBMITTED BY ANY  
16 SCHOOL EMPLOYEE UNION THAT ON THE EFFECTIVE DATE OF THIS  
17 CHAPTER REPRESENTS IN COLLECTIVE BARGAINING MORE THAN  
18 4,000 PROFESSIONAL EMPLOYEES WORKING IN PUBLIC SCHOOL  
19 ENTITIES THAT WILL BE COVERED BY THE PROGRAM WHEN IT IS  
20 FULLY OPERATIONAL. THE PROPORTIONAL CALCULATION OF  
21 MEMBERSHIP UNDER THIS PARAGRAPH SHALL NOT INCLUDE  
22 PROFESSIONAL EMPLOYEES REPRESENTED IN COLLECTIVE  
23 BARGAINING BY SCHOOL EMPLOYEE UNIONS WORKING IN A SCHOOL  
24 DISTRICT OF THE FIRST CLASS, AS CLASSIFIED PURSUANT TO  
25 SECTION 202 OF THE PUBLIC SCHOOL CODE, UNTIL SUCH SCHOOL  
26 DISTRICT OPTS TO PARTICIPATE IN THE PROGRAM UNDER THE  
27 TERMS PROVIDED PURSUANT TO SECTION 9332(D) (RELATING TO  
28 MANDATORY PARTICIPATION AND OPTIONAL MEMBERSHIP)).

29 (II) TWO PERSONS REPRESENTING SCHOOL EMPLOYEES WHO  
30 ARE COVERED BY THE PROGRAM REPRESENTED IN COLLECTIVE

BARGAINING BY SCHOOL EMPLOYEE UNIONS OTHER THAN SCHOOL  
EMPLOYEE UNIONS WITHIN SUBPARAGRAPH (I) APPOINTED BY THE  
GOVERNOR AND CHOSEN FROM A LIST OF CANDIDATES SUBMITTED  
BY THOSE SCHOOL EMPLOYEE UNIONS OTHER THAN SCHOOL  
EMPLOYEE UNIONS WITHIN SUBPARAGRAPH (I).

(III) FOR PURPOSES OF THIS SECTION "SCHOOL EMPLOYEE  
UNIONS" SHALL INCLUDE A STATEWIDE AFFILIATE OF SUCH  
SCHOOL EMPLOYEE UNIONS.

~~(3)~~ (4) Four persons representing public school entity <—  
employers appointed by the Governor and chosen from a list of  
candidates submitted by the Pennsylvania School Boards  
Association. At least one of the school entity employer  
representatives initially named to the board shall be a  
member of a consortium board.

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

(b) Terms.--

(1) Two board members appointed under subsection (a)(2),  
as designated by the Governor, shall serve a term of two  
years, and two board members appointed under subsection  
(a)(2), as designated by the Governor, shall serve a term of  
four years.

(2) Two board members appointed under subsection (a)(3),  
as designated by the Governor, shall serve a term of two  
years, and two board members appointed under subsection  
(a)(3), as designated by the Governor, shall serve a term of  
four years, except that the Pennsylvania School Boards

1 Association shall designate for which initial term the  
2 representative who is a member of a consortium board shall  
3 serve.

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

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

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

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

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

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

24     (h) Duties of the board.--The board shall have the power and  
25 authority to carry out the duties established by this chapter,  
26 including the design, implementation and administration of the  
27 school employee health benefits study pursuant to Subchapter C  
28 (relating to study and options election) and either the  
29 Statewide health benefits program if approved pursuant to  
30 section 9323 (relating to plan adoption) or the alternative

measures program if created pursuant to section 9351 (relating to alternative measures program).

§ 9312. Administrative duties of board.

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

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

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

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

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

(c) Professional personnel.--The board may employ or contract with consultants and other professional personnel as needed TO CONDUCT THE SCHOOL EMPLOYEE HEALTH BENEFITS STUDY AND EVALUATION PURSUANT TO SUBCHAPTER C (RELATING TO STUDY AND OPTIONS ELECTION) AND to operate the program, including third-

<—

party administrators, managed care managers, chief medical examiners, actuaries, investment advisors and managers, legal counsel and other professional personnel as it deems advisable. The board may also contract for the services of any national or State banking corporation or association having trust powers, with respect to carrying out the business and other matters of the program.

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

(1) from the General Fund; or

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

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

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

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

(h) Temporary regulations.--

(1) Notwithstanding any other provision of law to the contrary and in order to facilitate the prompt implementation of this chapter, regulations promulgated by the board during the two years following the effective date of this chapter shall be deemed temporary regulations which shall expire no later than three years following the effective date of this

chapter or upon promulgation of regulations as generally provided by law. The temporary regulations shall not be subject to:

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

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

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

(i) Postretirement benefits study.--The board shall conduct an assessment of public school entity postretirement health care liability in this Commonwealth and publish a report providing generalized data regarding the scope of the liability to be borne by public school entities and measures implemented by public school entities to prepare for this liability. This assessment may be conducted in conjunction with the study required by section 9321 (relating to school employee health benefits study and evaluation).

#### SUBCHAPTER C

#### STUDY AND OPTIONS ELECTION

Sec.

9321. School employee health benefits study and evaluation.

9322. Board review and election.

9323. Plan adoption.

§ 9321. School employee health benefits study and evaluation.

(a) Study.--The board shall conduct a thorough evaluation of



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

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

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

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

(3) The nature of health care purchasing arrangements.

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

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

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

(7) The amount and basis of any school employee cost-

1     sharing, both individual and in aggregate.

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

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

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

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

been extenuating circumstances preventing the timely submission of all necessary information. In considering an appeal, the secretary may grant an extension of time for the public school entity or consortium to provide the necessary information before the suspension is instituted. The board is authorized and shall authorize school entities and consortia to enter into agreements with entities providing or administering coverage for health care benefits under this chapter for the purpose of carrying out the provisions of this section.

(e) Health benefit entities.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21          (f) Confidentiality.--Any data requested by or provided to  
22          the board pursuant to this section shall comply with the  
23          standards for privacy established pursuant to the Health  
24          Insurance Portability and Accountability Act of 1996 (Public Law  
25          104-191, 110 Stat. 1936).

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

records or information that would otherwise be available from original sources shall not be construed as immune from discovery or use in any civil or administrative action or proceeding merely because they were presented to the board. Nothing in this subsection shall be construed to prevent publication or dissemination of the aggregate study findings.

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

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

(j) Original source document.--In the event an original source document as set forth in subsection (g) is determined by a court of competent jurisdiction to be unavailable from the entity providing health insurance or health care coverage in a

1 civil action or proceeding, then, in that circumstance alone,  
2 the board may be required pursuant to a court order to release  
3 that original source document to the party identified in the  
4 court order.

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

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

20 § 9322. Board review and election.

21 (a) Options assessment.--Upon collection of the necessary  
22 information, the board shall evaluate existing public school  
23 entity health care arrangements, examine options that would  
24 aggregate, either Statewide or regionally, health care coverage  
25 for public school employees, assess possible cost-management  
26 improvements and solicit input from public school entities and  
27 consortia identified with best practice standards. The board  
28 shall investigate the creation of a Statewide health benefits  
29 program as provided for in section 9331 (relating to health  
30 benefits program) with the goal of improving the overall

affordability of providing health care coverage for public school employees. The cost projections shall be predicated on a plan that provides quality health care benefits at a level consistent with those now provided to most school employees through existing collective bargaining contracts and offers coverage to school employees and other eligible individuals.

(b) Election to proceed with program.--No later than ten months after the board is constituted, unless a request by the board for an extension is granted by the Governor, the board shall decide whether to implement a Statewide health benefits program, as provided for in section 9331, or to implement an alternative measures program, as provided for in section 9351 (relating to alternative measures program), to reduce health coverage costs for public school entities. The board's election to implement a Statewide health benefits program OR TO IMPLEMENT AN ALTERNATIVE MEASURES PROGRAM shall require approval by a qualified majority vote. Upon election to proceed with a Statewide health benefits program, the board shall develop a plan for adoption, pursuant to section 9323 (relating to plan adoption).

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

§ 9323. Plan adoption.



1     (a) Statewide health benefits program adoption.--Within  
2     three months of electing to proceed with the Statewide health  
3     benefits program, pursuant to section 9322(b) (relating to board  
4     review and election), the board shall verify that implementation  
5     of a Statewide health care program will result in reduction in  
6     the Statewide aggregate cost of the purchase of benefits or the  
7     rate of growth of such costs and adopt a proposed plan for the  
8     implementation of the program. The proposed plan shall be in  
9     writing and shall include a detailed description of the program  
10    and the transition procedures necessary to phase in and  
11    implement the program. The board's adoption of a proposed plan  
12    shall require approval by a qualified majority vote.

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

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

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

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

25           (4) The designation of health care regions.

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

30           (6) The requirements for electronic eligibility

1 transmission between the board and other participating  
2 entities, including public school entities, consortia and the  
3 retirement system.

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

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

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

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

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

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

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

30 (d) Alternative measures program adoption.--Within three

months of proceeding with consideration of an alternative measures program pursuant to section 9322(c) (relating to board review and election), the board shall adopt a proposed plan for the implementation of an alternative measures program, pursuant to Subchapter E (relating to alternative measures for cost reduction), that will result in reduction in the Statewide aggregate cost of the purchase of benefits or the rate of growth of such costs. The proposed plan shall be in writing and shall include a detailed description and the transition procedures necessary to phase in and implement the alternative measures program. THE BOARD'S ADOPTION OF A PROPOSED PLAN FOR IMPLEMENTATION OF AN ALTERNATIVE MEASURES PROGRAM SHALL REQUIRE APPROVAL BY A QUALIFIED MAJORITY VOTE.

(e) Legislative and public review.--

(1) The board shall publish the provisions of any proposed plan adopted pursuant to this section in the Pennsylvania Bulletin and make it available on the board's Internet website. Following publication, the board shall schedule at least three public hearings to be conducted in geographically diverse areas of this Commonwealth to solicit public input on the plan. EIGHT PUBLIC HEARINGS TO SOLICIT PUBLIC INPUT ON THE PLAN. THE HEARINGS SHALL BE CONDUCTED IN PHILADELPHIA COUNTY; ALLEGHENY COUNTY; AND THE NORTHEAST, NORTHWEST, SOUTHEAST, SOUTHWEST, NORTH CENTRAL AND SOUTH CENTRAL REGIONS OF THIS COMMONWEALTH.

(2) The board shall submit the provisions of any proposed plan adopted pursuant to this section to the chairman and minority chairman of the Education Committee of the Senate and the chairman and minority chairman of the Education Committee of the House of Representatives. The

1 committees shall have 45 days to review the proposed plan and  
2 submit comments to the board.

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

13 (g) Failure to reach consensus.--If the board fails to  
14 achieve agreement and approve a plan for implementing a  
15 Statewide health benefits program by a qualified majority vote  
16 or if the board fails to achieve agreement and approve a plan  
17 for implementing an alternative measures program BY A QUALIFIED <—  
18 MAJORITY VOTE, the board shall report as to its findings and  
19 reasons preventing agreement on a plan to the Governor, the  
20 President pro tempore of the Senate and the Speaker of the House  
21 of Representatives.

#### 22 SUBCHAPTER D

#### 23 STATEWIDE HEALTH BENEFITS PROGRAM

24 Sec.

25 9331. Health benefits program.

26 9332. Mandatory participation and optional membership.

27 9333. Continuation of coverage and transfer employees.

28 9334. Partnership for stable benefits funding.

29 9335. Powers and duties of board.

30 9336. Public School Employees' Benefit Trust Fund.

1 9337. Misrepresentation, refusal to cooperate and fraud.

2 9338. Miscellaneous provisions.

3 § 9331. Health benefits program.

4 (a) Creation.--Upon adoption of a Statewide health plan  
5 under section 9323(f) (relating to plan adoption), the board  
6 shall proceed to initiate and sponsor an employee benefits  
7 program for eligible individuals.

8 (b) Program design.--The board shall design a program which  
9 follows the parameters of the plan and transition procedures as  
10 established in section 9323. The board may develop and  
11 administer the program itself or operate through any legal  
12 entity authorized by law to do so, including consortia, and the  
13 program may be developed and administered differently within  
14 each health care region as long as a standard benefit package  
15 that is substantially equivalent in coverage, as determined by  
16 the board, is available to eligible individuals. The program may  
17 also be administered in whole or in part on a fully insured or  
18 self-funded basis at the board's sole discretion.

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

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

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

29 (d) Eligibility requirements.--The board shall have full  
30 authority to determine eligibility requirements for benefits and

1 to adopt rules and regulations setting forth the same which will  
2 be binding on all eligible individuals. No coverage shall be  
3 provided for eligible individuals without payment being made,  
4 except under circumstances as may be established by the board  
5 under reasonable guidelines.

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

14 (f) Standard and optional benefits.--

15 (1) A standard benefit package shall be established by  
16 the board that shall include coverage for medical and  
17 hospital services, prescription drugs and MAY INCLUDE <—  
18 SUPPLEMENTAL AND other benefits in amounts to be determined  
19 by the board.

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

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

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

1 health care plan shall be set and annually adjusted so  
2 that the cost of providing the coverage for the  
3 Commonwealth and a public school entity is no greater  
4 than the cost incurred for the health plan in  
5 subparagraph (i).

6 (iii) One or more optional benefit plans, as  
7 approved by the board, which allow an eligible individual  
8 to purchase coverage that is not included in the standard  
9 benefit package, provided that any cost over and above  
10 the cost of the health care plan in subparagraph (i) is  
11 to be paid by the member EXCEPT AS OTHERWISE PROVIDED IN <—  
12 SECTION 9338(F)(2) (RELATING TO MISCELLANEOUS  
13 PROVISIONS).

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

21 § 9332. Mandatory participation and optional membership.

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

29 (b) Transition plan.--When the board determines pursuant to  
30 subsection (a) that a public school entity shall be required to

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

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

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

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

23 (3) A public school entity or a consortium which will  
24 incur a significant financial penalty under terms of a  
25 contract with an insurance carrier or other provider of  
26 health care coverage for a contract in existence on or before  
27 January 1, 2008.

28 (4) A public school entity or consortium which will  
29 incur a significant financial cost, including fees, penalties  
30 or other contractual financial obligations, related to the



1 termination of coverage under a contract of insurance or, in  
2 the case of a public school entity that self-insures,  
3 insufficient reserves to pay claims incurred during the  
4 previous coverage year, if the obligation relates to a plan  
5 of coverage that was in existence on or before January 1,  
6 2008, and the public school entity or consortium provides the  
7 board with a financial plan for meeting these obligations.

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

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

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

mutual agreement and approval of the board join the program at an earlier date. Renewal or extension of a collective bargaining agreement shall constitute its expiration for the purpose of this subsection.

§ 9333. Continuation of coverage and transfer employees.

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

(1) For an annuitant who is enrolled in the program pursuant to section 513 of the Public School Code or an annuitant who pursuant to any award of health benefits for annuitants under a written policy or agreement collectively bargained or otherwise entered into by the public school entity prior to the effective date of this section, payments shall be based on the total contribution rate established pursuant to section 9334(b) and (c) (relating to partnership for stable benefits funding) for a school employee in the same health care region, plus a 2% administrative fee.

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

(i) The board shall periodically have the actuary

1 review and determine the separate cost of providing  
2 continuation of coverage to annuitants under this  
3 paragraph, along with an assessment of its impact on the  
4 cost of providing coverage to members who are school  
5 employees and annuitants qualified for coverage under  
6 paragraph (1). The review and assessment shall first  
7 occur as part of the school employee health benefits  
8 study and evaluation conducted pursuant to section 9321  
9 (relating to school employee health benefits study and  
10 evaluation) and its results shall be considered in the  
11 development of parameters under section 9323(b) (relating  
12 to plan adoption).

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

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

continuation of coverage eligibility that meets the requirements of Title X of the Employee Retirement Income Security Act of 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide the continuation of coverage options required pursuant to 51 Pa.C.S. § 7309 (relating to employment discrimination for military membership or duty) for members on military leave.

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

§ 9334. Partnership for stable benefits funding.

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

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

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

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

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

1 the prior year; and

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

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

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

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

19 (f) Limitation on Commonwealth contribution.--

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

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

30 (ii) the product of the total revenue transferred in

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

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

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

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

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

6 (i) Contributions on behalf of school employees.--Consistent  
7 with any transition procedure pursuant to section 9323(c)(5)  
8 (relating to plan adoption), each public school entity shall be  
9 required to make payments to the trust fund on behalf of members  
10 who are school employees and their eligible health care  
11 dependents based on the contribution rate certified by the board  
12 in subsection (c). The increase in payments made from one year  
13 to the next by public school entities on behalf of school  
14 employees shall be equal to or greater than the increase in  
15 payment from one year to the next made pursuant to subsection  
16 (d), excluding any additional optional contribution made by the  
17 Commonwealth pursuant to subsection (g).

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

29 (k) Transition.--Until any transition pursuant to section  
30 9323(c)(5) has been completed, the payments made by each public



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

9 ~~(1) Applicability. Any expenditures necessary to fund~~ <—  
10 ~~participation in this program shall qualify as costs incurred~~  
11 ~~under section 333(f)(2)(ix) of the act of June 27, 2006 (1st~~  
12 ~~Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.~~

13 (L) REFERENDUM EXCEPTION.-- <—

14 (1) IN ADDITION TO THE EXCEPTIONS PROVIDED FOR IN  
15 SECTION 333(F) OF THE ACT OF JUNE 27, 2006 (1ST SP.SESS.,  
16 P.L.1873, NO.1), KNOWN AS THE TAXPAYER RELIEF ACT, THE COSTS  
17 SPECIFIED IN PARAGRAPH (2) SHALL CONSTITUTE AN EXCEPTION TO  
18 THE REFERENDUM REQUIREMENTS OF SECTION 333(C) OF THE TAXPAYER  
19 RELIEF ACT SUBJECT TO DEPARTMENT APPROVAL PURSUANT TO SECTION  
20 333(J) OF THE TAXPAYER RELIEF ACT.

21 (2) COSTS INCURRED BY A SCHOOL DISTRICT IN PROVIDING  
22 HEALTH CARE-RELATED BENEFITS WHICH ARE ATTRIBUTABLE TO THE  
23 SCHOOL DISTRICT'S PARTICIPATION IN THE PROGRAM SHALL  
24 CONSTITUTE AN EXPENDITURE FOR PURPOSES OF SECTION 333(F)(1)  
25 AND (2) OF THE TAXPAYER RELIEF ACT TO THE EXTENT THE  
26 ANTICIPATED INCREASE IN SUCH COSTS BETWEEN THE CURRENT YEAR  
27 AND THE UPCOMING YEAR IS GREATER THAN THE INDEX ESTABLISHED  
28 FOR THE SCHOOL DISTRICT PURSUANT TO SECTION 313(1)(II) OF THE  
29 TAXPAYER RELIEF ACT. THE DOLLAR AMOUNT OF THIS EXCEPTION  
30 SHALL BE EQUAL TO THE PORTION OF THE INCREASE WHICH EXCEEDS

THE INDEX ESTABLISHED FOR THE SCHOOL DISTRICT PURSUANT TO  
SECTION 313(1)(II) OF THE TAXPAYER RELIEF ACT.

§ 9335. Powers and duties of board.

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

(1) Determine appropriate geographic health care regions  
for the administration of the program and make changes to the  
regions as necessary.

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

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

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

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

<—

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

2       (7) Determine enrollment procedures.

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

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

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

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

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

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

29       (14) Issue self-liquidating debt or borrow against  
30 contributions, payments or other accounts receivable for the

purposes of prepaying any health benefits, establishing reserves or otherwise lowering the cost of coverage.

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

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

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

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

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

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

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

(20) Seek and take all necessary steps to retain eligibility for the members, public school entities and the Commonwealth to receive tax-preferred or tax-free treatment

1 under the IRC for contributions to and earnings of the trust  
2 fund.

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

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

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

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

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

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

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

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

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

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

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

with the provisions of this chapter for each participating public school entity that shall make information contained in the manual available to school employees. The board shall thereafter advise public school entities within 90 days of any changes in rules and regulations due to changes in the law or due to changes in administrative policies.

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

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

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

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

(1) The plan to implement the program adopted pursuant to section 9323(f) (relating to plan adoption).

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

(3) Membership eligibility criteria.

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

1 the addition, deletion or significant change in status of a  
2 health care provider network.

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

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

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

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

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

15 (10) THE ALTERNATIVE MEASURES PROGRAM CREATED PURSUANT  
16 TO SECTION 9351(A) (RELATING TO ALTERNATIVE MEASURES  
17 PROGRAM).

18 (11) APPROVE EMPLOYMENT OF AND CONTRACTS WITH  
19 CONSULTANTS AND PROFESSIONAL PERSONNEL.

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

26 § 9336. Public School Employees' Benefit Trust Fund.

27 (a) Establishment of trust fund.--The Public School  
28 Employees' Benefit Trust Fund is established in the State  
29 Treasury. The moneys of the trust fund are appropriated on a  
30 continuing basis and shall be used exclusively for the purposes

<—



set forth in this chapter. All of the assets of the trust fund shall be maintained and accounted for, separate from all other funds and moneys of the Commonwealth. The Treasury Department shall credit to the trust fund all moneys received from the Department of Revenue arising from the contributions required under this chapter and all earnings from investments or moneys of the trust fund. There shall be established and maintained by the board the several ledger accounts, including:

(1) The employee benefits account shall be the ledger account to which shall be credited the payments from section 9333(a),(b) and (c) (relating to continuation of coverage and transfer employees), payments from members for cost sharing and any additional member-paid cost associated with optional benefit packages elected by members and transfers from the employer contribution account as provided in paragraph (3). All earnings derived from investment of the assets of the employee benefits account shall be credited to this account. The board is authorized to separately invest the amounts in the employee benefits account in a prudent manner intended to maximize the safety of the capital contained in the employee benefits account. Payments for member health care benefits and the direct administrative expenses of the board related to the administration of the employee benefits program, as provided in section 9312(d) (relating to administrative duties of board), shall be charged to this account.

(2) Reserve account.

(i) A restricted reserve account, or more than one account if the board determines it necessary to have segregated accounts, is established within the trust fund for the purpose of establishing and maintaining a reserve

1 or separate reserves sufficient:

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

5 (B) to prefund the accrued liability for any  
6 postretirement health care benefits earned by  
7 employees enrolled in the program pursuant to section  
8 9333(a)(1) (relating to continuation of coverage and  
9 transfer employees) as the benefit is earned by the  
10 employees; and

11 (C) to amortize the unfunded actuarial accrued  
12 liability for postretirement health care benefits  
13 already earned by employees and annuitants pursuant  
14 to section 9333(a)(1) in the event the board elects  
15 to assume all or a portion of the liability. The  
16 board shall use an amortization period that does not  
17 exceed 30 years for this purpose.

18 (ii) The board shall annually establish through an  
19 actuary retained by the board the amount necessary, if  
20 any, to establish and maintain a reserve or separate  
21 reserves sufficient for the purposes of this paragraph.  
22 Any moneys needed to maintain the reserve or separate  
23 reserves established under this paragraph shall be  
24 collected through the adjustment of the contribution rate  
25 established pursuant to section 9334(b) and (c) (relating  
26 to partnership for stable benefits funding) or through  
27 other available sources.

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

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

3 (3) The employer contribution account shall be the  
4 ledger account to which shall be credited all contributions  
5 made by the Commonwealth as determined in accordance with  
6 section 9334(e) and payments from public school entities as  
7 determined in accordance with section 9334(i), as well as all  
8 earnings derived from the investment of the assets of the  
9 employer contribution account. The total amount of the  
10 Commonwealth and public school entity contributions required  
11 to provide the standard benefit package on behalf of all  
12 members who are school employees and their eligible health  
13 care dependents shall be transferred on a monthly basis to  
14 the employee benefits account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Transfers.--The board may transfer moneys among the various accounts of the trust fund, including any reserve accounts established under subsection (a)(2), as may be necessary to satisfy the provisions of this chapter. Transfers from funds retained in the reserve account pursuant to subsection (a)(2)(i)(A) may be made only for the payment of claims or expected claims as determined by the actuary retained by the board. Transfers from funds retained in the reserve account pursuant to subsection (a)(2)(i)(B) or (C) may be made only for paying toward the cost of providing health care benefits to annuitants enrolled in the program pursuant to section 9333(a)(1).

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

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

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

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

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

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

§ 9337. Misrepresentation, refusal to cooperate and fraud.

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

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

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

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

18 § 9338. Miscellaneous provisions.

19 (a) Construction of chapter.--

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

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

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

5 (3) THIS SUBSECTION SHALL NOT APPLY TO POLICIES DESIGNED <—  
6 PRIMARILY TO PROVIDE COVERAGE PAYABLE ON A PER DIEM, FIXED  
7 INDEMNITY OR NONEXPENSE INCURRED BASIS, OR POLICIES THAT  
8 PROVIDE ACCIDENT ONLY COVERAGE, WHERE PAYMENT FOR SUCH POLICY  
9 IS MADE SOLELY BY THE SCHOOL EMPLOYEE.

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

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

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



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

(e) Collective bargaining, mediation and binding arbitration.--Nothing EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F), NOTHING in this chapter or in any other law shall be construed to permit, authorize or require collective bargaining, mediation or binding arbitration to create, alter or modify health benefits set forth in this chapter or administered by the board for school employees and their health care dependents.

Further, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F), nothing in this chapter or in any other law shall be construed to permit, authorize or require a public school entity, through collective bargaining, mediation or binding arbitration, or otherwise, to establish, create, alter or modify a health benefits plan or pay health benefits set forth in this chapter or administered by the board that modify or supplement in any way the health benefits set forth in this chapter for school employees and their health care dependents. ~~Notwithstanding the provisions of this subsection, the parties may:~~

~~(1) Continue to engage in collective bargaining with~~  
(F) EXCEPTIONS.--

(1) THE PARTIES MAY:

(I) CONTINUE TO ENGAGE IN COLLECTIVE BARGAINING WITH regard to health benefits until such time as the board-sponsored program, pursuant to this subchapter, is released and the standard benefit package is made available to employees of a public school entity.

However, any health benefits provided under a collective

bargaining agreement entered into on or after the  
effective date of this chapter shall contain a provision  
that school employees covered by the agreement must join  
the board-sponsored program as required by section 9332  
(relating to mandatory participation and optional  
membership) as a condition of continuing to receive  
health benefits. The board shall determine the  
appropriate timing and phase-in of the program in any  
public school entity taking into consideration the need  
for the public school entity to properly terminate any  
existing health benefits arrangements.

~~(2) Negotiate or otherwise agree to provide benefits~~ <—

(II) NEGOTIATE OR OTHERWISE AGREE TO PROVIDE OR MAKE <—  
PAYMENT FOR SUPPLEMENTAL BENEFITS that have not been  
included as part of the standard benefit package so long <—  
as they do not increase or diminish the level of any  
benefit provided as part of the standard benefit package  
or any alternate health care plan or any optional benefit  
packages. Nothing contained in this section shall  
PACKAGE. <—

(2) NOTHING CONTAINED IN THIS CHAPTER SHALL restrict a  
public school entity from negotiating or otherwise agreeing  
to make payment for postretirement health benefits for  
members or as may be provided for in Subchapter F (relating  
to retirement health savings plan).

(G) INITIAL QUALIFIED MAJORITY VOTE REQUIREMENT.--A <—  
QUALIFIED MAJORITY VOTE OF THE BOARD THAT OCCURS ON OR BEFORE  
DECEMBER 31, 2010, MUST INCLUDE THE SUPPORT OF EITHER THE  
SECRETARY OF THE BUDGET OR THE INSURANCE COMMISSIONER.

#### SUBCHAPTER E

1                   ALTERNATIVE MEASURES FOR COST REDUCTION

2   Sec.

3   9351. Alternative measures program.

4   § 9351. Alternative measures program.

5       (a) Creation.--Upon completing the study required under  
6   section 9321 (relating to school employee health benefits study  
7   and evaluation) with either a negative recommendation to proceed  
8   with implementation of a Statewide health care program or if the  
9   board fails to achieve agreement and approve a plan for  
10   implementing a Statewide health benefits program by a qualified  
11   majority vote, the board shall proceed to initiate and sponsor  
12   an alternative measures program to reduce the costs for public  
13   school entities in providing health care coverage to employees  
14   and other eligible individuals.

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

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

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

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

28           (4) Requirements that public school entities and  
29   consortia aggregate into larger regional pools, with opt-out  
30   provisions for public school entities or consortia that meet

best practice standards and benchmarks.

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

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

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

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

(f) Extensions of time.--The board shall give due consideration to a transition plan submitted pursuant to subsection (e) that includes a request for an extension of time. Consideration shall be given to a public school entity or

1 consortium which will incur a significant financial cost or  
2 penalty.

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

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

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

29 SUBCHAPTER F

30 RETIREMENT HEALTH SAVINGS PLAN

1 Sec.

2 9361. Retirement health savings plan.

3 § 9361. Retirement health savings plan.

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

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

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

18 (3) Determination of enrollment procedures.

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

1 administering the investment option shall be paid by the  
2 retirement health savings plan.

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

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

14 (e) Contributions.--

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

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

30 (ii) An optional employee contribution at a fixed

percentage of compensation may be elected by a school employee during an annual election window that, once elected, shall continue in effect, except to the extent it may be changed or discontinued at a subsequent annual election window as provided for by the board or supplanted by a mandatory contribution.

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

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

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



1           (ii) Any other payments by the Commonwealth or  
2           public school entity, including any set-aside payments to  
3           be made to school employee accounts under section 9334  
4           (relating to partnership for stable benefits funding) as  
5           determined by the board.

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

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

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

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

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

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

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

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

19 (i) Advisory committee.--

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

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

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

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

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

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

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

7       Section 3. Within 18 months after the Statewide health  
8       benefits program or the alternative measures program is fully  
9       implemented, the Secretary of Administration shall report to the  
10      Governor, the President pro tempore of the Senate and the  
11      Speaker of the House of Representatives the feasibility of  
12      including community college employees in the program.

13      Section 4. This act shall take effect immediately.