

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1140 Session of
2007

INTRODUCED BY MUSTO, MELLOW, FOLMER, LOGAN, STOUT, FERLO,
WASHINGTON, BOSCOLA, M. WHITE, O'PAKE, STACK, C. WILLIAMS,
KITCHEN, WONDERLING, PUNT, HUGHES, WOZNIAK AND BROWNE,
NOVEMBER 13, 2007

REFERRED TO BANKING AND INSURANCE, NOVEMBER 13, 2007

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
17 misrepresentation, refusal to cooperate and fraud), the right of
18 a person to a member's annuity, a State annuity, or retirement
19 allowance, to the return of contributions, any benefit or right
20 accrued or accruing to any person under the provisions of this

part, and the moneys in the fund are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable.

* * *

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

CHAPTER 93

SCHOOL EMPLOYEE BENEFITS

Subchapter

A. Preliminary Provisions

B. Public School Employees' Benefit Board

C. Study and Options Election

D. Statewide Health Benefits Program

E. Alternative Measures for Cost Reduction

F. Retirement Health Savings Plan

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

9301. Short title of chapter.

9302. Definitions.

§ 9301. Short title of chapter.

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

§ 9302. Definitions.

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

"Alternate health care plan." A plan or plan design established by the Public School Employees' Benefit Board pursuant to section 9331(f)(2)(ii) (relating to health benefits

1 program) which the board in its exclusive authority determines
2 to contain benefits equivalent to the standard benefit package.

3 "Alternative measures program." A program created by the
4 Public School Employees' Benefit Board in accordance with the
5 provisions of Subchapter E (relating to alternative measures for
6 cost reduction).

7 "Annuitant." Any "annuitant" or "disability annuitant" as
8 defined in section 8102 (relating to definitions).

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

17 "Board." The Public School Employees' Benefit Board created
18 in section 9311 (relating to Public School Employees' Benefit
19 Board).

20 "Board member." A person designated or appointed to the
21 Public School Employees' Benefit Board pursuant to section
22 9311(a) (relating to Public School Employees' Benefit Board).

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

30 "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 Fund).

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

1 determined by the Public School Employees' Benefit Board.

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

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

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

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

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

30 (1) A school employee.

1 (2) An annuitant.

2 (3) A transfer employee.

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

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

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

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

24 "Phase-in period." The period of program operation in any
25 health care region from the time the Public School Employees'
26 Benefit Board begins implementation of mandatory participation
27 under section 9332 (relating to mandatory participation and
28 optional membership) until the commencement of the first plan
29 year in which 75% of school districts in that region are
30 participating in the program.

1 "Program." The Statewide health benefits program sponsored
2 by the Public School Employees' Benefit Board in accordance with
3 the provisions of Subchapter D (relating to Statewide health
4 benefits program).

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

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

13 "Qualified majority vote." A vote by the Public School
14 Employees' Benefit Board requiring the support of a majority of
15 the members of the board present and voting, with the support of
16 at least two board members described in section 9311(a)(1)
17 (relating to Public School Employees' Benefit Board), at least
18 two board members appointed under section 9311(a)(2) and at
19 least two board members appointed under section 9311(a)(3) to
20 pass.

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

26 "Reserve account." A ledger account of the Public School
27 Employees' Benefit Trust Fund created in section 9336(a)(2)
28 (relating to Public School Employees' Benefit Trust Fund).

29 "Retirement system." The Public School Employees' Retirement
30 System of Pennsylvania as established by the act of July 18,

1 1917 (P.L.1043, No.343).

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

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

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

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

24 SUBCHAPTER B

25 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

26 Sec.

27 9311. Public School Employees' Benefit Board.

28 9312. Administrative duties of board.

29 § 9311. Public School Employees' Benefit Board.

30 (a) Status and membership.--The board shall be an

independent administrative board and shall consist of the following board members:

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

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

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

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

45 days following receipt of the lists.

(b) Terms.--

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

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

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

(d) Vacancies.--A vacancy occurring during the term of any board member shall be filled for the unexpired term by a successor appointed in the same manner as his predecessor. The school employee unions and the Pennsylvania School Boards

1 Association shall provide the Governor with their respective
2 lists of candidates within 60 days of the end of a member's term
3 or within 15 days of any other vacancy.

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

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

1 period in which the duties are not executed.

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

6 (h) Duties of the board.--The board shall have the power and
7 authority to carry out the duties established by this chapter,
8 including the design, implementation and administration of the
9 school employee health benefits study pursuant to Subchapter C
10 (relating to study and options election) and either the
11 Statewide health benefits program if approved pursuant to
12 section 9323 (relating to plan adoption) or the alternative
13 measures program if created pursuant to section 9351 (relating
14 to alternative measures program).

15 § 9312. Administrative duties of board.

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

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

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

29 (2) Review and analyze proposed legislation and
30 legislative developments affecting the program and present

1 findings to the board, legislative committees and other
2 interested groups or individuals.

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

8 (c) Professional personnel.--The board may employ or
9 contract with consultants and other professional personnel as
10 needed to operate the program, including third-party
11 administrators, managed care managers, chief medical examiners,
12 actuaries, investment advisors and managers, legal counsel and
13 other professional personnel as it deems advisable. The board
14 may also contract for the services of any national or State
15 banking corporation or association having trust powers, with
16 respect to carrying out the business and other matters of the
17 program.

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

23 (1) from the General Fund; or

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

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

30 (f) Records.--The board shall keep a record of all its

1 proceedings which shall be open to inspection by the public.

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

4 (h) Temporary regulations.--

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

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

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

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

24 (i) Postretirement benefits study.--The board shall conduct
25 an assessment of public school entity postretirement health care
26 liability in this Commonwealth and publish a report providing
27 generalized data regarding the scope of the liability to be
28 borne by public school entities and measures implemented by
29 public school entities to prepare for this liability. This
30 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-sharing, both individual and in aggregate.

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

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

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

(d) Public school entities.--The Secretary of Education shall assist the board in obtaining the necessary data for the study from public school entities and consortia. In the event it

is necessary to facilitate the collection of data from a noncooperating public school entity or consortium, the Secretary of Education may request the State Treasurer to cause the suspension of any payment of moneys due to the noncooperating public school entity or public school entities that are participants in a noncooperating consortium on account of any appropriation for schools or other purposes until the necessary information is properly provided. A public school entity shall be notified before any payments are suspended and may appeal to 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
entity or consortium, that willfully fails to comply with the
obligations imposed by this section. If the entity does not
comply with the obligations imposed by this section within 15
days of an order being imposed, the board shall notify the
regulating authority of the failure of an entity under its
jurisdiction to provide data as set forth in this section.
Upon notification, the regulating authority shall suspend or
revoke the license of the entity or otherwise suspend or
revoke the entity's ability to operate until such time as the
board notifies the regulating authority that the entity is in
compliance. The board shall have standing to petition the
Commonwealth Court to seek enforcement of the order.

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

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

1 Company Law of 1921.

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

5 (iii) A professional health services plan
6 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to
7 professional health services plan corporations).

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

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

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

15 (vii) Health care plans subject to the Employee
16 Retirement Income Security Act of 1974 (Public Law 93-
17 406, 88 Stat. 829), to the maximum extent permitted by
18 Federal law.

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

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

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

1 (f) Confidentiality.--Any data requested by or provided to
2 the board pursuant to this section shall comply with the
3 standards for privacy established pursuant to the Health
4 Insurance Portability and Accountability Act of 1996 (Public Law
5 104-191, 110 Stat. 1936).

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

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

29 (i) Document review.--No current or former member or
30 employee of the board or any department shall be allowed to

1 testify as to any matters by reason of the member's or
2 employee's review of documents, materials, records or
3 information submitted to the board by the entity providing
4 health insurance or health care coverage pursuant to subsection
5 (b). The enjoinder of testimony does not apply to findings or
6 actions by the board or any department that are public records.

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

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

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

30 § 9322. Board review and election.

1 (a) Options assessment.--Upon collection of the necessary
2 information, the board shall evaluate existing public school
3 entity health care arrangements, examine options that would
4 aggregate, either Statewide or regionally, health care coverage
5 for public school employees, assess possible cost-management
6 improvements and solicit input from public school entities and
7 consortia identified with best practice standards. The board
8 shall investigate the creation of a Statewide health benefits
9 program as provided for in section 9331 (relating to health
10 benefits program) with the goal of improving the overall
11 affordability of providing health care coverage for public
12 school employees. The cost projections shall be predicated on a
13 plan that provides quality health care benefits at a level
14 consistent with those now provided to most school employees
15 through existing collective bargaining contracts and offers
16 coverage to school employees and other eligible individuals.

17 (b) Election to proceed with program.--No later than ten
18 months after the board is constituted, unless a request by the
19 board for an extension is granted by the Governor, the board
20 shall decide whether to implement a Statewide health benefits
21 program, as provided for in section 9331, or to implement an
22 alternative measures program, as provided for in section 9351
23 (relating to alternative measures program), to reduce health
24 coverage costs for public school entities. The board's election
25 to implement a Statewide health benefits program shall require
26 approval by a qualified majority vote. Upon election to proceed
27 with a Statewide health benefits program, the board shall
28 develop a plan for adoption, pursuant to section 9323 (relating
29 to plan adoption).

30 (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.

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

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

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

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

(3) Disclosure of any member cost-sharing contributions, whether expressed as a target percentage of overall program

1 costs or individually determined as a flat fee or a
2 percentage of salary and whether the cost-sharing is uniform
3 on a Statewide basis or varies by health care region.

4 (4) The designation of health care regions.

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

9 (6) The requirements for electronic eligibility
10 transmission between the board and other participating
11 entities, including public school entities, consortia and the
12 retirement system.

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

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

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

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

26 (3) The interim steps to aggregate public school
27 entities into a Statewide pool or regional pools, including
28 any best practice standards and benchmarks to be applied to
29 new or existing consortia, or public school entities, or in
30 any selection process to build a Statewide or regional pool.

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

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

9 (d) Alternative measures program adoption.--Within three
10 months of proceeding with consideration of an alternative
11 measures program pursuant to section 9322(c) (relating to board
12 review and election), the board shall adopt a proposed plan for
13 the implementation of an alternative measures program, pursuant
14 to Subchapter E (relating to alternative measures for cost
15 reduction), that will result in reduction in the Statewide
16 aggregate cost of the purchase of benefits or the rate of growth
17 of such costs. The proposed plan shall be in writing and shall
18 include a detailed description and the transition procedures
19 necessary to phase in and implement the alternative measures
20 program.

21 (e) Legislative and public review.--

22 (1) The board shall publish the provisions of any
23 proposed plan adopted pursuant to this section in the
24 Pennsylvania Bulletin and make it available on the board's
25 Internet website. Following publication, the board shall
26 schedule at least three public hearings to be conducted in
27 geographically diverse areas of this Commonwealth to solicit
28 public input on the plan.

29 (2) The board shall submit the provisions of any
30 proposed plan adopted pursuant to this section to the

1 chairman and minority chairman of the Education Committee of
2 the Senate and the chairman and minority chairman of the
3 Education Committee of the House of Representatives. The
4 committees shall have 45 days to review the proposed plan and
5 submit comments to the board.

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

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

23 SUBCHAPTER D

24 STATEWIDE HEALTH BENEFITS PROGRAM

25 Sec.

26 9331. Health benefits program.

27 9332. Mandatory participation and optional membership.

28 9333. Continuation of coverage and transfer employees.

29 9334. Partnership for stable benefits funding.

30 9335. Powers and duties of board.

1 9336. Public School Employees' Benefit Trust Fund.

2 9337. Misrepresentation, refusal to cooperate and fraud.

3 9338. Miscellaneous provisions.

4 § 9331. Health benefits program.

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

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

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

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

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

30 (d) Eligibility requirements.--The board shall have full

authority to determine eligibility requirements for benefits and to adopt rules and regulations setting forth the same which will be binding on all eligible individuals. No coverage shall be provided for eligible individuals without payment being made, except under circumstances as may be established by the board under reasonable guidelines.

(e) Coverage and plan selection.--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 a range of benefit packages to eligible individuals through the program. The board shall have full authority to determine the nature, amount and duration and discontinuation of coverage to be provided.

(f) Standard and optional benefits.--

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

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

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

(ii) One or more alternate health care plans or plan designs which in the board's judgment contain benefits equivalent to the standard benefit package in paragraph (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.

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

19 § 9332. Mandatory participation and optional membership.

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

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

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

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

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

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

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

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

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

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

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

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

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 review and determine the separate cost of providing continuation of coverage to annuitants under this

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

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

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

1 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide
2 the continuation of coverage options required pursuant to 51
3 Pa.C.S. § 7309 (relating to employment discrimination for
4 military membership or duty) for members on military leave.

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

20 § 9334. Partnership for stable benefits funding.

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

29 (b) Determination of contribution rate.--The board shall
30 determine for each plan year the total amount of the

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

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

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

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

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

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

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

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

17 (f) Limitation on Commonwealth contribution.--

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

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

28 (ii) the product of the total revenue transferred in
29 the prior plan year from the employer contribution
30 account to the employee benefits account and the most

1 recent annual percent change in the per enrollee private
2 health insurance premium for all benefits, as defined in
3 the National Health Expenditure Data published by the
4 Centers for Medicare and Medicaid Services, Department of
5 Health and Human Services.

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

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

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

market value/income aid ratio. For the purpose of this subsection, "market value/income aid ratio" shall have the same meaning given to it in the Public School Code.

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

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

(k) Transition.--Until any transition pursuant to section 9323(c)(5) has been completed, the payments made by each public school entity shall be no less than the total amount paid by the public school entity to provide, purchase and administer health

1 care benefits to members who are school employees and their
2 eligible health care dependents in the year before
3 implementation of the program. Any contributions received by the
4 public school entity from school employees in the form of cost-
5 sharing payments for health care coverage shall be excluded from
6 the amount.

7 (1) Applicability.--Any expenditures necessary to fund
8 participation in this program shall qualify as costs incurred
9 under section 333(f)(2)(ix) of the act of June 27, 2006 (1st
10 Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.
11 § 9335. Powers and duties of board.

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

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

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

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

29 (4) Establish copayments, annual deductibles,
30 coinsurance levels, exclusions, formularies and other

1 coverage limitations and payment responsibilities of members
2 incurred at the time of service.

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

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

10 (7) Determine enrollment procedures.

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

14 (9) Establish a plan with the retirement system to
15 coordinate health care coverage for annuitants between the
16 program established by this chapter and the group health
17 insurance program sponsored by the retirement system under
18 the provisions of Chapter 89 (relating to group health
19 insurance program) and to coordinate the sharing of
20 information pertaining to premium assistance payment
21 transfers.

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

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

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

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

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

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

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

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

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

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

29 (18) Promulgate rules and regulations regarding the
30 administration of the program, including the establishment of

1 the plan year.

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

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

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

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

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

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

30 (b) Administrative duties of board.--In addition to other

duties of the board provided in this chapter, the board shall perform the duties under subsections (c), (d), (e), (f), (g), (h), (i) and (j) in order to implement this section.

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

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

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

1 school employees and the public.

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

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

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

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

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

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

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

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

5 (3) Membership eligibility criteria.

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

11 (5) Any determination on the use of excess fund
12 payments.

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

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

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

19 (9) Changes in trust documents, bylaws or any major
20 internal operating policies or procedures, such as claims
21 appeal procedures, not to include routine ministerial
22 functions.

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

29 § 9336. Public School Employees' Benefit Trust Fund.

30 (a) Establishment of trust fund.--The Public School

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

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

1 account if the board determines it necessary to have
2 segregated accounts, is established within the trust fund
3 for the purpose of establishing and maintaining a reserve
4 or separate reserves sufficient:

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

8 (B) to prefund the accrued liability for any
9 postretirement health care benefits earned by
10 employees enrolled in the program pursuant to section
11 9333(a)(1) (relating to continuation of coverage and
12 transfer employees) as the benefit is earned by the
13 employees; and

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

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

1 (iii) The moneys in any reserve account may be
2 invested by the board separate from other moneys of the
3 trust fund. All earnings derived from investment of the
4 assets of any reserve account shall be credited to the
5 reserve account.

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

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

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

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

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

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

1 (1) The board shall have exclusive control and
2 management of the trust fund and full power to invest and
3 manage the assets of each account of the trust fund as a
4 prudent investor would, by considering the purposes, terms
5 and other circumstances of each account and by pursuing an
6 overall investment strategy reasonably suited to the trust
7 fund.

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

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

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

16 (ii) the liquidity and payment requirements of the
17 account;

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

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

22 (v) the reasonable diversification of assets, taking
23 into account the purposes, terms and other circumstances
24 of the trust fund and the requirements of this section.

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

27 (f) Name for transacting business.--By the name of "The
28 Public School Employees' Benefit Trust Fund," all of the
29 business of the trust fund shall be transacted, its fund
30 invested, all requisitions for money drawn and payments made and

1 all of its cash and securities and other property shall be held,
2 except that, any other law to the contrary notwithstanding, the
3 board may establish a nominee registration procedure for the
4 purpose of registering securities in order to facilitate the
5 purchase, sale or other disposition of securities.

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

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

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

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

30 (1) Adopt, from time to time, appropriate investment

1 policy guidelines and convey the same to those fiduciaries
2 who have the responsibility for the investment of funds.

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

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

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

16 § 9337. Misrepresentation, refusal to cooperate and fraud.

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

1 (b) Refusal to cooperate.--The board may refuse to pay
2 benefits, or cease to pay benefits, on behalf of an eligible
3 individual who fails to sign any document deemed by the board to
4 be relevant to protecting its subrogation rights or certifying
5 eligibility or who fails to provide relevant information when
6 requested. As used in this subsection, the term "information"
7 includes any documents, insurance policies, police reports or
8 any reasonable request by the claims processor to enforce the
9 board's rights.

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

21 § 9338. Miscellaneous provisions.

22 (a) Construction of chapter.--

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

1 any person a contractual right in that provision.

2 (2) The provisions of this chapter are severable and if
3 any of its provisions shall be held to be unconstitutional,
4 the decision of the court shall not affect or impair any of
5 the remaining provisions. It is hereby declared to be the
6 legislative intent that this chapter would have been adopted
7 had the unconstitutional provisions not been included.

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

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

28 (d) Reservation of immunities.--Nothing contained in this
29 chapter shall be construed as a waiver of the Commonwealth's or
30 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 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, 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
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

1 appropriate timing and phase-in of the program in any public
2 school entity taking into consideration the need for the
3 public school entity to properly terminate any existing
4 health benefits arrangements.

5 (2) Negotiate or otherwise agree to provide benefits
6 that have not been included as part of the standard benefit
7 package so long as they do not increase or diminish the level
8 of any benefit provided as part of the standard benefit
9 package or any alternate health care plan or any optional
10 benefit packages. Nothing contained in this section shall
11 restrict a public school entity from negotiating or otherwise
12 agreeing to make payment for postretirement health benefits
13 for members or as may be provided for in Subchapter F
14 (relating to retirement health savings plan).

15 SUBCHAPTER E

16 ALTERNATIVE MEASURES FOR COST REDUCTION

17 Sec.

18 9351. Alternative measures program.

19 § 9351. Alternative measures program.

20 (a) Creation.--Upon completing the study required under
21 section 9321 (relating to school employee health benefits study
22 and evaluation) with either a negative recommendation to proceed
23 with implementation of a Statewide health care program or if the
24 board fails to achieve agreement and approve a plan for
25 implementing a Statewide health benefits program by a qualified
26 majority vote, the board shall proceed to initiate and sponsor
27 an alternative measures program to reduce the costs for public
28 school entities in providing health care coverage to employees
29 and other eligible individuals.

30 (b) Program design.--In designing an alternative measures

1 program, the board may consider all of the following:

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

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

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

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

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

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

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

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

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

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

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

1 join the program at an earlier date. Renewal or extension of a
2 collective bargaining agreement shall constitute its expiration
3 for the purposes of this subsection.

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

14 SUBCHAPTER F

15 RETIREMENT HEALTH SAVINGS PLAN

16 Sec.

17 9361. Retirement health savings plan.

18 § 9361. Retirement health savings plan.

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

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

30 (2) Determination of the structure of the retirement

1 health savings accounts available to eligible school
2 employees.

3 (3) Determination of enrollment procedures.

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

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

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

29 (e) Contributions.--

30 (1) The board shall determine what contributions are

1 eligible under the IRC for tax-preferred or tax-free
2 treatment and may be made into a retirement health savings
3 plan by a school employee. The board shall authorize and
4 allow contributions, subject to appropriate limits as may be
5 established by the board, to be paid by a school employee
6 electing participation in the retirement health savings plan
7 subject to the following conditions:

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

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

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

1 contributions until the next annual election window.

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

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

16 (ii) Any other payments by the Commonwealth or
17 public school entity, including any set-aside payments to
18 be made to school employee accounts under section 9334
19 (relating to partnership for stable benefits funding) as
20 determined by the board.

21 (3) Contributions to the plan by a school employee or by
22 the Commonwealth or a public school entity on behalf of an
23 employee must be held in trust for reimbursement of employee
24 health-related expenses and the health-related expenses of
25 any health care dependents following retirement of the
26 employee or when otherwise determined to be benefit eligible.
27 The board shall maintain a separate account of the
28 contributions made by or on behalf of each participant and
29 the earnings thereon. The board shall make available a
30 selection of investment options for participants who wish to

1 direct the investment of the accumulations in the
2 participant's account, in addition to a default option for
3 participants to be invested in a prudent manner as determined
4 by the board.

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

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

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

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

25 (g) Annual financial statement.--Quarterly and annually the
26 board shall prepare summary retirement health savings plan
27 statements for individual participant account holders listing
28 information on contributions, investment earnings and
29 distributions for the account holders' accounts.

30 (h) Fees.--The board is authorized to charge uniform fees to

participants to cover the ongoing costs of operating the plan.
Any fees not needed must revert to participant accounts or be
used to reduce plan fees the following year.

(i) Advisory committee.--

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

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

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

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

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

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

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

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

Section 4. This act shall take effect immediately.