

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 762 Session of 2009

INTRODUCED BY MUSTO, HUGHES, KITCHEN, STACK, STOUT, FONTANA,
O'PAKE, BROWNE, WAUGH, FOLMER, FARNESE, MELLOW, COSTA,
BOSCOLA AND FERLO, APRIL 3, 2009

REFERRED TO BANKING AND INSURANCE, APRIL 3, 2009

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
21 part, and the moneys in the fund are hereby exempt from any

1 State or municipal tax, and exempt from levy and sale,
2 garnishment, attachment, or any other process whatsoever, and
3 shall be unassignable.

4 * * *

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

6 CHAPTER 93

7 SCHOOL EMPLOYEE BENEFITS

8 Subchapter

9 A. Preliminary Provisions

10 B. Public School Employees' Benefit Board

11 C. Study and Options Election

12 D. Statewide Health Benefits Program

13 E. Alternative Measures for Cost Reduction

14 F. Retirement Health Savings Plan

15 SUBCHAPTER A

16 PRELIMINARY PROVISIONS

17 Sec.

18 9301. Short title of chapter.

19 9302. Definitions.

20 § 9301. Short title of chapter.

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

23 § 9302. Definitions.

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

27 "Alternate health care plan." A plan or plan design
28 established by the Public School Employees' Benefit Board under
29 section 9331(f)(2)(ii) (relating to health benefits program)
30 which the board in its exclusive authority determines to contain

benefits equivalent to the standard benefit package.

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

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

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

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

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

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

"Contribution rate." The rate established by the Public School Employees' Benefit Board in accordance with section

9334(b) and (c) (relating to partnership for stable benefits funding) used to determine contributions by the Commonwealth and public school entities for the funding of the standard benefit package for eligible individuals in each health care region.

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

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

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

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

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

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

"Health care region." The geographic regions determined by

1 the Public School Employees' Benefit Board to be appropriate for
2 providing health benefits for eligible individuals based on the
3 availability of insurance carriers, benefit administrators,
4 health care providers, health care provider networks, costs and
5 any other factors related to health care or the financing of the
6 benefits.

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

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

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

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

28 (1) A school employee.

29 (2) An annuitant.

30 (3) A transfer employee.

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

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

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

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

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

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

1 the provisions of Subchapter D (relating to Statewide health
2 benefits program).

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

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

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

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

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

27 "Retirement system." The Public School Employees' Retirement
28 System of Pennsylvania as established by the act of July 18,
29 1917 (P.L.1043, No.343).

30 "School employee." Any person regularly employed by or in a

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

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

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

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

SUBCHAPTER B

PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

Sec.

9311. Public School Employees' Benefit Board.

9312. Administrative duties of board.

§ 9311. Public School Employees' Benefit Board.

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

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

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

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

24 The school employee unions and the Pennsylvania School Boards
25 Association shall provide the Governor with their respective
26 lists of candidates within 15 days following the effective date
27 of this section. The Governor shall make his appointments within
28 45 days following receipt of the lists.

29 (b) Terms.--

30 (1) Two board members appointed under subsection (a)(2),

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

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

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

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

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

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

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

29 (g) Corporate power and legal advisor.--For the purposes of
30 this chapter, the board shall possess the power and privileges

1 of a corporation. The Office of General Counsel shall be the
2 legal advisor of the board.

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

12 § 9312. Administrative duties of board.

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

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

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

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

30 (3) Receive inquiries and requests for information

1 concerning the program from the press, Commonwealth
2 officials, public school entities, school employees and the
3 general public and provide information as authorized by the
4 board.

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

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

20 (1) from the General Fund; or

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

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

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

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

1 (h) Temporary regulations.--

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

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

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

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

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

30 SUBCHAPTER C

1 STUDY AND OPTIONS ELECTION

2 Sec.

3 9321. School employee health benefits study and evaluation.

4 9322. Board review and election.

5 9323. Plan adoption.

6 § 9321. School employee health benefits study and evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) Public school entities.--The Secretary of Education
26 shall assist the board in obtaining the necessary data for the
27 study from public school entities and consortia. In the event it
28 is necessary to facilitate the collection of data from a
29 noncooperating public school entity or consortium, the Secretary
30 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,"

1 shall cooperate with the board, if necessary, to obtain
2 information from any insurance company, third-party
3 administrator or other administrator or provider of health
4 insurance benefits for school employees, other than a public
5 school entity or consortium. Following notice and hearing,
6 the board may impose an order assessing a penalty of up to
7 \$1,000 per day upon any entity, other than a public school
8 entity or consortium, that willfully fails to comply with the
9 obligations imposed by this section. If the entity does not
10 comply with the obligations imposed by this section within 15
11 days of an order being imposed, the board shall notify the
12 regulating authority of the failure of an entity under its
13 jurisdiction to provide data as set forth in this section.
14 Upon notification, the regulating authority shall suspend or
15 revoke the license of the entity or otherwise suspend or
16 revoke the entity's ability to operate until such time as the
17 board notifies the regulating authority that the entity is in
18 compliance. The board shall have standing to petition the
19 Commonwealth Court to seek enforcement of the order.

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

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

29 (ii) A mutual insurance company incorporated for any
30 of the purposes set forth in section 202(d) of The

1 Insurance Company Law of 1921.

2 (iii) A professional health services plan
3 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to
4 professional health services plan corporations).

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

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

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

12 (vii) Health care plans subject to the Employee
13 Retirement Income Security Act of 1974 (Public Law
14 93-406, 88 Stat. 829), to the maximum extent permitted by
15 Federal law.

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

19 (ix) A person licensed under Article VI-A of The
20 Insurance Department Act of 1921.

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

28 (f) Confidentiality.--Any data requested by or provided to
29 the board under this section shall comply with the standards for
30 privacy established under the Health Insurance Portability and

1 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

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

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

25 (i) Document review.--No current or former member or
26 employee of the board or any department shall be allowed to
27 testify as to any matters by reason of the member's or
28 employee's review of documents, materials, records or
29 information submitted to the board by the entity providing
30 health insurance or health care coverage under subsection (b).

The enjoinder of testimony does not apply to findings or actions by the board or any department that are public records.

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

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

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

§ 9322. Board review and election.

(a) Options assessment.--Upon collection of the necessary information, the board shall evaluate existing public school entity health care arrangements, examine options that would aggregate, either Statewide or regionally, health care coverage

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

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

26 (c) Alternative election.--If the board decides that a
27 Statewide health benefits program cannot be created in
28 accordance with subsection (a), or the board fails to achieve
29 agreement and approve a plan for implementing a Statewide health
30 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, under 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 costs or individually determined as a flat fee or a percentage of salary and whether the cost sharing is uniform on a Statewide basis or varies by health care region.

(4) The designation of health care regions.

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

5 (6) The requirements for electronic eligibility
6 transmission between the board and other participating
7 entities, including public school entities, consortia and the
8 retirement system.

9 (7) Financial and accounting plans, including the
10 establishment of any necessary reserves or escrow accounts
11 with carriers.

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

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

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

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

27 (4) Transition rules on member cost sharing
28 responsibility until any member cost sharing is required for
29 all members Statewide, or within any region.

30 (5) Transition rules to limit any negative financial

1 impact on a public school entity required to purchase health
2 care coverage through a Statewide or regional pool and to
3 normalize contribution rates for all participating public
4 school entities within the same health care region.

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

17 (e) Legislative and public review.--

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

25 (2) The board shall submit the provisions of any
26 proposed plan adopted under this section to the chairman and
27 minority chairman of the Education Committee of the Senate
28 and the chairman and minority chairman of the Education
29 Committee of the House of Representatives. The committees
30 shall have 45 days to review the proposed plan and submit

1 comments to the board.

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

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

19 SUBCHAPTER D

20 STATEWIDE HEALTH BENEFITS PROGRAM

21 Sec.

22 9331. Health benefits program.

23 9332. Mandatory participation and optional membership.

24 9333. Continuation of coverage and transfer employees.

25 9334. Partnership for stable benefits funding.

26 9335. Powers and duties of board.

27 9336. Public School Employees' Benefit Trust Fund.

28 9337. Misrepresentation, refusal to cooperate and fraud.

29 9338. Miscellaneous provisions.

30 § 9331. Health benefits program.

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

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

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

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

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

26 (d) Eligibility requirements.--The board shall have full
27 authority to determine eligibility requirements for benefits and
28 to adopt rules and regulations setting forth the same which will
29 be binding on all eligible individuals. No coverage shall be
30 provided for eligible individuals without payment being made,

1 except under circumstances as may be established by the board
2 under reasonable guidelines.

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

11 (f) Standard and optional benefits.--

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

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

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

23 (ii) One or more alternate health care plans or plan
24 designs which in the board's judgment contain benefits
25 equivalent to the standard benefit package in paragraph
26 (1). The deductibles and copayments for each alternate
27 health care plan shall be set and annually adjusted so
28 that the cost of providing the coverage for the
29 Commonwealth and a public school entity is no greater
30 than the cost incurred for the health plan in

1 subparagraph (i).

2 (iii) One or more optional benefit plans, as
3 approved by the board, which allow an eligible individual
4 to purchase coverage that is not included in the standard
5 benefit package, provided that any cost over and above
6 the cost of the health care plan in subparagraph (i) is
7 to be paid by the member.

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

15 § 9332. Mandatory participation and optional membership.

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

23 (b) Transition plan.--When the board determines under
24 subsection (a) that a public school entity shall be required to
25 participate in the program, the public school entity or
26 consortium in which the public school entity is a participant
27 shall, within a reasonable period of time as determined by the
28 board, present to the board a transition plan with a schedule
29 for the eventual migration of school employees into the program.
30 The board shall review the transition plan with the public

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

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

10 (1) A public school entity that participates in a
11 consortium where an extension of time is necessary for the
12 rundown and proper termination of the consortium's health
13 care program.

14 (2) A public school entity that participates in a
15 consortium where the withdrawal of the public school entity
16 may undermine the financial stability of the consortium.

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

22 (4) A public school entity or consortium which will
23 incur a significant financial cost, including fees, penalties
24 or other contractual financial obligations, related to the
25 termination of coverage under a contract of insurance or, in
26 the case of a public school entity that insures itself,
27 insufficient reserves to pay claims incurred during the
28 previous coverage year, if the obligation relates to a plan
29 of coverage that was in existence on or before January 1,
30 2008, and the public school entity or consortium provides the

1 board with a financial plan for meeting these obligations.

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

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

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

29 § 9333. Continuation of coverage and transfer employees.

30 (a) Annuitants.--Upon retirement, an annuitant eligible

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

10 (1) For an annuitant who is enrolled in the program
11 under section 513 of the Public School Code or an annuitant
12 who pursuant to any award of health benefits for annuitants
13 under a written policy or agreement collectively bargained or
14 otherwise entered into by the public school entity prior to
15 the effective date of this section, payments shall be based
16 on the total contribution rate established under section
17 9334(b) and (c) (relating to partnership for stable benefits
18 funding) for a school employee in the same health care
19 region, plus a 2% administrative fee.

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

24 (i) The board shall periodically have the actuary
25 review and determine the separate cost of providing
26 continuation of coverage to annuitants under this
27 paragraph, along with an assessment of its impact on the
28 cost of providing coverage to members who are school
29 employees and annuitants qualified for coverage under
30 paragraph (1). The review and assessment shall first

1 occur as part of the school employee health benefits
2 study and evaluation conducted under section 9321
3 (relating to school employee health benefits study and
4 evaluation) and its results shall be considered in the
5 development of parameters under section 9323(b) (relating
6 to plan adoption).

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

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

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

16 § 9334. Partnership for stable benefits funding.

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

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

dependents. The contribution rate shall consist of the amount required to provide the standard benefit package, including appropriate reserves and administrative expenses, and shall be adjusted for each health care region to reflect the cost of benefits in that region. The contribution rates may differentiate between single coverage for members only and types of family coverage, as determined by the board.

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

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

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

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

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

(1) The board shall submit to the Secretary of the

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

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

13 (f) Limitation on Commonwealth contribution.--

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

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

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

Health and Human Services.

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

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

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

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

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

23 (k) Transition.--Until any transition under section 9323(c)
24 (5) has been completed, the payments made by each public school
25 entity shall be no less than the total amount paid by the public
26 school entity to provide, purchase and administer health care
27 benefits to members who are school employees and their eligible
28 health care dependents in the year before implementation of the
29 program. Any contributions received by the public school entity
30 from school employees in the form of cost-sharing payments for

1 health care coverage shall be excluded from the amount.

2 (1) Applicability.--Any expenditures necessary to fund
3 participation in this program shall qualify as costs incurred
4 under section 333(f)(2)(ix) of the act of June 27, 2006 (1st
5 Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.
6 § 9335. Powers and duties of board.

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

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

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

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

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

28 (5) Set and adjust member cost-sharing contributions to
29 be expressed as a target percentage of overall program costs
30 or individually determined as a flat fee or a percentage of

1 salary. The board shall determine whether member cost-sharing
2 shall be uniform on a Statewide basis or shall vary by health
3 care region.

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

5 (7) Determine enrollment procedures.

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

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

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

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

26 (12) Purchase insurance or employ self insurance, alone
27 or in combination, to provide benefits as shall be determined
28 by the board.

29 (13) Establish appropriate reserves based on generally
30 accepted standards as applied by Federal and State regulators

1 to similar types of plans.

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

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

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

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

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

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

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

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

1 (20) Seek and take all necessary steps to retain
2 eligibility for the members, public school entities and the
3 Commonwealth to receive tax-preferred or tax-free treatment
4 under the IRC for contributions to and earnings of the trust
5 fund.

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

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

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

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

25 (b) Administrative duties of board.--In addition to other
26 duties of the board provided in this chapter, the board shall
27 perform the duties under subsections (c), (d), (e), (f), (g),
28 (h), (i) and (j) in order to implement this section.

29 (c) Regulations and procedures.--The board shall, with the
30 advice of the Office of General Counsel and the actuary, adopt

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

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

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

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

30 (g) Manual of regulations.--The board shall, with the advice

of the Office of General Counsel and the actuary, prepare within six months of the commencement of a program adopted under this chapter a manual incorporating rules and regulations consistent with the provisions of this chapter for each participating public school entity that shall make information contained in the manual available to school employees. The board shall thereafter advise public school entities within 90 days of any changes in rules and regulations due to changes in the law or due to changes in administrative policies.

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

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

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

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

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

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

(3) Membership eligibility criteria.

1 (4) The addition, deletion or significant change in
2 status of an insurance carrier, benefits administrator or
3 other major contractor in the administration of benefits, or
4 the addition, deletion or significant change in status of a
5 health care provider network.

6 (5) Any determination on the use of excess fund
7 payments.

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

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

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

14 (9) Changes in trust documents, bylaws or any major
15 internal operating policies or procedures, such as claims
16 appeal procedures, not to include routine ministerial
17 functions.

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

24 § 9336. Public School Employees' Benefit Trust Fund.

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

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

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

(2) Reserve account.

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

(A) to pay the expected claims experience of the

1 program in the event the board elects to fund itself
2 all or a portion of the program for any plan years;

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

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

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

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

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

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

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

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

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

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

26 (1) The board shall have exclusive control and
27 management of the trust fund and full power to invest and
28 manage the assets of each account of the trust fund as a
29 prudent investor would, by considering the purposes, terms
30 and other circumstances of each account and by pursuing an

1 overall investment strategy reasonably suited to the trust
2 fund.

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

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

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

11 (ii) the liquidity and payment requirements of the
12 account;

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

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

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

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

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

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

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

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

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

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

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

30 (3) Settle, compromise or submit to arbitration all

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

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

§ 9337. Misrepresentation, refusal to cooperate and fraud.

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

(b) Refusal to cooperate.--The board may refuse to pay benefits, or cease to pay benefits, on behalf of an eligible individual who fails to sign any document deemed by the board to be relevant to protecting its subrogation rights or certifying eligibility or who fails to provide relevant information when requested. As used in this subsection, the term "information"

1 includes any documents, insurance policies, police reports or
2 any reasonable request by the claims processor to enforce the
3 board's rights.

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

15 § 9338. Miscellaneous provisions.

16 (a) Construction of chapter.--

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

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

1 had the unconstitutional provisions not been included.

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

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

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

27 (e) Collective bargaining, mediation and binding
28 arbitration.--Nothing in this chapter or in any other law shall
29 be construed to permit, authorize or require collective
30 bargaining, mediation or binding arbitration to create, alter or

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

13 (1) Continue to engage in collective bargaining with
14 regard to health benefits until such time as the board-
15 sponsored program, under this subchapter, is released and the
16 standard benefit package is made available to employees of a
17 public school entity. However, any health benefits provided
18 under a collective bargaining agreement entered into on or
19 after the effective date of this chapter shall contain a
20 provision that school employees covered by the agreement must
21 join the board-sponsored program as required by section 9332
22 (relating to mandatory participation and optional membership)
23 as a condition of continuing to receive health benefits. The
24 board shall determine the appropriate timing and phase-in of
25 the program in any public school entity taking into
26 consideration the need for the public school entity to
27 properly terminate any existing health benefits arrangements.

28 (2) Negotiate or otherwise agree to provide benefits
29 that have not been included as part of the standard benefit
30 package so long as they do not increase or diminish the level

1 of any benefit provided as part of the standard benefit
2 package or any alternate health care plan or any optional
3 benefit packages. Nothing contained in this section shall
4 restrict a public school entity from negotiating or otherwise
5 agreeing to make payment for postretirement health benefits
6 for members or as may be provided for in Subchapter F
7 (relating to retirement health savings plan).

8 SUBCHAPTER E

9 ALTERNATIVE MEASURES FOR COST REDUCTION

10 Sec.

11 9351. Alternative measures program.

12 § 9351. Alternative measures program.

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

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

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

30 (2) Assistance in the formation of consortia to serve

1 public school entities that do not have the option of joining
2 an existing consortium.

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

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

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

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

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

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

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

5 (f) Extensions of time.--The board shall give due
6 consideration to a transition plan submitted under subsection
7 (e) that includes a request for an extension of time.

8 Consideration shall be given to a public school entity or
9 consortium which will incur a significant financial cost or
10 penalty.

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

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

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

of a collective bargaining agreement covering a majority of employees of the school district. Upon a school district of the first class entering participation in the alternative measures program pursuant to a collective bargaining agreement, continued participation in the alternative measures program shall become mandatory.

SUBCHAPTER F

RETIREMENT HEALTH SAVINGS PLAN

Sec.

9361. Retirement health savings plan.

§ 9361. Retirement health savings plan.

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

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

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

(3) Determination of enrollment procedures.

(b) Contracting authorized.--The board is authorized to administer the retirement health savings plan and to contract with any lawfully authorized entities to provide investment services, recordkeeping, benefit payments and other functions

1 necessary for the administration of the retirement health
2 savings plan. The board may contract with the retirement system
3 to invest funds in an account that shall be maintained and
4 accounted for separately from the funds of the retirement system
5 and invested in a prudent manner intended to maximize the safety
6 of the capital, with all earnings derived from investment of the
7 assets to be credited to the retirement health savings plan.
8 Costs and expenses incurred by the retirement system in
9 administering the investment option shall be paid by the
10 retirement health savings plan.

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

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

22 (e) Contributions.--

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

1 (i) A mandatory school employee contribution
2 established as a fixed percentage of compensation may be
3 established through a collective bargaining agreement
4 between a public school entity and a bargaining group
5 representing school employees. The retirement health
6 savings plan contribution rate does not have to be
7 uniform for all groups of school employees.

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

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

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

28 (i) For an employee who elects participation in the
29 retirement health savings plan, the employee's employer
30 shall make a contribution to the employee's account equal

1 to the public school entity's savings in Social Security
2 and Medicare taxes resulting from the tax-preferred or
3 tax-free treatment of contributions made by the school
4 employee under this subsection. Additional contributions
5 by a public school entity may be established through a
6 collective bargaining agreement between a public school
7 entity and a bargaining group representing school
8 employees.

9 (ii) Any other payments by the Commonwealth or
10 public school entity, including any set-aside payments to
11 be made to school employee accounts under section 9334
12 (relating to partnership for stable benefits funding) as
13 determined by the board.

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

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

29 (1) Upon retirement or separation from employment with a
30 public school entity, a participant becomes eligible to seek

reimbursements for IRC-qualifying health-related expenses from the participant's retirement health savings plan account, including reimbursements for the health-related expenses of the participant's eligible health care dependents.

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

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

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

(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

1 union that represents bargaining groups of school
2 employees participating in the plan.

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

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

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

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

11 (3) The advisory committee shall meet at least two times
12 per year and shall be consulted on plan offerings. By October
13 1 of each year, the board shall give the advisory committee a
14 statement of fees collected and the use of the fees.

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

21 Section 4. This act shall take effect immediately.