

Act 32 TCC Model Bylaws

(Detailed Version – With Options and Explanatory Notes)

_____ COUNTY TAX COLLECTION COMMITTEE BYLAWS

Effective _____, 2009

These model bylaws are a starting point for a tax collection committee developing bylaws under Act 32. The model provides statutorily required provisions, other basic provisions, and additional options that might be desirable. Options are set forth in brackets and bold. The model was developed by the PASBO Act 32 Task Force, and includes Task Force explanatory notes and comments. A basic version of this model is also available, which does not include options, explanatory notes or comments.

The TCC first meeting will occur in October or November, 2009. However, taxing authorities should begin advance planning for TCC governance as soon as possible. Advance planning is necessary to simplify what will otherwise be a cumbersome TCC process. One or more individuals will need to form a planning group and assume a leadership role in each geographic area in order to facilitate advance planning. Development of bylaws is an important component of the advance planning. Bylaws are a critical first step required before the TCC makes other important decisions. Advance planning will facilitate TCC adoption of bylaws at the first or second TCC meeting.

Drafting Committee Preliminary Comments

A. Important Background Facts for Bylaw Decisions by Each TCC

Different bylaws will be appropriate for different TCCs based on the facts pertaining to the TCC. Development of bylaws for a particular TCC requires initial consideration of the number of taxing authorities, tax facts, and other information concerning the TCC as follows.

1. Number of taxing authorities/statutory TCC delegates

- a. TCDs have anywhere from 4 to 91 taxing authorities/statutory TCC delegates
- b. Bucks County example
 - (1) 66 taxing authorities/statutory TCC delegates
 - (2) 13 school districts; 53 municipalities

2. Tax facts and documents pertaining to TCC

- a. Tax types and rates imposed by each taxing authority.
- b. Copies of tax enactment documents.
- c. Information on any pending changes.
- d. Most recent fiscal year tax revenue for each taxing authority.
- e. Current tax collectors.
- f. Copies of current Tax Collection Agreements (including compensation rates).
- g. Some of the above information is readily available on the DCED Tax Register; other information will need to be collected from taxing authorities.

B. Background Considerations for Bylaw Decisions by Each TCC

Before making bylaw decisions, TCC delegates should understand Act 32 rules concerning delegates and key TCC decisions as follows.

1. Act 32 rules concerning delegates

- a. See *PASBO Guidance: Act 32 Tax Collection Delegates*

2. Key TCC decisions

- a. Elect Chairperson
- b. Appoint legal counsel

- c. Adopt bylaws
- d. TCC management structure decisions, including:
 - (1) Who will be the leader/chief operating officer to lead and make sure all required TCC steps occur and all TCC responsibilities are fulfilled?
 - (2) Does TCC need an employee to perform these duties?
- e. TCC finance decisions, including:
 - (1) TCC budget
 - (2) TCC financing mechanism – when will school districts and municipalities make payments to fund TCC budget?
 - (3) TCC auditor
 - (4) TCC bank
 - (5) Tax collection cost allocation (how tax collector fees will be imposed on and shared by the school districts and municipalities?)
- f. Decision on TCC jurisdiction over other taxes, such as local services tax (LST)
- g. Decision on single-county vs. multi-county TCC
- h. Decision on tax bureau vs. independent third party collector
- i. If tax will be collected by an independent third party tax collector, prepare tax collector RFP, conduct RFP process, and select and appoint Act 32 county-wide tax collector. As part of this process, the TCC must develop the formal written Act 32 Tax Collection Agreement and address many important issues therein, including tax collector cost allocation.
- j. Appoint tax appeal board
- k. If the TCC decides to create a tax bureau, there will be many more considerations and decisions
- l. Ongoing oversight of tax collection within TCD

C. Act 32 Bylaw Mandates

The following are the minimum bylaw requirements mandated by Act 32.

1. **Procedural requirements – copy of proposed bylaws to delegates prior to meeting.** Per § 505(f), prior to the meeting at which bylaws will be adopted, the TCC must give written notice to each delegate and alternate that bylaws will be considered. The notice must include a copy of the proposed bylaws.

2. Required bylaw content. Per § 505(f), the bylaws must include the following basic items:

- a. Rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the TCC.
- b. A list of officers, their terms and powers and a process for their election.
- c. Meetings, including special meetings.
- d. The process for adopting and amending bylaws.
- e. The procedure for the addition of new political subdivisions to the TCC.

Many other bylaw provisions will be required, but are not mandated by Act 32.

3. Other laws

- a. Pennsylvania Sunshine Act – applies to TCCs, requiring advertising and open meetings
- b. Pennsylvania Right-to-Know Law – applies to TCCs, requiring appointment of an Open Records Officer and making certain records available on request

D. TCC Bylaw Development Process

These model bylaws are a starting point for a tax collection committee developing bylaws under Act 32. Development of bylaws requires careful consideration of the specific facts pertaining to the TCC, and also the many Act 32 legal requirements and options.

Although the bylaws require many decisions, the following are the most significant bylaw development decisions:

- How many voting delegates should there be? Should the number of delegates be reduced to streamline governance?
- Should there be weighted voting based on tax revenues and population? Alternatively, should each delegate have just one vote?
- Should the TCC have a management committee? If so, what duties should be delegated to the management committee?
- Will the TCC have an Executive Director or other employees?

If the TCC is contemplating the possibility of creating a tax bureau, this will significantly impact bylaw drafting decisions.

The Drafting Committee recommends that PASBO sponsor workshops to help guide school districts and municipalities through the bylaw development process. In addition, it is critical that TCC planning groups obtain assistance of legal counsel having a thorough understanding of Act 32 in order to explain the options available under Act 32 and the effect of various bylaw options.

_____ COUNTY TAX COLLECTION COMMITTEE

BYLAWS

Effective _____, 2009

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COUNTY TAX COLLECTION COMMITTEE

BYLAWS

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[Sample] Tax Collection Committee Bylaws

[] COUNTY TAX COLLECTION COMMITTEE

Bylaws

Effective: _____, 2009

Background. The [] County Tax Collection Committee (“TCC”) is a government entity created and organized under Act 32 of 2008, 53 P.S. § 6924.501 *et seq.*, which amended and restated the Local Tax Enabling Act (“LTEA”), 53 P.S. § 6901 *et seq.* Under Act 32, the TCC is required to appoint a tax collector to collect earned income and possibly other taxes on a county-wide basis, and to oversee tax collection within the [] Tax Collection District (“TCD”).

The following school districts and municipalities are within the TCD: _____, _____, _____. These school districts and municipalities are referred to herein as “taxing authorities.”

ARTICLE I. Governing Body – Board of Delegates

[Drafting Committee Note: TCCs in different counties will have from 4 to 91 delegates, and delegate votes will be weighted according to a statutory formula unless the TCC bylaws provide otherwise. 53 P.S. § 6924.505(c)(2). Governance by a large group might be unwieldy. TCC governance can be simplified and streamlined by reducing the number of delegates or eliminating weighted voting. 53 P.S. § 6924.505(c)(2). Governance can also be simplified by delegating duties to a management committee or Executive Director. 53 P.S. § 6924.505(f)(1). This model provides options for reducing the delegate number, eliminating weighted voting, and delegating duties.]

Section 1. Voting and Alternate Delegates: The Governing Body shall be called the “Board of Delegates,” and will be referred to herein as the “Board.” Taxing authorities that impose an income tax shall appoint a primary voting delegate, a first alternate voting delegate, and a second alternate voting delegate. The Board shall consist of voting delegates appointed by these taxing authorities. Delegates may but need not be residents of the taxing authority they represent. A single individual may simultaneously serve as a delegate for multiple taxing authorities. **[If a single individual serves as delegate for more than one taxing authority, the individual may cast separate votes as delegate for each taxing authority and may vote in the same manner or in a different manner for each taxing authority.]** In the absence of the primary voting delegate, the first alternate delegate will be considered the voting delegate. In the

absence of both the primary voting delegate and the first alternate delegate, the second alternate delegate will be considered the voting delegate.

[Drafting Committee Note: (1) Taxing authorities should appoint TCC delegates as soon as possible. Although the Act 32 delegate appointment deadline is September 15, 2009, earlier appointment will provide a contact person within each school district and municipality and is recommended to facilitate TCC advance planning. (2) Taxing authorities should begin advance planning for TCC governance as soon as possible. Advance planning is necessary to simplify what will otherwise be a cumbersome TCC process. One or more individuals will need to form a planning group and assume a leadership role in each geographic area in order to facilitate advance planning. (3) If the TCC does not implement a reduced delegate number model in the bylaws, the bracketed language above may be used to make clear that a TCC voting delegate appointed by more than one taxing authority may cast separate and independent votes for each taxing authority.]

[Delegate Number Option 1 – Basic Model Without Mandated Reduced Delegate Number (With or Without Weighted Voting):

a. Number and Appointment of Board Delegates/Alternates:

(1) Initial Delegate Appointment: Prior to September 15, 2009, each taxing authority within the TCD that imposed an income tax prior to July 1, 2009 appointed one primary voting and two alternate voting delegates to the Board in accordance with Act 32. Each taxing authority within the TCC that imposes an income tax for the first time after June 30, 2009 shall appoint one primary voting and two alternate voting delegates to the Board in accordance with Act 32. Each taxing authority that does not impose an income tax prior to July 1, 2009 may appoint one nonvoting delegate and two alternate nonvoting delegates to the Board. If a taxing authority that does not impose an income tax prior to July 1, 2009 appoints a nonvoting delegate to the Board, and then after June 30, 2009 imposes an income tax, the previously appointed nonvoting delegate shall become the taxing authority's voting delegate to the Board.]

(2) Ongoing Delegate Appointment: Beginning in 2010, each school district taxing authority shall at its annual organization meeting (held during the first week of December that includes a Monday) appoint its Board delegates. The municipality taxing authorities within each school district shall also appoint Board delegates before the end of the first week of December that includes a Monday.

[Drafting Committee Note: Under the basic model without reduced delegate number, the number of delegates will be very high for many TCCs. For example, the number in Bucks County would be 66 delegates.]

[Delegate Number Option 2 – Mandated Reduced Delegate Number Model (With or Without Weighted Voting):

a. Number and Appointment of Board Delegates/Alternates:

(1) Initial Delegate Appointment: Prior to September 15, 2009, each taxing authority within the TCD that imposed an income tax prior to July 1, 2009 appointed one primary voting and two alternate voting delegates to the Board in accordance with Act 32.

(2) Transition to Reduced Delegate Number: In order to simplify governance, the TCC desires to reduce the number of voting delegates by having one delegate serve as the collective representative for all municipalities that impose an income tax located within each school district. After adoption of these bylaws, there will be one primary voting delegate and two alternate voting delegates who will represent all such municipalities located within each school district. Accordingly, there will be an equal number of school district and municipal delegates on the Board. Transition to and future governance by the reduced number of delegates will be accomplished as follows.

Prior to October 31, 2009, representatives of the municipalities within each school district will discuss candidates to serve as delegates, with the objective of agreeing on consensus appointments to be approved by all municipalities.

Prior to November 30, 2009, each municipality governing body will vote on delegate appointments. Each municipality will promptly thereafter advise the Secretary of the Board of the vote results. [Any individuals designated by a majority of the municipalities within each school district as primary voting delegate, first alternate, or second alternate will serve in such position. If there is no individual designated for one or more of the delegate positions by such a majority, the individual designated by the highest number of municipalities for any delegate position will be the primary voting delegate, the individual designated by the second highest number for any delegate position will be the first alternate, and the individual designated by the third highest number for any delegate position will be the second alternate. If there is a tie in the number of municipalities designating an individual, the delegate appointment will be decided by weighting the vote of each municipality as determined by the Department of Community and Economic Development pursuant to 53 P.S. § 6924.505(c)(3).] The Secretary of the Board will notify the

municipalities and the appointed individuals of the delegate appointments to each position pursuant to this process.

Beginning December 1, 2009, any delegate appointed to represent an individual municipality will no longer be considered a voting delegate, and municipalities will be represented on the Board solely by the delegates collectively appointed to represent all municipalities within each school district.

(3) **Ongoing Delegate Appointment: Beginning in 2010**, each school district taxing authority shall at its annual organization meeting (held during the first week of December that includes a Monday) appoint its Board delegates. The municipality taxing authorities that impose an income tax within each school district shall also appoint Board delegates before the end of the first week of December that includes a Monday.

Concerning the municipality appointment process, prior to October 31 of each year representatives of the municipalities will discuss candidates to serve as delegates, with the objective of agreeing on consensus appointments to be approved by all municipalities. Thereafter, at a meeting held prior to the end of the first week of December that includes a Monday, each municipality governing body will vote on delegate appointments. Each municipality will promptly thereafter advise the Secretary of the Board of the vote results. Any individuals designated by a majority of the municipalities within each school district as primary voting delegate, first alternate, or second alternate will serve in such position. If there is no individual designated for one or more of the delegate positions by such a majority, the individual designated by the highest number of municipalities for any delegate position will be the primary voting delegate, the individual designated by the second highest number for any delegate position will be first alternate, and the individual designated by the third highest number for any delegate position will be the second alternate. If there is a tie in the number of municipalities designating an individual, the delegate appointment will be decided by weighting the vote of each municipality pursuant to 53 P.S. § 6924.505(c)(3) based on the following formula: (1) 50% of the weight for each municipality vote will be allocated according to the proportional population of each municipality in proportion to the total population of the TCD, as determined by the most recent Federal decennial census data; and (2) 50% of the weight for each municipality vote will be allocated in direct proportion to the income tax revenues collected for each municipality based on each municipality's most recent annual financial report submitted to DCED or the Pennsylvania Department of Education. The Secretary of the Board will notify the municipalities and the appointed individuals of the delegate appointments to each position pursuant to this process.

Each taxing authority that does not impose an income tax prior to July 1, 2009 may appoint one nonvoting delegate and two alternate nonvoting delegates to the Board. If a school district that does not impose an income tax prior to July 1, 2009 appoints a nonvoting delegate to the Board, and then after June 30, 2009 imposes an income tax, the previously appointed nonvoting delegate shall become the school district's voting delegate on the Board. If a municipality that does not impose an income tax prior to July 1, 2009 appoints a nonvoting delegate to the Board, and then after June 30, 2009 imposes an income tax, the municipality will participate in the municipality appointment process effective for the first calendar year that starts at least 6 months after the municipality adopts the ordinance imposing the income tax.]

[Drafting Committee Note: (1) Collective representation of municipalities within each school district will substantially reduce the number of delegates. For example, in Bucks County, this would reduce the number of delegates from 66 to 26. (2) As a matter of procedure, a TCC that wishes to adopt the mandated reduced delegate number model will need to start with delegates appointed by each taxing authority under the basic model and with weighted voting. After the first meeting is convened with a quorum consisting of a majority of the appointed TCC delegates and bylaws are approved by a majority of delegate weighted votes, the municipalities would need to take prompt action to appoint collective representatives, and the reduced number of delegates would take effect at the next TCC meeting. (3) The dates set forth in the reduced delegate number model option will work only with advance planning for the TCC process, including advance discussion of bylaws for adoption at the TCC first meeting, and only if the County Commissioners schedule the first TCC meeting well in advance of the November 15, 2009 final deadline. If these conditions are not fulfilled, the dates set forth in the reduced delegate number model option will need to be adjusted accordingly. (4) If there is an advance consensus on the reduced number of delegates, the process can be accelerated and delay avoided by adopting the bylaws at the TCC first meeting and having the municipalities take action to appoint collective delegates in advance of the TCC first meeting. (5) As a further alternative, governance models that reduce delegate numbers could be implemented by consensus action without special bylaw provisions that mandate collective appointment of delegates. For example, multiple taxing authorities could informally agree to appoint the same individual as their delegate. Of course, compared to reducing the delegate number through a bylaw mandate, consensus action without a bylaw mandate has the potential significant downside of instability in that any taxing authority could change its appointment at any time. (6) Selecting an individual as the collective municipal representative based on the number of municipalities that vote for the individual might be inappropriate in a TCC where municipalities are significantly different in size. In such cases, municipalities may wish to select a collective municipal representative by using a weighted voting process, and the bracketed language above referring to a majority vote will need to be modified accordingly. (7) In addition to the above options, many other delegate appointment options are possible. For example, the TCC could pass a bylaw

provision that requires all school districts within the TCD to appoint a single delegate to represent the districts' collective interests, and all municipalities within the TCD to appoint a single delegate to represent the municipalities' collective interests, with the two appointed delegates then choosing a third delegate and all three delegates having an equal vote. (8) Similar options could also be used to simplify the governance process for a multi-county TCC. (9) Act 32 does not expressly authorize bylaws that mandate a reduced delegate number governance arrangement. KKAG believes that Act 32 authorizes such arrangements pursuant to § 505(f)(1), which authorizes the TCC to adopt bylaws that provide voting rights and provisions for managing the affairs of the TCC. However, it would be helpful to have DCED approve model bylaws with such alternatives or to promulgate a DCED regulation expressly authorizing such arrangements.]

b. Delegate Term of Office: The delegates appointed in 2009 shall serve until a successor has been appointed, or earlier death, resignation, or removal of the delegate. Thereafter, each delegate shall be appointed for a term of one (1) year starting January 1 and until a successor has been appointed, or earlier death, resignation, or removal of the delegate. If there is a vacancy in the position of delegate representing any taxing authority, the taxing authority **[or taxing authorities]** will promptly appoint a new delegate to fill the vacancy.

[Removal Option 1 – Basic Model Without Reduced Delegate Number:

c. Delegate Removal: All delegates serve at the pleasure of and may be removed at any time by the governing body of the taxing authority that appointed the delegate.]

[Removal Option 2 – Reduced Delegate Number Model:

c. Delegate Removal: All delegates serve at the pleasure of and may be removed at any time by the governing body of the taxing authority or taxing authorities that appointed the delegate. As to a delegate appointed as representative of more than one municipality, removal requires action by [a majority of the municipalities represented by the delegate] [the number of municipalities represented by the delegate that possess a majority of the votes weighted as determined pursuant to 53 P.S. § 6924.505(c)(3)].]

d. Delegate Qualifications: All delegates appointed to the Board will be eighteen (18) years of age or over.

[Drafting Committee Note: Act 32 does not authorize TCCs to establish delegate qualifications. The Committee therefore recommends caution in adding additional qualifications.]

e. **Tax Enactments and Other Information:** Each taxing authority that imposes an income or other tax over which the TCC has assumed authority or appoints a nonvoting delegate shall promptly provide the TCC with all information and documents necessary for TCC operation and for tax collection as requested by and in a form satisfactory to the TCC, including certified copies of the taxing authority's tax enactments, the names and contact information of all appointed delegates, and all other information requested by the TCC.

Section 2. Board Meetings: The Board will hold quarterly or more frequent meetings on dates and at times established by the Board, or by the Chairperson in the absence of Board action. Special meetings will be called by the Secretary upon request received from any officer or any [5] delegates. Established regular meeting dates and times may be changed by the Chairperson. One of the regular meetings will be designated as the annual organization meeting as set forth in Article II, Section 3.

[Drafting Committee Note: Quarterly meetings are recommended in order to facilitate review of tax revenue after employer quarterly tax payments are made. During the initial two years of the TCC, and thereafter for TCCs that create a tax collection bureau, more frequent meetings might be required, depending on the number of duties delegated to committees or employees.]

Section 3. Quorum: A quorum shall consist of the presence of [a majority of all primary voting delegates (or an alternate present in place of the primary).] [delegates holding a majority of the sum of all taxing authority votes.]

[Drafting Committee Note: The bylaws may specify how a quorum will be calculated. 53 P.S. § 6924.505(b.1).]

Section 4. Meeting Conduct: All Board meetings will be conducted according to any policies or rules established by the Board, and in default of such rules by Robert's Rules of Order.

Section 5. Vote Weight/Votes Required for Action on Matters Other than Major Decisions:

a. **General Rule on Vote Required:** Except as otherwise provided in these bylaws, all action taken by the Board shall be by the affirmative vote of a majority of all delegate votes present [, but such majority shall not constitute less than [40%] of all delegate votes that could be cast if all delegates were present].

[Delegate Vote Option 1 – Weighted Vote:

b. **Weighted Voting:** In counting delegate votes, the vote of each delegate will be weighted. By September 1, 2009, the Pennsylvania Department of Community and Economic Development will calculate the weight of each delegate's vote pursuant to 53 P.S. § 6924.505(c)(3). Pursuant to such section, the TCC shall re-weight each taxing authority delegate's vote on July 1, 2010, on July 1 every year thereafter, and at any time when a new taxing authority is added to the TCC as set forth in Article VI. Re-weighting will be based on the following formula: (1) 50% of the weight for each delegate vote will be allocated according to the proportional population of each taxing authority in proportion to the total population of the TCD, as determined by the most recent Federal decennial census data; and (2) 50% of the weight for each delegate vote will be allocated in direct proportion to the income tax revenues collected for each taxing authority based on each taxing authority's most recent annual financial report submitted to DCED or the Pennsylvania Department of Education. As to any delegate appointed to represent more than one taxing authority, the weight of such delegate's vote will be the sum of the weight assigned for each taxing authority delegate's vote.]

[Delegate Vote Option 2 – One Person, One Vote:

b. **Vote Weight:** In counting delegate votes, each delegate on the Board will have one equally-weighted vote.]

Section 6. Board General Powers and Duties:

[Drafting Committee Note: This model provides an option to simplify governance by delegating authority to a Management Committee or to an Executive Director. While the TCC is not required to delegate authority, doing so will probably be helpful to most TCCs to streamline governance. ***If the TCC does not delegate authority to a Management Committee or an Executive Director, the authority will remain vested in the Board.***]

Except as otherwise provided in these bylaws, all powers of the TCC shall be exercised by or under authority of the Board, and the business and affairs of the TCC shall be managed under direction of the Board.

The Board may delegate authority for actions to committees, officers, and others. However, without regard to any prior delegation of authority:

a. The Board shall receive and review information provided by the [Management Committee,] [Executive Director,] Secretary, Chairperson, and others in order to keep fully informed as to TCC business, operations, and other affairs.

b. At each regular Board meeting, the [Executive Director] [Chairperson] [Secretary] [Treasurer] will present to the Board for ratification all TCC expenditures paid or incurred during the calendar year quarter preceding the month in which the meeting is held.

c. Although the Board in performing its duties will rely substantially on information from and decisions by the [Management Committee,] [Executive Director,] Secretary, Chairperson, and others, the Board shall have ultimate responsibility and authority with respect to TCC business, financial oversight, and other TCC affairs.

d. The Board will always have the right to direct TCC action on any matter by policy, resolution, directive, or other measure, including a direction that reverses prior action of any committee or officer. Any reversal of a prior action shall not negate any contract rights acquired by a third party pursuant to a contract properly approved before the Board action reversing the prior decision.

Section 7. Major Decisions – Board Powers Retained and Not Delegated:
The Board shall not delegate authority to act on, and only the Board shall have authority to act on, any **Major Decision**. Each of the following shall be considered a **Major Decision**:

a. Approval of any amendment of these bylaws.

b. Approval to merge or take joint action with another TCC to form a multi-county TCC.

[Drafting Committee Note: The TCC may merge or take joint action with one or more other TCCs to form a multi-county TCC. 53 P.S. § 6924.505(a.2)(7). Advantages of a multi-county TCC would include: (1) lower overhead cost through sharing expenses and greater tax collection efficiency due to higher volume and tax revenue; (2) reduction in the amount of funds that would have to pass from other tax collectors to the TCC tax collector; and (3) if a third-party tax collector is appointed, the larger population of a joint-TCC should provide greater bargaining power and presumably lead to a lower tax collector compensation rate. However, with many more taxing authorities involved, a joint-TCC will be difficult to govern unless steps are taken to simplify governance.]

c. Approval of the TCC annual budget.

[Drafting Committee Note: The PASBO Act 32 Task Force should as part of its technical assistance workplan prepare a document providing guidance to TCCs on

developing a TCC budget. Of course, the budget process will be easier for a TCC appointing an independent third party tax collector in comparison to a TCC establishing a tax bureau.]

d. Approval to borrow money or otherwise incur debt not provided for in a budget approved by the Board.

e. Appointment or removal of TCC officers.

f. Appointment or termination of the TCC solicitor, an accounting firm to audit the TCC annual financial statements, the TCC insurance agent, Tax Appeal Board Members, and one or more banks or financial institutions to serve as the primary depository for the TCC or to otherwise accept TCC deposits or provide investments for the TCC.

[Drafting Committee Note: PASBO, PSBA, or another organization should consider the possibility of sponsoring an insurance program or assisting TCCs in creating a joint purchase program for insurance packages.]

g. Approval to create a bureau to collect tax within the TCD, or to dissolve any such bureau.

h. Approval to assume jurisdiction over any tax other than income tax.

[Drafting Committee Note: The TCC must assume jurisdiction over earned income tax (EIT) and may assume jurisdiction over other taxes collected within the TCD. 53 P.S. § 6924.509(k). Although the statute is not entirely clear, DCED interprets § 509(k) to require not just TCC approval, but also approval by each taxing authority imposing any other tax to be collected under TCC contract with a tax collector. The TCC should consult with legal counsel concerning required steps to contract for collection of other taxes. Subject to compliance with all legal requirements, the Committee recommends TCC assumption of jurisdiction over local services tax (LST) and other taxes collected or paid through employers, such as mercantile tax. This should help achieve the greatest possible efficiency in collection and uniformity in administration of such taxes.]

i. Approval to purchase or sell real estate.

j. Approval of any real estate lease to the extent the lease requires payments not provided for in a budget approved by the Board.

[k. Appointment of the tax collector and approval or termination of the tax collection agreement with the collector.]

[l. Appointment or termination of a TCC Executive Director.]

[m. Approval to open, relocate, or close any office.]

[n. Approval of any contract extending more than one (1) year or creating a liability greater than a specific amount established by Board resolution adopted pursuant to this section of the bylaws.]

[o. Approval of the sale of any TCC asset or combination of assets when the purchase price exceeds a specific amount established by Board resolution adopted pursuant to this section of the bylaws.]

[p. Approval of any expense that will cause total TCC expenses for the year to exceed total annual budgeted expenses.]

[q. Approval to hire any individual to the extent funds have not been provided for the position in a budget approved by the Board.]

[r. Approval for the creation or dissolution of any new entity owned or controlled by the TCC.]

s. Any other issue or matter as to which the Board in the future adopts a resolution designating the issue or matter to be a Major Decision.

Section 8. Vote Required for Major Decisions:

a. Supermajority Vote Required for Certain Major Decisions:

Notwithstanding any other provision of these bylaws, action taken by the Board on the following **Major Decisions** shall be by roll call vote and shall require the affirmative vote of a 2/3 super-majority of all **[delegate votes that could be cast if all delegates were present] [delegate votes present, but not less than [40%] of all delegate votes that could be cast if all delegates were present]**: (1) Approval of any amendment of these bylaws. (2) Approval to merge or take joint action with another TCC to form a multi-county TCC. (3) Approval to purchase or sell real estate. **[(4) Approval of the TCC annual budget.] [(5) Approval to create a bureau to collect tax within the TCD.] [(6) Appointment of the tax collector and approval or termination of the tax collection agreement with the collector.] [(7) Approval to borrow money or otherwise incur debt not provided for in a budget approved by the Board.]**

b. **Vote Required for Other Major Decisions:** Action taken by the Board on all other **Major Decisions** will be by the affirmative vote of a majority of all **[delegate votes that could be cast if all delegates were present] [delegate votes present, but such majority shall not constitute less than [40%] of all delegate votes that could be cast if all delegates were present]**.

[Drafting Committee Note: The bylaws may specify what votes are required for decisions. 53 P.S. § 6924.505(f)(1).]

ARTICLE II. Officers, Agents, Employees

[Drafting Committee Note: The Board must have a Chairperson and Vice-Chairperson, both of whom must be Board delegates, and must have a Secretary who may but need not be a Board delegate. 53 P.S. § 6924.505(e). Each TCC must also have an Open Records Officer. 53 P.S. § 6924.505(i)(1); 65 P.S. § 67.502(a)(1). The bylaws may also provide for other officers. 53 P.S. § 6924.505(f)(2). The Board might wish to have a Second Vice-Chairperson (who must be a TCC delegate), an Assistant Secretary, a Treasurer or Assistant Treasurer (who need not be TCC delegates). 53 P.S. § 6924.505(e).]

Section 1. Officers: The Board will have the following officers: (1) Chairperson; (2) Vice-Chairperson; **[(3) Second Vice-Chairperson];** (4) Secretary; **[(5)Assistant Secretary]; [(6) Treasurer]; [(7) Assistant Treasurer]**, and such other officers or assistant officers as elected by the Board. The Chairperson, Vice-Chairperson, **[and Second Vice-Chairperson]** shall each be a TCC voting delegate. Other officers may but need not be TCC voting delegates. Different offices may be held by the same person if determined appropriate by the Board.

[Drafting Committee Note: The TCC will need to decide whether compensation should be paid to officers or Tax Appeal Board members. There are significant legal and practical considerations associated with compensating officers and Tax Appeal Board members. Although there might be circumstances when compensation is appropriate, the Committee generally discourages compensation for these positions. TCCs should consult legal counsel concerning the permissibility of compensation, and also concerning the permissibility of appointing an officer or delegate to a TCC employee position.]

Section 2. First Board Meeting/Initial Organization/Initial Officer Election/Term of Appointment: The chair of the county commissioners or the chair's designee, or the chief executive of the county or the chief executive's designee, shall in 2009 convene the first meeting of the Board. At the meeting, the Board shall elect officers. Within thirty (30) days after the election of any officer, the Secretary shall notify DCED of the name and address of each officer.

Section 3. Annual Board Organization Meeting/Officer Election/Other Appointments: Beginning in 2010, the Board will designate one of the regular Board meetings as the annual organization meeting. This meeting will generally be held in December or January. At the annual organization meeting, the Board shall elect officers. Within thirty (30) days after the election of any officer, the Secretary shall notify DCED of the name and address of each officer. At the annual organization meeting, the Board will also review the tax collector's performance, review TCC audited financial statements, appoint the TCC solicitor, appoint an accounting firm to audit the TCC annual financial statements, appoint the TCC insurance agent, appoint Tax Appeal Board

members, approve one or more banks or other financial institutions to serve as the primary depository for the TCC or otherwise to accept TCC deposits or provide investments for the TCC, and take other action as necessary or appropriate.

[Drafting Committee Note: The Committee recommends the Board use an RFP process for the selection of all professionals and consultants.]

Section 4. Officer Term of Office: The officers elected in 2009 shall hold office until a successor has been elected, or earlier death, resignation, or removal of the officer. Thereafter, each officer shall hold office for a term of one (1) year commencing **[January 1]** and until a successor has been elected, or earlier death, resignation, or removal of the officer.

Section 5. Removal of Officers, Agents, and Tax Appeal Board Members: Any officer, agent, or Tax Appeal Board member may be removed by the Board at any time, with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of any officer shall not of itself create contract rights.

Section 6. Chairperson: The Chairperson shall be a TCC voting delegate. The Chairperson shall preside at Board meetings[, **and together with the Management Committee, shall act as a sounding board for and give direction to the Executive Director when necessary or appropriate between Board meetings**]. Except as otherwise determined by the Board, the Chairperson shall set Board meeting agendas, conduct Board meetings, and perform other duties as determined by the Board. **[In the absence or unavailability of the Executive Director, the Chairperson may perform the duties of the Executive Director to the extent the Chairperson deems necessary or appropriate.]**

Section 7. Vice-Chairperson: The Vice-Chairperson shall be a TCC voting delegate. The Vice-Chairperson shall perform duties as determined by the Board. In the absence or unavailability of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson. **[The Second Vice-Chairperson shall perform the duties of the Chairperson in the absence or unavailability of the Chairperson and Vice-Chairperson.]**

[Section 8. Treasurer: **[The Treasurer may but need not be a TCC voting delegate. [Together with the Executive Director and Management Committee,] The Treasurer shall be responsible for oversight of TCC finances, and shall endeavor to ensure that the Board [and Management Committee] [has] [have] adequate information concerning TCC finances. The Treasurer shall perform other duties designated by the Board[, the Management Committee,] or the Chairperson.]**

Section 9. Secretary: The Secretary may but need not be a TCC voting delegate. The Secretary will notify DCED within thirty (30) days of adoption of these bylaws or any amendments of these bylaws. The Secretary shall maintain the Board meeting minutes and all TCC records, provide all public notices required under the Pennsylvania Sunshine Act, 65 Pa.C.S.A. § 701 *et seq.*, provide all notices to delegates required by these bylaws, provide all notices to DCED required by these bylaws, provide all other notices required by applicable law, and shall perform other duties as determined by the Board.

[Drafting Committee Note: The TCC will need to make certain basic documents available to the public, and some TCCs may not have an office or a website. If the TCC does not have a website, it would be very helpful if a third-party such as the county or DCED would dedicate a section of its website to allowing TCCs to post basic information such as officer names and meeting dates, Board meeting minutes, certain records subject to disclosure under the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 *et seq.*, and other documents and information.]

Section 10. Open Records Officer: The TCC shall appoint an Open Records Officer who shall serve until a successor is appointed, or earlier death, resignation, or removal. The Open Records Officer shall ensure compliance with the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 *et seq.*, and shall consult with the Solicitor as necessary in doing so. The Open Records Officer shall receive all Right-to-Know Law requests submitted to the TCC, shall direct these requests to appropriate persons within the TCC, shall track the TCC's progress in responding to requests, and shall issue interim and final responses to requests.

[Drafting Committee Note: If the TCC employs an Executive Director, he or she should also serve as the Open Records Officer. If the TCC does not employ an Executive Director, the Secretary should serve as the Open Records Officer.]

Section 11. Solicitor: The TCC shall appoint a Solicitor who shall serve until a successor is appointed, or earlier death, resignation, or removal. The Solicitor shall attend all Board meetings and serve as the legal advisor to the TCC.

[Drafting Committee Note: The TCC needs to retain legal counsel immediately to explain to delegates and officers the many requirements applicable to the TCC. The Committee recommends that the Board use an RFP process to select legal counsel that has a thorough understanding of Act 32; the TCC process; EIT, PIT, LST, and other local government taxes; tax collection agreement provisions important for protection of taxing authorities; and the tax collection process. Of course, if an advance planning group is formed within the TCC, it will also be important that the advance planning group have the benefit of legal counsel.]

[Executive Director Option:

Section 12. Executive Director: The Executive Director is the Chief Operating Officer of the TCC. Subject to these bylaws and directions of the Board [and the Management Committee], the Executive Director shall: (1) collect and summarize tax facts and documents relevant to Board decisions; (2) ensure mandated TCC organization and operations steps occur; (3) together with the Secretary, maintain TCC records; (4) make recommendations to the Board [and the Management Committee] on key decisions; (5) assist in development of the tax collection agreement between the TCC and the tax collector; (6) develop an RFP and oversee the selection process for TCC legal counsel, TCC auditor, TCC insurance agent, the TCC bank, and the tax collector; (7) assist in developing a transition plan from former tax collectors to the Act 32 tax collector; (8) obtain and monitor TCC insurance; (9) oversee TCC finances, including establishing and monitoring bank accounts, preparing and implementing an annual budget, allocating TCC expenses, and interfacing with the TCC auditor; (10) ensure the TCC complies with applicable laws such as the Pennsylvania Right-to-Know Law, the Pennsylvania Adverse Interest Act, 71 P.S. § 776.1 *et seq.*, the Pennsylvania Sunshine Act, and the Pennsylvania Public Official and Employee Ethics Act, 65 Pa.C.S.A. § 1101 *et seq.*, based on advice from the Solicitor as necessary or appropriate; (11) ensure the TCC complies with all temporary and permanent DCED regulations; (12) furnish all information requested by DCED for the DCED tax register; (13) oversee the Tax Appeal Board's operations; (14) coordinate TCC involvement in the DCED mediation process as necessary or appropriate; (15) monitor the tax collector on an ongoing basis; (16) make recommendations to the Board [and Management Committee] on policies, long range plans, and other matters; (17) keep the Board [and Management Committee] fully informed as to TCC operations; (18) perform all other duties in the TCC job description for the Executive Director, all duties generally incident to the office of Chief Operating Officer, and all other duties designated by the Board [or Management Committee]; and (19) oversee all other aspects of TCC operations.

Section 13. Delegation of Specific Powers to the Executive Director: Without limiting the general grant of authority to the Executive Director set forth in Section 12, but subject to these bylaws and directions of the Board [and Management Committee], the Executive Director shall have authority concerning the following specific matters:

a. Employment Decisions:

(1) Hiring, Supervision, Discipline, and Termination: Except as otherwise stated in this section, the Executive Director shall have authority

to hire, supervise, discipline, and terminate the employment of any TCC employee. Except in the case of voluntary termination of employment by decision of the employee, the Executive Director will terminate employment of an employee only after consultation with the Chairperson and the Solicitor. However, the Executive Director shall promptly report to the Board [and the Management Committee]: (a) the name of, position, and compensation paid to all new employees; and (b) the name and a brief statement of the reason for termination of any employee, including whether the termination resulted from decision of the employee or decision of the Executive Director. In the event of any involuntary termination resulting from decision of the Executive Director, the decision will be presented to the Board [or Management Committee] for ratification at a subsequent public meeting.

(2) **Employee List:** The Executive Director shall at least annually provide to the Board a list of all employees, including name, position, and compensation.

(3) **Compensation:** The compensation paid to employees shall be decided and established at the discretion of the Executive Director pursuant to a Board-approved personnel policy, compensation survey, compensation report, or other guideline establishing compensation ranges for specific positions or types of positions. If there is no applicable policy, compensation survey, compensation report, or other guideline establishing compensation ranges for the specific position or type of position, compensation shall be set by the Board [or the Management Committee].

(4) **Limitations on Delegated Powers:** As limitations on the powers delegated to the Executive Director: (a) the Executive Director shall have authority to hire only to the extent that funds for a position are provided in the current budget; and (b) any employment contract must be approved by the Board [or the Management Committee].

b. **Approval of Budgeted Expenses and of Unbudgeted Expenses up to Specified Amount:** Subject to the requirements stated elsewhere in these bylaws, the Executive Director shall have authority for approval of: (1) any expense included within the current budget; and (2) specific expenses not included within the current budget, provided that such specific unbudgeted expense approved for any one item or for payment to any one vendor does not exceed a specific amount established by Board resolution adopted pursuant to this section of these bylaws, and provided also that the expense approved will not cause total expenses for the year to exceed total annual budgeted expenses.

c. **Contract Signature:** After required approvals have been obtained in accordance with these bylaws, contracts may be signed by the Executive Director.]

[Drafting Committee Note: The tasks in the bracketed language above must be performed by someone. However, there are numerous ways to delegate these tasks, and for TCCs that appoint a third-party tax collector the level of work required to lead the TCC will be substantially reduced after the first two years of the TCC process. Options available to ensure performance of the above tasks include: (1) Full time Executive Director. (2) Part time Executive Director. (3) Executive Director shared with another TCC. (4) School district, municipality, IU, county, or other employee serve as Executive Director, or by contract perform specified duties and report to TCC Chairperson. (5) Executive assistant or clerical employee perform some or all operations duties. (6) No employees – TCC officers perform some or all operation duties (with or without delegation or purchase of services from school district, municipality, IU, or county).

If the TCC has an Executive Director or other employee, this raises additional complications and requirements in terms of personnel policies, payroll, and many other issues. If the TCC decides an employee is needed, the TCC should explore some type of joint employment relationship with a school district, municipality, IU, county, or other employer in order to allow human resource functions to be performed by an entity with a preexisting employee base and human resources capability.

The option best suited for the TCC will depend on the facts and individual circumstances of the TCC. If an Executive Director or other leader for the TCC will be retained, it would be highly beneficial to retain and involve that individual in the advance planning prior to the first TCC meeting.]

[Management Committee Option:

ARTICLE III. Management Committee

[Drafting Committee Note: In addition to the possible option of reducing the number of delegates, eliminating weighted voting, and appointing an Executive Director, an alternate or additional strategy for streamlining governance is delegation of duties to a Management Committee. A Management Committee can be given the duty to analyze issues and make recommendations to the full Board. Alternatively, the Board can delegate final decision making authority to a Management Committee on certain matters.]

Section 1. Management Committee Members: The Management Committee shall consist of the Chairperson, Vice-Chairperson, [Second Vice-Chairperson,] Immediate Past Chairperson if still a member of the Board, and any other officer appointed to the Management Committee by the Board.

Section 2. Management Committee Meetings: Regular Management Committee meetings shall be held on dates and at times established by the Management Committee. Generally, the Management Committee will hold meetings each month during months in which there is not a regular Board meeting. Special Management Committee meetings shall be called upon request received from any officer. Regular meeting dates and times established by the Management Committee may be changed by decision of the Chairperson.

Section 3. Quorum: A quorum of the Management Committee shall consist of the presence of a majority of all Management Committee members.

Section 4. Votes Required for Action: Except as otherwise provided in these bylaws, all action taken by the Management Committee shall be by majority vote of all Management Committee members [present].

Section 5. Management Committee Powers and Duties: The purpose of the Management Committee is to assist in oversight of TCC management and to exercise certain specific powers. Subject to these bylaws, the Management Committee shall have the following powers and duties:

[a. **Sounding Board for Executive Director.** The Management Committee shall act as a sounding board for and give direction to the Chairman and Executive Director when necessary or appropriate between Board meetings.]

b. **Recommendations to Board.** [Based on recommendations of or with input from the Executive Director,] the Management Committee shall make recommendations to the Board on policies, long range plans, financial matters, Major Decisions, and any other matter it deems appropriate.

c. **Financial Oversight.** The Management Committee shall determine and approve the scope of the audit for TCC financial statements and may request other services be provided by the TCC auditor. The Management Committee shall also approve an accounting firm for audit of the tax collector financial statements in compliance with 53 P.S. § 6924.505(h). Although the Management Committee in performing its duties will rely substantially on information and advice from the TCC auditor [and the Executive Director], the Management Committee shall have responsibility to oversee TCC finances and tax collector financial statements, including the following specific responsibilities: (1) review TCC internal monthly financial statements; (2) review TCC and tax collector annual audited financial statements; (3) ensure presentation of the TCC and tax collector annual audited financial statements to the Board; (4) highlight for the Board any financial or other matters the Management Committee believes require attention or action; (5) ensure that the TCC has adequate internal controls relating to all financial matters; (6) establish the tax collector bond or theft protection

insurance amounts; and (7) any other steps deemed appropriate for financial oversight.

d. **General Authority/Board Powers Retained.** Subject to these bylaws, the Management Committee may authorize TCC action on any matter other than the following items which are reserved for decision by the Board:

- (1) Any Major Decision as defined in Article I, Section 7.
- (2) Any matter committed by resolution of the Board exclusively to the Board itself, or to another committee.
- (3) Amendment or repeal of any resolution of the Board.
- (4) Any action that is contrary to any action directed by the Board.

e. **Delegation of Specific Powers to Management Committee.** Without limiting the general grant of authority to the Management Committee contained in subsection (d) but subject to these bylaws and directions of the Board, the Management Committee shall have authority to act on the following matters:

- (1) Approval of any contract not reserved for Board action as a Major Decision.
- (2) Approval to amend the budget by transferring amounts budgeted in one expenditure category to another expenditure category when it is determined that the funds budgeted in the first category will not be needed.
- (3) Approval of specific expenses not included within the current budget, provided that such specific unbudgeted expense approved for any one item or for payment to any one vendor does not exceed a specific amount established by Board resolution adopted pursuant to this section of these bylaws, and provided also that the expense approved will not cause total TCC expenses for the year to exceed total annual budgeted expenses.
- (4) Approval of new accounts or signature authority with respect to accounts established at any bank or other financial institution previously approved by the Board.
- (5) Approval of credit cards to be used for payment of TCC expenses through any bank or other financial institution previously approved by the Board.

(6) Approval of employee or tax collector bond or theft protection insurance amounts.

(7) Presentation of a recommended slate of officer nominees and other appointments at the Board annual organization meeting.

[(8) Directing actions by the Executive Director.]

[(9) Approval or recommendation of compensation of the Executive Director or any other employee. However, the Management Committee shall approve compensation only to the extent funds for the compensation are provided in the current budget.]

[(10) Approval of amendments to the tax collection agreement that do not materially favor one taxing authority over another.]

(11) Approval of TCC expense allocation among taxing authorities.

(12) Approval of the Department of Revenue Information Exchange Agreement.

(13) If there is vacancy in an office, on the Management Committee, or on the Tax Appeal Board between Board annual organization meetings, appointment of a replacement.

(14) Adoption of regulations, policies, and procedures for tax administration.

(15) Any other decision relating to TCC affairs which does not constitute a Major Decision.]

ARTICLE IV. [Other] Board Committees

[Drafting Committee Note: The TCC likely will not need other committees. However, the bylaws should provide for the possible future appointment of standing or *ad hoc* committees to address identified needs.]

Section 1. Board Committee Appointment: The Board may establish one or more [other] committees to consist of one or more delegates appointed to the committee by the Board or the Chairperson.

Section 2. Board Committee Term: Each Board committee [other than the Management Committee] shall serve until the earlier of completion of the business for which formed, or until dissolved by action of the Board.

Section 3. Board Committee Meetings: A Board committee shall meet on dates and at times established by the committee.

Section 4. Quorum: A quorum of a Board committee shall consist of the presence of a majority of all committee members.

Section 5. Votes Required for Action: All action taken by any Board committee shall be by a majority vote of all committee members [**present**].

Section 6. [Other] Board Committee Powers and Duties: Subject to these bylaws, any committee appointed by the Board shall have and may exercise all powers and authority granted by resolution of the Board.

**ARTICLE V. Rules Concerning Required Notices/
Meeting Participation/Meeting Place/Manner of Voting**

Section 1. Required Meeting Notices:

a. The TCC shall give notice to all voting and nonvoting delegates and officers of all meetings of the Board. The TCC shall give such notice at least 5 days in advance of any regular or special Board meeting. If a delegate is unable to be present at a Board meeting, it is the responsibility of the delegate to advise the taxing authority's alternate delegates. The TCC shall give notice to all committee members of all meetings of committees of the Board. The TCC shall give such notice at least 24 hours in advance of any regular or special committee meeting. Any person shall have the right to waive required notice.

b. A meeting notice shall at minimum specify the date, time, and address of the meeting.

c. For a public meeting, the Secretary shall also give public notice of the meeting in accordance with the Pennsylvania Sunshine Act.

Section 2. Manner of Giving Notice to Delegates, Officers, or Committee Members: Any notice or document required to be given to a delegate, officer, or committee member shall be given to the person either by hand delivery, or by sending a copy thereof as follows:

a. Written notice may be given by first class or express mail, postage prepaid, or other courier service with charges prepaid, to the person's postal address supplied by the person to the Board for the purpose of notice. Notice given in this manner shall be deemed given to the person when deposited in the U.S. mail or with a courier service for delivery to the person.

b. Alternatively, written notice may be given by facsimile transmission, e-mail, or other electronic communication to the person's facsimile number or address for e-mail or other communication supplied by the person to the Board for the purpose of notice. Notice given in this manner shall be deemed given to the person when sent.

c. Alternatively, notice of a meeting required to be given to a delegate, officer, or committee member may be given by telephone. Notice given in this manner shall be deemed to be given to the person when a telephone conversation occurs with the person, or when a voice mail is left on a recording at a telephone number supplied by the person to the Board for the purpose of notice.

Section 3. Manner of Giving Notice to Taxing Authorities: Any notice or document required to be given directly to a taxing authority shall be given either by hand delivery, or by sending a copy thereof as follows:

a. Written notice may be given by first class or express mail, postage prepaid, or other courier service with charges prepaid, to the taxing authority postal address either supplied to the Board by the taxing authority or appearing on the taxing authority website. Notice given in this manner shall be deemed given to the taxing authority when deposited in the U.S. mail or with a courier service for delivery to the taxing authority.

b. Alternatively, written notice may be given by facsimile transmission, e-mail, or other electronic communication to the taxing authority facsimile number or address for e-mail or other communication supplied to the Board by the taxing authority or appearing on the taxing authority website. Notice given in this manner shall be deemed given to the taxing authority when sent.

Section 4. Manner of Giving Notice to DCED: Any notice or document required to be given to DCED may be given by first class or express mail, postage prepaid, or other courier service with charges prepaid, to DCED's official address. Notice may also be given to DCED in any other manner established by DCED.

Section 5. Meeting Participation by Conference Telephone or Electronic Technology: A delegate or committee member may participate in a meeting by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner shall constitute presence at the meeting. If a person participates in this manner, a log-on, log-off record shall be maintained.

Section 6. Meeting Place: Although multiple individuals may participate in a meeting by means of conference telephone or other electronic technology, a public meeting shall always be convened at a specific geographic location with at least one delegate or officer present, in order to allow for public participation in the meeting.

Section 7. Manner of Voting: Except as otherwise stated in this section, voting at any public meeting of **[the Board,] [Management Committee,] [or] Board committee** may be done by voice vote, roll call, or any other means determined appropriate by the chairperson. Board or committee member voting by mail or proxy is not permitted. **[Voting on any matter requiring a supermajority vote of the Board under Article I, Section 8, shall be conducted by roll call vote.] [These bylaws provide for weighted voting by delegates pursuant to 53 P.S. § 6924.505(c)(3). Any vote by the Board shall be conducted by roll call.]**

ARTICLE VI. Finances and Contracts

Section 1. Fiscal Year: The TCC fiscal year will begin on **[September 1]** and end on **[August 31]**.

Section 2. Bond: All TCC employees and officers shall be bonded or covered by crime insurance in amounts and with such coverage as determined by the **[Board] [Management Committee]**.

Section 3. Budget

a. **Budget Adoption:** The proposed annual budget of the TCC for the next fiscal year shall be prepared by the **[Chairperson] [Executive Director] [Treasurer]** and distributed to delegates at least 10 days prior to the Board meeting at which the budget is expected to be presented for adoption. A special meeting may be called for advance discussion of the proposed budget. The budget will generally be presented for adoption at a regular Board meeting held in **[June]**. However, the budget may be presented for adoption at an earlier or later meeting. As set forth in Article I, Section 8, Board approval of the budget shall require the affirmative vote of **[.....]**

b. **Budget Amendment:** Because the TCC likely will not have a large annual budget, and the TCC might incur unanticipated expenses during the fiscal year, the TCC may amend the annual budget during the fiscal year to reflect unanticipated expenses. The budget may be amended at any Board meeting. As set forth in Article I, Section 8, Board approval of a budget amendment shall require the affirmative vote of **[.....]**

[Promptly after Board adoption of the budget, a copy of the budget shall be given to each taxing authority that levies an income tax. If any such taxing authority expresses in writing prior to _____ an objection to any provision in the budget, the objection shall be discussed by the Board at the regular Board meeting held in _____ and if no regular Board meeting is held in _____ at a special Board meeting held in _____ or the first regular or special Board meeting held after _____. If written objections to any provision or

provisions of the budget are received from 1/3 of the taxing authorities that levy an income tax, the budget shall be deemed rescinded, but may be readopted by the Board in the same or any changed form by a majority of all delegate votes present.]

[Promptly after adoption of the budget, a copy of the budget shall be given to each taxing authority that levies an income tax. Each such taxing authority will promptly thereafter review and vote on approval of the budget and advise the TCC of the results of the vote. Approval of the budget shall require an affirmative vote by the governing bodies of [2/3] [a majority] of the taxing authorities that levy income tax.]

Section 4. TCC Operating Expense Allocation and Payment:

a. **Application:** This section applies to the allocation of TCC operating expenses. It does not apply in any manner to the allocation of the cost of tax collection. Tax collection cost allocation will be decided by the Board and documented in a tax collection agreement with an appointed tax collector or otherwise as appropriate.

[Operating Expense Payment Option 1 – Taxing Authority Direct Payment:

b. **TCC Budget Funding:** The expense of operating the TCC shall be shared among and paid by all taxing authorities within the TCD that are entitled to be represented by voting delegates. [Expenses will be paid by each taxing authority in direct proportion to income tax revenues collected for the taxing authority. For 2009 and 2010, the shares will be calculated using the “Proportional EIT Revenue” % for each school district and municipality as shown in the DCED Act 32 Weighted Vote Calculation Spreadsheet for the TCD. For subsequent years, the shares will be calculated using the similar future numbers published by DCED if DCED publishes such numbers. If DCED does not publish such numbers in future years, the shares will be based on the taxing authority’s most recent audited annual financial statements. In that event, expense allocations will be based on school district audited financial statements for the fiscal year ending on the preceding June 30, and the municipality’s audited financial statements for the second preceding calendar year.] [Expenses will be paid by each taxing authority in direct proportion to income tax revenues collected for the taxing authority. For 2009 and 2010, the shares will be calculated using the “Proportional EIT Revenue” % for each school district and municipality as shown in the DCED Act 32 Weighted Vote Calculation Spreadsheet for the TCD. For subsequent years, the shares will be calculated using the similar future numbers published by DCED if DCED publishes such numbers. If DCED does not publish such numbers in future years, the shares will be based on revenues for a period of one year ending on a date selected by the Board and reported by the tax collector serving the taxing authority as collected during such year.] The budget will be funded by [semi-annual payments][one annual payment] made by each taxing authority, with payments due on dates established by the

Board as part of the budget or through action independent of the budget. If a budget amendment is adopted increasing the budget amount during the fiscal year, the increased amount will be funded by a payment made by each taxing authority, with the payment due on the date established by the Board as part of adopting the budget amendment. Promptly after Board adoption of the budget or budget amendment, the [Chairperson] [Secretary] [Executive Director] shall notify each taxing authority of its required payment or payments.]

[Operating Expense Payment Option 2 – Payments for 2012 and Beyond Made by Tax Collector on Behalf of Taxing Authorities:

b. **Budget Funding Prior to 2012 – Taxing Authority Direct Payment:** The expense of operating the TCC shall be shared among and paid by all taxing authorities within the TCD that are entitled to be represented by voting delegates. Expenses will be paid by each taxing authority in direct proportion to income tax revenues collected for the taxing authority. For 2009 and 2010, the shares will be calculated using the “Proportional EIT Revenue” % for each school district and municipality as shown in the DCED Act 32 Weighted Vote Calculation Spreadsheet for the TCD. For 2011, the shares will be calculated using the similar numbers published by DCED if DCED publishes such numbers. If DCED does not publish such numbers, the shares will be based on revenues for a period of one year ending on a date selected by the Board and reported by the tax collector serving the taxing authority as collected during such year. The budget will be funded by [semi-annual payments][one annual payment] made by each taxing authority, with payments due on a date established by the Board as part of the budget or through action independent of the budget. If a budget amendment is adopted increasing the budget amount during the fiscal year, the increased amount will be funded by a payment made by each taxing authority, with the payment due on the date established by the Board as part of adopting the budget amendment. Promptly after Board adoption of the budget or a budget amendment, the [Chairperson] [Secretary] [Executive Director] shall notify each taxing authority of its required payment.

c. **Budget Funding for 2012 and Beyond – Payment Through Tax Collector:** Starting January 1, 2012, after the tax collector appointed by the TCC begins collecting income tax pursuant to a tax collection agreement with the TCC, the budget will be funded by deducting a percentage of each distribution due each taxing authority and direct payment to the TCC of the amounts deducted. The percentage to be deducted from all taxing authority distributions will be the same and will be established by the Board based on its estimate of the percentage amount required to fund the budget. Prior to January 1, 2012, and from time to time thereafter, the TCC shall notify the tax collector of the percentage of taxing authority distributions that must be deducted, and the tax collector will pay the amounts deducted directly to the TCC at the same time as distributions are made to

each taxing authority. The tax collector shall comply with such notice, and shall incur no liability in doing so. If for any reason the tax collector fails to comply with such notice, the TCC may require one direct payment from a taxing authority for the taxing authority's entire annual share of the budget in the manner payments were required prior to 2012.]

[Drafting Committee Notes: (1) Preliminarily, it is important to distinguish between allocation of TCC operating expenses and allocation of tax collection costs. Act 32 requires allocating TCC operating expenses based on tax revenues. Act 32 leaves to Board decision the manner in which tax collection costs will be allocated. (2) TCC operating expenses may be funded with up-front cash payments from taxing authorities, periodic payments from taxing authorities, or by borrowing money that will later be repaid by the taxing authorities. 53 P.S. § 6924.505(a.2)(9). (3) TCC operating expenses must be shared by all taxing authorities that impose an income tax. 53 P.S. § 6924.505(l)(2). A taxing authority's share of the expenses is allocated based on income tax revenues collected for the taxing authority compared to revenues collected for all taxing authorities within the TCD. 53 P.S. § 6924.505(l)(2). (4) Payment of expenses is based solely on income tax revenues in contrast to delegate voting weight, which is based 50% on income tax revenues and 50% on population per 53 P.S. § 6924.505(c)(3). (5) Option 1 for Section 4(b) provides for TCC operating expense allocation based initially on the numbers DCED provides for weighted voting, and thereafter based on revenue reflected in most recent audited financial statements – as specified in Act 32. Because of the complexity of allocating with audited financial statements for municipalities having a calendar fiscal year and school districts having a June 30 fiscal year, an option is also provided for allocating expenses based on tax revenue reported by the tax collector. Option 2 for Section 4(b) provides for payment of operating expenses through the tax collector starting in 2012, based on tax revenue reported by the tax collector. The TCC should consult with legal counsel before implementing such an operating expense allocation – since this differs from the Act 32 direction.]

Section 5. Enforcement of Taxing Authority Obligation to Pay TCC Operating Expense Allocation: If a taxing authority fails to make one or more required payments due under the preceding Section on or before the due date established by the Board, the **[Secretary of the Board][Executive Director]** will give written notice to the taxing authority specifying the payment amount due. Upon receipt of this notice, the taxing authority shall immediately pay to the TCC the amount specified in the notice. The taxing authority will also be obligated to pay any TCC legal and other expenses incurred in connection with enforcement of taxing authority payment obligations. Expenses payable by the taxing authority include TCC attorney fees and other expenses, whether or not legal proceedings are filed. The **[Secretary of the Board][Executive Director]** will give written notice to the taxing authority specifying the amount of legal or other expenses due. Upon receipt of this notice, the taxing authority shall immediately pay to the TCC the amount specified in the notice. If a taxing authority fails to pay any

amount specified in a TCC written notice within [20] days after the notice is given, the TCC shall have the right to: (1) notify the tax collector collecting tax for the taxing authority under contract with the TCC to deduct the amount due from any distribution otherwise owed to the taxing authority, and to promptly pay directly to the TCC the amount deducted; and (2) pursue any other legal remedy against the taxing authority. The tax collector shall comply with a TCC directive to deduct and pay amounts due to the TCC, and shall incur no liability in doing so.

Section 6. Board Ratification of Expenditures: At each regular Board meeting, the [Chairperson] [Executive Director] [Treasurer] will present to the Board for ratification all TCC expenditures paid or incurred during the calendar year quarter preceding the month in which the meeting is held.

Section 7. Independent Auditor: The Board will appoint an independent accounting firm to audit the TCC annual financial statements and to perform other auditing, control, or finance or consulting tasks designated by the Board[, the Management Committee, or the Executive Director].

Section 8. Financial Reports: Promptly after completion or receipt and within any deadlines established by applicable law, the [Chairperson] [Secretary] [Executive Director] shall provide to each delegate, alternate delegate, and taxing authority copies of monthly reports of tax distributions, the TCC annual audited financial statements, and the tax collector annual audited financial statements.

Section 9. Contracts: After required approvals have been obtained in accordance with these bylaws, contracts may be signed by the [Executive Director,] Chairperson, Vice-Chairperson, or any other person authorized by resolution of the Board [or the Management Committee]. Contract signatures may but are not required to be attested to by the Secretary.

ARTICLE VII. Adding Taxing Authorities to TCC

Section 1. Procedure: The governing body of each taxing authority that imposes an income tax for the first time after June 30, 2009 shall promptly provide the TCC with all information and documents necessary for TCC operation and for tax collection as requested by and in a form satisfactory to the TCC, including certified copies of the taxing authority's tax enactments, the names and contact information of all appointed delegates, and all other information requested by the TCC.

Section 2. Effective Date: Upon the TCC Secretary's receipt of the information and documents in Section 1, the taxing authority's delegate will be entitled to participate on the Board as a voting delegate in accordance with these bylaws.

ARTICLE VIII. Tax Appeal Board

[Drafting Committee Note: By June 1, 2010, the TCC must establish an appeals board to hear appeals from certain determinations of the tax collector. 53 P.S. § 6924.505(j)(1). The TCC may enter into an agreement with one or more other TCCs to form a joint Tax Appeal Board. 53 P.S. § 6924.505(j)(4).]

Section 1. Tax Appeal Board Purpose: The Tax Appeal Board shall hear appeals of taxpayers, employers, taxing authorities, and other TCCs from determinations of the tax collector relating to the assessment, collection, refund, withholding, remittance, or distribution of taxes over which the TCC has jurisdiction.

Section 2. Tax Appeal Board Members: The Tax Appeal Board shall be comprised of three (3) regular members **[and two (2) alternate members]** appointed by the Board. A panel of three (3) members shall hear and decide each appeal. **[If a regular member is unavailable to participate in an appeal, one of the alternate members shall participate in place of the regular member.]** All Tax Appeal Board members shall be TCC voting delegates.

[Drafting Committee Note: The TCC could appointment Management Committee members as Tax Appeal Board members.]

Section 3. Tax Appeal Board Member Qualifications: No member of the Tax Appeal Board may be an employee, agent, or attorney of the tax collector. The Board may prescribe other qualifications for Tax Appeal Board members in accordance with applicable law and in consultation with the Solicitor.

Section 4. Term of Office: The initial appointed Tax Appeal Board members shall serve until a successor has been appointed, or earlier death, resignation, or removal. Thereafter, each Tax Appeal Board member shall hold office for a term of one (1) year commencing **[January 1]** and until a successor has been elected, or earlier death, resignation, or removal.

Section 5. Tax Appeal Board Procedures: Tax Appeal Board procedures will be developed by the Board or the Tax Appeal Board in consultation with the Solicitor.

ARTICLE IX. Bylaw Amendments

A copy of any proposed amendment to these bylaws shall be given to all delegates at least **[ten (10)]** days prior to the Board meeting at which it will be presented for adoption. Any such proposed amendment may be adopted in the form given to the delegates or with such clarifying or other amendments as the Board determines appropriate at the meeting at which the proposed amendment is presented for adoption. If the proposed amendment sets forth a restatement of the bylaws in their entirety, there shall be no limitation on the

nature or content of clarifying or other amendments that may be made before final adoption. However, if the proposed amendment relates only to one or more particular sections of the bylaws and is not presented in the form of restatement of the bylaws in their entirety, the clarifying or other amendments made before final adoption shall not materially enlarge the purpose as set forth in the copy of the proposed amendment given to delegates prior to the Board meeting. Approval of a bylaw amendment by the delegates shall require the affirmative vote of a 2/3 supermajority of all **[delegate votes that could be cast if all delegates were present] [delegate votes present, but not less than [40%] of all delegate votes that could be cast if all delegates were present].** **[After a bylaw amendment is approved by the delegates, the taxing authorities must approve the amendment. Approval of a bylaw amendment by the taxing authorities shall require the affirmative vote by the governing bodies of 2/3 of the taxing authorities that impose an income tax.]**

[Drafting Committee Note: The model suggests a 2/3 supermajority vote requirement for bylaw amendments. This could be reduced to a simple majority vote.]