

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 C.D. 2016

Aurthur Alan Wolk, et al.
Appellees

v.

The School District of Lower Merion,
Appellant

**BRIEF OF AMICUS CURIAE THE
PENNSYLVANIA SCHOOL BOARDS ASSOCIATION
In Support of Appellant**

**On Appeal from the August 29, 2016 Decision/Order Sur Petition for
Injunction of the Montgomery County Court of Common Pleas,
Civil Division, No. 16-01839**

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Dated: October 20, 2016

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STATEMENT OF INTEREST OF AMICUS CURIAE

Your Amicus Curiae the Pennsylvania School Boards Association ("PSBA") is a voluntary non-profit association whose membership includes the 500 local school districts and 29 intermediate units of this Commonwealth, numerous area vocational technical schools and community colleges, and the members of the boards of directors of those public school entities. The mission of the Pennsylvania School Boards Association, organized in 1895 and the first such association in the Nation, is to promote excellence in school board governance through leadership, service and advocacy for public education. The efforts of PSBA in assisting local school entities and representing the interests of effective and efficient governance of our public schools also benefit taxpayers and the general public interest in education of our youth.

In that capacity, PSBA endeavors to assist state and federal courts in selected cases presenting important legal issues of statewide or national significance, by offering benefit of the Association's statewide and national perspective, experience and analysis relative to the legal, policy, management, liability, fiscal, ethical and other considerations, ramifications and consequences that should inform any resolution of the particular disputed issues in such cases. For decades, PSBA's informed insight, thorough research and careful legal

analysis have made PSBA a respected and valued participant in state and federal appellate proceedings involving public schools.

PSBA files this *amicus curiae* brief in support of Appellees pursuant to Pa.R.A.P. 531(b)(i), in order to offer the Court PSBA's perspective about the trial court's damaging interference with the intended workings of the Taxpayer Relief Act and how such interference would, if upheld, greatly elevate the fiscal uncertainty already faced by public school systems in Pennsylvania.

Accordingly, with this brief your *Amicus Curiae* PSBA urges the Court to reverse the decision of the trial court in this case.

STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Your *Amicus Curiae*, PSBA, concurs in such statements as are made in the brief of Appellant Lower Merion School District regarding Jurisdiction, the Order or Other Determination in Question, Scope and Standard Of Review, Questions Involved and Statement of the Case.

SUMMARY OF ARGUMENT

When the Court of Common Pleas in this case ordered the Lower Merion School District to reduce its real estate tax rate to match only what the Taxpayer Relief Act's statutory index would have allowed, the effect was to reverse the Department of Education's approval of Taxpayer Relief Act exceptions that would allow a tax increase exceeding that index. The court below had no authority to do so, and the court's action usurped the exclusive authority of the Department of Education to adjudicate whether a school district qualifies for one or more of the Taxpayer Relief Act's exceptions.

The Taxpayer Relief Act sets forth in detail a transparent, adjudicatory process through which a school district applies for such exceptions, preceded by specified prerequisite actions at the district level taken in public and as to which public notice is given.

The repeated suggestion in the trial court's decision that the Department of Education somehow lacked adequate information needed to rule on the district's application for exceptions is simply preposterous. Every bit of financial information about the district pertinent to that process is submitted to the Department as part of that process or is otherwise submitted on an annual basis and tabulated and maintained by the Department going back decades.

The trial court had no business interfering with the workings of the exception process or altering the results that system produces. By doing so, the trial court acted improperly as a “super-school board”, and even worse, has attempted to function as a super-Department of Education.

This case has been driven by the Plaintiff’s desire to overturn the choices expressed by the voters of the Lower Merion community about what level of investment in its educational program the community believes is appropriate and sufficient. This end run around the ballot box seeks to replace those choices with the disturbing and offensive philosophy that a public school system has no business trying to offer the kind of quality education that affluent families can find at the best private schools, and that a tax-supported public education should be limited to the bare bones minimum. A school board remains always accountable to the electorate for its decisions, but the decision below disenfranchises those voters.

There is no inherent evil in fund balances; they are important to fiscal health and credit ratings. As last year’s state budget impasse illustrates, it can mean the difference between operating schools and having to shut down some or all programs when funding runs out, or being forced to incur significant extra borrowing costs that ultimately will have to be added to what comes out of taxpayer pockets.

On top of the fiscal uncertainty caused by budget impasses, state funding to help update aging school facilities has been on hold for years with an uncertain future, forcing districts with deteriorating classroom facilities to fund needed improvements without that support. Charter school costs continue to grow without visible return on investment for the public school system as a whole. The pension system underfunding problem has caused skyrocketing employer contribution costs and special education costs likewise consistently outpace inflation. The remaining exceptions that have not yet been stripped out of the Taxpayer Relief Act are more important than ever before. The decision by the trial court, if upheld, will add to this fiscal uncertainty and further jeopardize educational quality.

Students, families and taxpayers deserve more than hand-to-mouth school district budgeting. Very conservative budgeting where expenses are overestimated and revenues are not overestimated is sensible and normally what the public should want to see. Just how conservative to be is a policy decision for each school board to make, not the courts.

ARGUMENT

WHEN THE COURT OF COMMON PLEAS IN THIS CASE ORDERED THE LOWER MERION SCHOOL DISTRICT TO REDUCE ITS REAL ESTATE TAX RATE TO MATCH ONLY WHAT THE TAXPAYER RELIEF ACT'S STATUTORY INDEX WOULD HAVE ALLOWED, THE EFFECT WAS TO REVERSE THE DEPARTMENT OF EDUCATION'S APPROVAL OF TAXPAYER RELIEF ACT EXCEPTIONS THAT THAT WOULD ALLOW A TAX INCREASE EXCEEDING THAT INDEX. THE COURT BELOW HAD NO AUTHORITY TO DO SO, AND THE COURT'S ACTION USURPED THE EXCLUSIVE AUTHORITY OF THE DEPARTMENT OF EDUCATION TO ADJUDICATE WHETHER A SCHOOL DISTRICT QUALIFIES FOR ONE OR MORE OF THE TAXPAYER RELIEF ACT'S EXCEPTIONS.

Your *amicus curiae* the Pennsylvania School Boards Association files this brief in support of the positions of the Appellant Lower Merion School District, and urges that the decision of the Montgomery County Court of Common Pleas be reversed.

When the Court of Common Pleas in this case ordered the Lower Merion School District to reduce its real estate tax rate to match only what the Taxpayer Relief Act's¹ statutory index would have allowed, the effect was to reverse the Department of Education's approval of Taxpayer Relief Act exceptions that would allow a tax increase exceeding that index. The court below had no authority to do so, and the court's action usurped the exclusive authority of the Department of

¹ Act of June 27, 2006, P.L. 1873, No. 1 (Special Session No. 1), 53 P.S. §6926.101 *et seq.*, entitled "Taxpayer Relief Act" (hereinafter "Act 1").

Education to adjudicate whether a school district qualifies for one or more of the Taxpayer Relief Act's exceptions.

The Taxpayer Relief Act sets forth in detail a transparent, adjudicatory process through which a school district applies for such exceptions, preceded by specified prerequisite actions at the district level. The Act generally prohibits a school district from raising tax rates, without approval by voters in a referendum, by more than a percentage referred to as the "index". 53 P.S. §6926.333. The index is calculated for each individual school district by combining the percentage increase in the statewide average weekly wage with the market value/income aid ratio of school districts that have higher aid ratios. 53 P.S. §6926.302.

When first enacted, the Act provided for a number of exceptions to the index limit accounting for various categories of costs recognized to consistently increase at a rate outpacing inflation or of some other unanticipated, unpredictable or extraordinary nature. Some of these exceptions required a school district to petition for approval by the local court of common pleas, and some could be approved only by the Department of Education (hereinafter "PDE"). Taxpayer Relief Act, Section 333(f), 53 P.S. §6926.333, as amended by the Act of June 30, 2011, P.L. 148, No. 25.

The exceptions were the foundation of a legislative promise that because a school district would no longer have the ability to tax its way out of a financial

emergency, the exceptions would be there to help stave off fiscal crisis and promote financial stability. The Governor and legislative leaders assured school districts about this repeatedly in what amounted to “don’t worry, we have you covered”. Unfortunately, that promise was broken only a few years later when Act 25 of 2011 eliminated most of the exceptions, including all of those that required court approval. See, Act of June 30, 2011, P.L. 148, No. 25.

The four remaining exceptions all must be approved by PDE. 53 P.S. §6926.333(f). Those exceptions are for increases in costs of debt service for borrowing that occurred before the Taxpayer Relief Act was enacted (“grandfathered debt”), 53 P.S. §6926.333(f)((2)(iii)(A), A.1), increases in costs of debt service for electoral debt, 53 P.S. §6926.333(f)((2)(iii)(B)-(F), increases in local costs for special education, 53 P.S. §6926.333(f)((2)(v), and increases in employer pension contributions, 53 P.S. §6926.333(n).

To the extent increases in these costs exceed the index, approval of an exception allows a school district to increase tax rates by more than the index percentage, but only to the extent necessary to pay for those increased costs. 53 P.S. §6926.333(f)((2), (g), (h).

To obtain approval of an exception, a school district must do several things first. The board is required to adopt, at a public meeting, a preliminary budget no later than 90 days before the primary election, after having posted it for public

inspection for at least 20 days. 53 P.S. §6926.311. The preliminary budget has to be submitted to PDE no later than 85 days prior to the primary. 53 P.S.

§6926.333(e). Within ten days after that, PDE must inform the district whether the tax increase indicated in the budget exceeds the district's index, and if so, that the district must reduce the increase, apply for one or more exceptions, or seek voter approval at a referendum.²

Since due to the Presidential election this year's primary in Pennsylvania was held on April 26, 2016, preliminary budgets for the 2016-2017 school year had to be posted by January 6, 2016, adopted by January 27 and submitted to PDE by February 1. It is well worth noting that all this had to happen before Governor Wolf first presented a proposed budget for 2016-2017 on February 9, and when the Commonwealth still did not have a final budget in place for the 2015-2016 fiscal year.

PDE must rule on applications for exceptions no later than 55 days prior to the primary, 53 P.S. §6926.333(j)(5)(i), and PDE set this year's exception

² PDE provides detailed instructions for the exceptions process and related calculations in a "guidelines" document annually published on the "Referendum Exceptions" page of the PDE website. *Referendum Exception Guidelines for 2016-2017*, Pennsylvania Department of Education (December 28, 2015), available at: <http://www.education.pa.gov/Teachers%20-%20Administrators/Property%20Tax%20Relief/Pages/Referendum-Exceptions.aspx#tab-1> (last visited October 20, 2016). For the convenience of the Court, the 2016 guidelines are appended to this brief as Appendix A. As reflected in the guidelines, the Department has designated the preliminary budget form itself as the "uniform form" to be submitted pursuant to §333(e) of the Act.

application deadline as February 11, the same deadline by which PDE was to inform school districts whether exceptions or referendum were necessary.

However, a school district that chooses to apply for exceptions must also publish notice of its intent to do so on its website and in a newspaper of general circulation at least one week prior to submitting its application. 53 P.S. §6926.333(j)(2). The Act gives PDE the option of scheduling a hearing on such requests, and if a hearing is scheduled, the applicant school district must also publish notice of the date, time and location of the hearing. 53 P.S. §6926.333(j)(1)-(2).³

If an application for exceptions is denied in whole or part, a district still has the option of seeking voter approval of a tax increase exceeding the index, but must submit the proposal to election officials no later than 50 days before the primary election. 53 P.S. §6926.333(j)(5)(ii).

The transparent process established by the Act further requires PDE to submit a report regarding exceptions to the leadership of the General Assembly

³ Notwithstanding these requirements for “preliminary” budgets, in order to adopt a final budget for the coming school year, in May and June school districts still must go through the traditional budget process prescribed by Sections 671 and 687 of the School Code, which includes “preparing” a “proposed” budget at least 30 days prior to final adoptions, posting it for public inspection at least 20 days prior to final adoption, and providing at least ten days’ public notice of the meeting at which final adoption is planned, all of which must be completed before July 1. 24 P.S. §§6-671, 6-687; 53 P.S. §6926.312. A district that does not intend to raise taxes above the index and thus needs neither exceptions nor a referendum can skip most of the preliminary budget process by adopting a resolution to that effect no later than 110 days prior to the primary election, and submitting the resolution to PDE within five days after adoption. 53 P.S. §6926.311(d). As stated in the guidelines in Appendix A, this year’s submission deadline for that alternative was January 12.

annually, within 30 days after the deadline for ruling on exceptions. The report must list the dollar amounts of exceptions requested by each district, how PDE ruled on them, the resulting tax increases allowed to produce those dollar amounts, and statistical summaries of all of the foregoing in the statewide aggregate. 53 P.S. §6926.333(j)(6). These reports are published on the “Referendum Exceptions” page of the PDE website, for each fiscal year since the Act went into effect.⁴ Samples of the worksheets used for calculating and submitting exceptions also appear in the reports.

As can be seen in the PDE reports, the majority of exceptions are approved, but not necessarily in the amounts requested by school districts. Downward adjustments resulting from data discrepancies are quite common, as PDE scrutinizes each request and compares the data submitted in the worksheets with what PDE has on record.

In more recent years, the PDE reports also provide data on how much of the exceptions approved in the previous year actually were used by school districts in the tax levies accompanying the final budgets they adopt in May or June. The 2016-17 report lists this data for each year since the Act went into effect.

⁴ <http://www.education.pa.gov/Teachers%20-%20Administrators/Property%20Tax%20Relief/Pages/Referendum-Exceptions.aspx#tab-1> (last visited October 20, 2016).

Because so much remains unknown at the time preliminary budgets have to be submitted barely half-way into the fiscal year, especially regarding what state funding to expect, preliminary budgets can be somewhat of a “shot in the dark”. Consequently, final budgets can vary a great deal from what was estimated in the preliminary budget. Many or most districts applying for exceptions apply for as much of each exception as they believe they qualify for, just in case, so they leave as much room as they can for adjustments later in the final budget adoption cycle.

As can be seen in the 2016-17 PDE report, over the years the actual percentage of approved exceptions used by school districts in final tax levies has averaged about 28.75%. Many school districts do not apply for exceptions at all, and many that apply end up using only some or none of the exceptions for which they were approved. *Report on Referendum Exceptions For School Year 2016-2017*, Pennsylvania Department of Education (April 2016), available at: [http://www.education.pa.gov/ Teachers%20-%20Administrators/Property%20Tax%20Relief/Pages/Referendum-Exceptions.aspx#tab-1](http://www.education.pa.gov/Teachers%20-%20Administrators/Property%20Tax%20Relief/Pages/Referendum-Exceptions.aspx#tab-1) (last visited October 20, 2016).

The repeated suggestion in the trial court’s decision that PDE somehow lacked adequate information needed to rule on the district’s application for exceptions is utter nonsense. See, *Decision/Order Sur Petition for Injunction*, slip op. at 7-8, 13-14. In addition to all the information submitted in connection with

the application process as described above, districts are required to submit their final adopted budgets to PDE annually within 15 days after final adoption, 24 P.S. §6-687(b), and to submit to PDE an Annual Financial Report (AFR) no later than October 31 each year for the previous fiscal year. 24 P.S. §218. Failure to file the AFR on time results in financial penalties for the district as well as possible professional disciplinary action against its chief school administrator. 24 P.S. §§218(d), 2552, 2552.1.

The AFR shows actual expenditure and revenue data and the amounts of any fund balance balances as of the end of the year. PDE not only maintains this data going back many years, it makes it publicly available on the “AFR Data: Detailed” page of the PDE website.⁵

To the extent the Taxpayer Relief Act allows for limited discretion for a school board to decide to increase tax rates above the index, the General Assembly has given PDE exclusive authority to determine the extent of that discretion each year, and the exercise of that limited discretion is exclusively the province of the board of school directors. It may not be a perfect system, but it is the system the General Assembly has established, and the trial court had no business interfering with its workings or altering the results that system produces. By doing so, the trial

⁵ <http://www.education.pa.gov/Teachers%20-%20Administrators/School%20Finances/Finances/AFR%20Data%20Summary/Pages/AFR-Data-Detailed-.aspx#.VZwC6mXD-Uk> (last visited October 20, 2016).

court acted improperly as a “super-school board”. See, *Zebra v. School District of the City of Pittsburgh*, 449 Pa. 432, 437, 296 A.2d 748, 750 (1972). Even worse, the trial court has attempted to function as a super-PDE.

It is for each community to decide, through its elected school board, what level of investment in its educational program the community believes is appropriate and sufficient. The school board remains always accountable to the electorate for decisions that are contrary to what the community prefers.

Although not directly apparent in the decision of the court below, this case has been driven by a desire on the part of the Plaintiff to overturn the will of the voters who elected the Lower Merion board of school directors, and substitute his own education philosophy. The central and recurring theme of the complaint filed by the Plaintiff in this case is the disturbing and offensive assertion that a public school system has no business trying to offer the kind of quality education that affluent families can find at the best private schools, and that a tax-supported public education should be limited to the bare bones minimum. Complaint, paragraphs 29-30, 47, 52, 105-106. This is anathema to our democratic system and the Commonwealth’s duty to provide for a quality education available to all children regardless of what tuition their families can afford. The majority of voters in the Lower Merion community apparently disagree with the Plaintiff’s education philosophy, but the trial court has now allowed the Plaintiff to do an end run

around the ballot box, and in effect tell those voters that their choice does not count.

There is no inherent evil in fund balances; they are important to fiscal health and credit ratings. As last year's state budget impasse illustrates, it can mean the difference between operating schools and having to shut down some or all programs when funding runs out, or being forced to incur significant extra borrowing costs that ultimately will have to be added to what comes out of taxpayer pockets.

The disparity in the financial resources available to school districts around the commonwealth is well known, as is the unpredictability of support from state sources. Last year's nine-month budget impasse provides a prime example of how important it is for school districts to maintain sufficient financial reserves.

Since 2003 there has been a statutory cap on the unreserved, undesignated fund balances a school district is permitted to maintain, expressed as a percentage of total budgeted expenditures that varies depending on the size of a district's budget, ranging from 8% for the districts with the largest budgets, up to 12% for districts with the smallest annual expenditures. 24 P.S. §6-668. However, this provision expressly defines "unreserved, undesignated fund balance" to mean fund balances other than those being built up and reserved or designated for specific or tentative future uses. *Id.*

Thus, the law does indeed permit school districts to save up for future needs and emergencies. Moreover, the use of a sliding scale limit implies a recognition that school districts with the highest expenditures are likely to be able to build more robust reserves over time.

It must be understood that the 8% cap on undesignated, unassigned fund balances applicable to the Lower Merion School District represents less than 15 school days of operating expenses (8% of 180 = 14.4). Budget impasses such as occurred in the 2015-2016 school year provide a compelling argument that perhaps school districts would be wise to have a designated “legislative gridlock/shutdown-layoff-prevention-emergency fund” that is large enough to fund more than just three weeks of academic operations.

A recent study by the Center on Regional Politics⁶ reports that on average, school districts have unassigned fund balances just above the minimum 5% of budgeted expenditures recommended by the Government Finance Officers Association, enough to pay less than three weeks operating expenses for most. The study further reports that in 2014-15, more than 90% of school districts had unassigned fund balances that were less than half of their state subsidy.

⁶ *Policy Brief - Explaining School Fund Balances: Are PA Schools, with \$4.7 Billion in Reserve Funds, Really Flush?*, Center for Regional Politics, July 2016, available on the Temple University website at: <http://www.cla.temple.edu/corp/publications/> (last visited October 20, 2016).

At the same time, state funding to help update aging school facilities has been on hold for years with an uncertain future, forcing districts with deteriorating classroom facilities to fund needed improvements without that support. Charter school costs continue to grow without visible return on investment for the public school system as a whole. With the pension system underfunding problem causing skyrocketing employer contribution costs far outpacing inflation, and special education costs likewise consistently outpacing inflation, the remaining exceptions that have not yet been stripped out of the Taxpayer Relief Act are more important than ever before. The decision by the trial court, if upheld, will add to this fiscal uncertainty and further jeopardize educational quality.

It is regrettable that the Taxpayer Relief Act does not allow SDs to “bank” any part of the index they did not immediately need to use in a given year, so that they could feel less compelled to build reserves and could delay millage increases until immediate needs arise. Because most of the promised exceptions provided for in lieu of that ability have since been stripped away, leaving only three having any continuing significance, if a school district foresees a need for a substantial expenditure in the future, it is forced to start saving up for it earlier.

Students, families and taxpayers deserve more than hand-to-mouth school district budgeting. Very conservative budgeting where expenses are overestimated and revenues are not overestimated is sensible and normally what the public should

want to see. Just how conservative to be is a policy decision for each school board to make, not the courts.

CONCLUSION

For the foregoing reasons, as well as those set forth in the brief of Appellant Lower Merion School District, your *Amicus Curiae* the Pennsylvania School Boards Association urges this Honorable Court to reverse the decision of the Montgomery County Court of Common Pleas.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the length of the foregoing brief, consisting of 3,685 words, is in compliance with the 7,000-word limit set forth in Pa. R.A.P. No. 531(b)(3) for an amicus curiae brief.

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Referendum Exceptions Submitted to PDE Guidelines for the 2016-2017 Fiscal Year Special Session Act 1 of 2006

(Does not apply to Philadelphia City SD)

(Dates do not apply to Pittsburgh SD and Scranton SD)

I. Preliminary Budget and Approval of Tax Rate Increases (Sections 311, 333(a)(1), 333(e))

School districts must adopt a preliminary budget by January 27, 2016. The adopted preliminary budget, which includes a schedule of proposed tax rate increases, must be submitted to the Pennsylvania Department of Education (PDE) by February 1, 2016.

After review of the school district's proposed tax rate increases as reported on the preliminary budget, PDE will inform each school district in writing by February 11, 2016, if any further actions must be taken. If proposed tax rate increases exceed the school district's index, (1) the tax rate increase must be reduced to the index, (2) a referendum exception must be sought from PDE, or (3) the tax rate increases must be approved by voters at the general primary election on April 26, 2016.

In lieu of a preliminary budget process, school districts have the option of adopting a resolution indicating that the rate of any tax will not be raised by more than its index. School districts must submit a copy of this resolution and a schedule of proposed tax rate increases to PDE by January 12, 2016. After review of the school district's resolution and proposed tax rate increases, PDE will inform each school district in writing by January 22, 2016, whether the proposed tax rate increases are less than or equal to its index.

If proposed tax rate increases exceed the school district's index, the school district is required to adhere to sections 311(a) and (c)—relating to preliminary budget adoption—and will be permitted to submit referendum exceptions to PDE. PDE will only approve referendum exceptions if the school district demonstrates a need for exceptions by adopting a balanced preliminary budget that contains a tax rate increase in excess of the school district's index.

II. Index (Section 302, 313, 333(l))

Each September, PDE publishes the index for use in the determination of allowable tax rate increases in the following fiscal year. The base index is the average of the percentage increase in the statewide average weekly wage, as determined by the PA Department of Labor and Industry, for the preceding thirty-six months ending December 31 and the percentage increase in the Employment Cost Index for Elementary and Secondary Schools, as determined by the Bureau of Labor Statistics in the U.S. Department of Labor, for the previous 12-month period ending June 30. For a school district with a market value/personal income aid ratio (MV/PI AR) greater than 0.4000, its index equals the base index multiplied by the sum of 0.75 and its MV/PI AR for the current year.

Note: Section 404(e)(2) of the Unemployment Compensation Law was amended by Act 6 of 2011, which required that the average weekly wage be calculated for a 36-month period.

For the 2016-2017 fiscal year, the base index is 2.4%. The index for each school district is available on the PDE website at www.education.pa.gov. Click on Teachers & Administrators, then Property Tax Relief.

APPENDIX A

III. Referendum Exceptions (Sections 333(f), (j), (n))

Section 333(f), as amended by Act 25 of 2011, provides for three referendum exceptions. A fourth exception is provided for in section 333(n).

For the 2016-2017 fiscal year, requests for referendum exceptions must be submitted to PDE by February 11, 2016. At least one week prior to submitting its request to PDE, a school district requesting a referendum exception must publish notice of its intent to seek PDE approval in a newspaper of general circulation and on the school district's publicly accessible World Wide Web site, if one is maintained.

The Referendum Exception System (RES) web-based application is to be used for submitting the data necessary to calculate and review the requests for referendum exceptions. In addition, Excel templates have been provided on the PDE website for use by school districts in estimating potential exception amounts before RES opens for the upcoming fiscal year.

General provisions (Section 333(f)(1), (2))

If approved by PDE, a school district may, without seeking voter approval, increase the rate of a tax levied for the support of public schools by more than its index if all of the following apply:

- (1) The revenue raised by the allowable increase under the school district's index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).
- (2) The revenue generated by increasing the rate of a tax by more than the school district's index will be used to pay for any of the following:

- **School Construction** (Section 333(f)(2)(iii))

General Instructions for School Construction Exceptions

1. The phrase *effective date*¹ will be used throughout the School Construction section of this document and has two possible meanings, depending on the school district:
 - for the 109 school districts that opted in to Act 72 of 2004, *effective date* refers to September 4, 2004, and
 - for all other school districts, *effective date* refers to June 27, 2006.
2. For each issue/note/loan issued prior to adoption of the preliminary budget **with** PlanCon Part H or K approval and with budgeted payments in 2015-2016 or 2016-2017, provide copies of the following:
 - for indebtedness incurred before the *effective date*, but issued on or after the *effective date*:
 - complete copy of the executed board resolution, including the signature page, incurring the indebtedness,

¹ Although the actual effective date of Act 72 of 2004 was September 3, 2004, for functional reasons these Guidelines treat it as September 4, 2004. Special Session Act 1 of 2006 provides that school districts that opted in to Act 72 (the Homeowner Tax Relief Act) may seek referendum exceptions for indebtedness incurred prior to September 4, 2004, and for indebtedness incurred *on or after September 4, 2004*, for school construction projects. Act 1 also provides that school districts that did not elect to participate in Act 72 may seek referendum exceptions for indebtedness incurred prior to the effective date of Act 1 and for indebtedness incurred *on or after the effective date of Act 1*. Since these provisions in Act 1 use the term "effective date" in reference to both non-Act 72 school districts and Act 72 districts, we have constructed a meaning for the phrase "effective date" in order to facilitate discussion of the referendum exceptions for both groups. Although this is a slight aberration from the actual effective date of Act 72, it does not change the substance of any provisions.

- for variable rate issues/notes/loans:
 - debt payment schedule based on budgeted interest rates,
 - rationale for the budgeted interest rates used in preparing the payment schedule
 - for vocational project financing: calculation showing the school district's share of scheduled payments
3. For each issue/note/loan issued prior to adoption of the preliminary budget **without** PlanCon Part H or K approval and with budgeted payments in 2015-2016 or 2016-2017, provide copies of the following:
- complete copy of the executed board resolution, including the signature page, incurring the indebtedness -- if the amount issued is less than the amount incurred, include an amended or supplemental resolution or a statement signed by the superintendent or business manager that ties the issue to the resolution,
 - settlement sheet with date of issuance,
 - debt payment schedule,
 - for variable rate issues/notes/loans:
 - debt payment schedule based on budgeted interest rates,
 - rationale for the budgeted interest rates used in preparing the payment schedule,
 - for vocational project financing: calculation for the school district's share of scheduled payments,
 - for refunding: signed verification report for advance refunding or certification for current refunding from paying agent/trustee,
 - for partial refunding: payment schedule for the debt service not refunded; this should include any payments made in 2015-2016 prior to the refunding,
 - for issues funding reimbursable projects or refunding any reimbursable issues: estimated reimbursable percent calculations (for original financing refer to the page D14 calculations in PlanCon Part D; for refinancings refer to PlanCon Part K). Calculations must be based on the most up-to-date information on project costs. In particular, the estimated reimbursable percent for projects with bids awarded must be based on the bid costs, not previous estimates.
4. For each issue/note/loan not yet issued for which payments in 2016-2017 are being budgeted, provide copies of the following:
- complete copy of the executed board resolution, including the signature page, or statement of intent to incur and issue indebtedness signed by superintendent or business manager,
 - proposed debt payment schedule,
 - for variable rate issues/notes/loans:
 - debt payment schedule based on budgeted interest rates,
 - rationale for the budgeted interest rates used in preparing the payment schedule,
 - for vocational project financing: calculation for the school district's share of scheduled payments,
 - for issues funding reimbursable projects or refunding any reimbursable issues but without PlanCon Part H or K approval: estimated reimbursable percent calculations (for original financing refer to the page D14 calculations in PlanCon Part D; for refinancings refer to PlanCon Part K). Calculations must be based on the most up-to-date information on project costs. In particular, the estimated reimbursable percent for projects with bids awarded must be based on the bid costs, not previous estimates.

5. Costs associated with any subsequent refinancing of this indebtedness will also qualify for an exception. The amount of refinancing bonds that a school district may issue is limited to a principal amount equal to the following: (1) the amount needed to pay, discharge or redeem the outstanding principal amount of the bonds to be refinanced, plus (2) any additional principal issued to meet the issuance costs of the refinancing such as underwriter's fees, bond insurance, legal fees, etc.
6. For refinancing incurred after the *effective date*, also include a copy of the following:
 - complete copy of the executed board resolution, including the signature page, incurring the indebtedness for the original issue.
7. The required documentation described above may be submitted electronically to ra-RES@pa.gov or via regular mail to the Division of Subsidy Data and Administration for receipt by PDE within 3 days of the date that referendum exceptions are submitted. Failure to timely submit requested documentation could result in disapproval of the referendum exception.
8. Based on the original language contained in the Taxpayer Relief Act, PDE previously interpreted "final payment of interest and principal" – a phrase found in section 333(f) in conjunction with approved debt exceptions – to require the rescission of tax rates following either the last scheduled payment of a bond issue or the refinancing of a bond issue.

Note: Act 25 of 2011 added section 333(o) to clarify "final payment of interest and principal" *for previously-approved Academic or Nonacademic school building projects* to not include a school district's payment of debt as a result of refunding or refinancing the debt. However, previously-approved Grandfathered Debt (indebtedness incurred prior to the *effective date*) and Electoral Debt referendum exceptions must still be rescinded according to the language in the Taxpayer Relief Act – following either the last scheduled payment of a bond issue or the refinancing of a bond issue. If indebtedness was refinanced, school districts may request approval of a referendum exception for the refinanced indebtedness but **only** in the fiscal year immediately following rescission of the originally-approved tax rate increase related to the refinanced principal.

(A) Indebtedness incurred prior to *effective date*

1. Costs associated with paying principal and interest on the indebtedness, incurred under the Local Government Unit Debt Act prior to the *effective date*, qualify for an exception.
2. A referendum exception may be requested if the total budgeted payments—for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments.
3. Liquidity, remarketing and other fees on a variable rate bond issue are not principal or interest on indebtedness. Therefore, if taxes must be increased by more than the amount allowable by its index and any approved referendum exceptions in order to meet these costs, a school district must seek voter approval.
4. Swap payments will qualify for the referendum exception if a school district:

- a) makes swap payments to an authority (State Public School Building Authority or a municipal authority) on a swap agreement entered into by the authority on the school district's behalf, and
 - b) the swap payment is a component of the interest charge the school district makes to the authority on indebtedness, and
 - c) the debt (underlying that swap agreement) was incurred prior to the effective date, and
 - d) the proposed tax increase will be used to make those swap payments.
5. If a school district makes swap payments to a swap counterparty (i.e., not through an authority as described above), those payments will not qualify for a referendum exception. Therefore, a school district will need to seek voter approval if taxes must be increased by more than the amount allowable by its index and any approved referendum exceptions to meet these costs.

6. For example:

2015-2016 local share of debt service payments	\$1,000,000
Nonrecurring revenues applied to debt service	- \$ <u>500,000</u>
2015-2016 local share from recurring revenue	\$ 500,000
2016-2017 local share of debt service payments	\$1,100,000
Nonrecurring revenues applied to debt service	- \$ <u>200,000</u>
2016-2017 local share from recurring revenue	\$ 900,000
2015-2016 local share from recurring revenue	- \$ <u>500,000</u>
Referendum exception available	\$ 400,000
2016-2017 local share of debt service payments	\$1,100,000
Nonrecurring revenues applied to debt service	- \$ <u>0</u>
2016-2017 local share from recurring revenue	\$1,100,000
2015-2016 local share from recurring revenue	- \$ <u>900,000</u>
Referendum exception available	\$ 200,000

7. Any tax rate increase to pay these costs must be rescinded following the final payment of principal and interest. See page 7 for additional information.

(B) Electoral debt

- 1. Costs associated with paying principal and interest on any voter-approved debt, incurred under the Local Government Unit Debt Act, qualify for an exception. Voter approval must have occurred prior to requesting a referendum exception.
- 2. A referendum exception may be requested if the total budgeted payments—for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments.

Note: For each issue/note/loan with budgeted payments in 2015-2016 or 2016-2017, provide a copy of the certification of electoral approval to issue bonds or notes.

- **Special Education Expenditures** (Section 333(f)(2)(v))

If costs for special education programs and services for students with disabilities increased by more than the school district's index between 2013-2014 and 2014-2015, the school district is eligible for an exception equal to the increase in the *school district's* share of expenditures (i.e. costs in each year not offset by state Special Education Funding and Contingency Funds) that exceed its index.

'Special education program' expenditures are defined as total special education expenditures (function 1200) minus gifted support expenditures (function 1243).

'Special education services' expenditures are defined as the portion of the support services expenditures for costs described in the Individualized Education Program (IEP) for students with disabilities from the following expenditure accounts: 2120 Guidance Services, 2140 Psychological Services, 2150 Speech Pathology and Audiology Services, 2160 Social Work Services, 2260 Instruction and Curriculum Development Services (expenditures for the Director of Special Education only), 2350 Legal Services, 2420 Medical Services, 2440 Nursing Services and 2700 Student Transportation Services.

Example:

School district 2016-2017 index is 2.4%

2014-2015 special education expenditures:	\$1,703,437
2014-2015 Special Education Funding and Contingency Funds:	<u>\$1,250,000</u>
2014-2015 net special education expenditures	\$ 453,437
2013-2014 special education expenditures:	\$1,412,689
2013-2014 Special Education Funding and Contingency Funds:	<u>\$1,250,000</u>
2013-2014 net special education expenditures	\$ 162,689
2.4% of 2013-2014 net special education expenditures:	\$3,905
2014-2015 <i>minus</i> 2013-2014 special education expenditures:	\$290,748
Allowable referendum exception:	\$290,748 - \$3,905 = \$286,843

- **Retirement contributions** (Section 333(n))

If the anticipated increase in the school district's (i.e. local) share of payments to the Public School Employees' Retirement System between 2015-2016 or 2016-2017 is greater than the school district's index, the school district will be eligible for an exception equal to the portion of the estimated payment increase that exceeds its index. The amount of state revenue reported for function 7820 must be at least 50% of the expenditures listed for object code 230.

The school district will be required to use the most up-to-date PSERS contribution rates for 2015-2016 and 2016-2017. The salary base for 2012-2013 and beyond will be capped at the 2011-2012 level.

Example:

School district 2016-2017 index is 2.4%

2016-2017 estimated SD share of payments to PSERS (at 30.03%): \$750,750

2015-2016 estimated SD share of payments to PSERS (at 25.84%): \$646,000

2.4% of 2015-2016 estimated SD share of payments to PSERS: \$ 15,504

2016-2017 *minus* 2015-2016 estimated SD share of payments to PSERS: \$104,750

Allowable referendum exception: \$104,750 - \$15,504 = \$89,246

Department approval/disapproval (Section 333(j))

PDE shall approve the referendum exception request if a review of the data demonstrates that the school district qualifies for one or more of the exceptions.

If the request for an exception is approved, PDE shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If PDE denies the request, the school district must (1) reduce the tax rate increase to no more than its index or (2) submit a referendum question for voter approval in the primary election (for school districts with a July 1 through June 30 fiscal year).