

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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STEIL, WOJNAROSKI AND YOUNGBLOOD, SEPTEMBER 20, 1999

REFERRED TO COMMITTEE ON URBAN AFFAIRS, SEPTEMBER 20, 1999

AN ACT

1 Providing for financing real property acquisitions for
2 conservation, open space, recreation and revitalization in
3 counties of the second class A.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Conservation,
8 Open Space, Recreation and Revitalization Financing Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) It is the purpose of this act to provide a means by
12 which counties may acquire and preserve property for open
13 space, agricultural conservation, greenway preservation and
14 community revitalization in order to protect the aquifers,
15 air and soil, the agricultural base and the quality of life
16 in communities and to maintain an attractive environment for
17 business and industry location.

18 (2) It is important to preserve and use land for the

1 purposes set forth in paragraph (1).

2 (3) The incurring of debt or the imposition of taxes to
3 generate funds for the purchase of property in accordance
4 with the act of July 28, 1953 (P.L.723, No.230), known as the
5 Second Class County Code, is for the:

6 (i) public benefit;

7 (ii) advancement of the public health, safety,
8 morals and general welfare of the citizens of this
9 Commonwealth; and

10 (iii) promotion of sound land development.

11 Section 3. Definitions.

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

15 "Acquisition of property." An interest in real property
16 acquired by a county as authorized by section 4.

17 "County." A county of the second class A.

18 "Department." The Department of Revenue of the Commonwealth.

19 Section 4. Acquisition of property.

20 A county has the power to purchase any of the following:

21 (1) Open space property interests authorized in the act
22 of January 19, 1968 (1967 P.L.992, No.442), entitled, as
23 amended, "An act authorizing the Commonwealth of Pennsylvania
24 and the local government units thereof to preserve, acquire
25 or hold land for open space uses."

26 (2) Agricultural conservation easements pursuant to a
27 program authorized by the county governing body and
28 administered in accordance with the act of June 30, 1981
29 (P.L.128, No.43), known as the Agricultural Area Security
30 Law.

1 (3) Recreation and park lands, greenways, natural areas
2 and open space, consistent with the purposes set forth in the
3 act of July 2, 1993 (P.L.359, No.50), known as the Keystone
4 Recreation, Park and Conservation Fund Act.

5 (4) Real property, including air rights, water rights
6 and other interests in real property, which is any of the
7 following:

8 (i) Blighted, deteriorated, deteriorating,
9 undeveloped or inappropriately developed from the
10 standpoint of sound community development and growth.

11 (ii) Appropriate for:

12 (A) rehabilitation or conservation activities;

13 (B) preservation or restoration of historic
14 sites;

15 (C) beautification of urban land;

16 (D) conservation of open spaces, natural
17 resources and scenic areas;

18 (E) provision of recreational opportunities; or

19 (F) guidance of urban development.

20 (iii) To be used for the provision of public works,
21 facilities and improvements.

22 Section 5. Incurring debt; installment payments.

23 (a) General rule.--A county may incur electoral or
24 nonelectoral debt under 53 Pa.C.S. Pt. VII Subpt. B (relating to
25 indebtedness and borrowing), for the acquisition of property.

26 (b) Debt referendum.--

27 (1) Electoral debt for the purpose of the acquisition of
28 property may be incurred in accordance with 53 Pa.C.S. Ch. 80
29 Subch. C (relating to procedure for securing approval of
30 electors).

(2) Notwithstanding that nonelectoral debt may be incurred under 53 Pa.C.S. Pt. VII Subpt. B without securing the approval of the electors, an initiative petition of electors submitted in accordance with section 6 or an ordinance of the governing body adopted in accordance with section 7 may provide for a nonbinding, advisory referendum on the question of whether nonelectoral debt should be incurred for the purpose of the acquisition of property.

(c) Installments.--To the extent that the statutes enumerated in section 4 do not conflict with the exercise of the authority contained in this section, the governing body of a county may authorize the establishment of a program for the acquisition of property on an installment or other deferred basis. The obligation of the county to make payment on an installment or other deferred basis shall not be subject to the requirements of 53 Pa.C.S. § 8142(b) or (c) (relating to limitations on stated maturity dates).

Section 6. Tax and debt initiative; referendum petition.

(a) Binding.--If the initiative procedure authorized by this section is utilized, a petition must be filed with the county board of elections containing a proposal for a referendum on the question of imposing a tax as specified in section 9 for the purpose of dedicating the tax revenues for:

- (1) the acquisition of property; or
- (2) the repayment of debt incurred for the acquisition of property.

(b) Nonbinding.--The petition also may contain a proposal for a nonbinding, advisory referendum on the question of whether nonelectoral debt should be incurred, as authorized by section 5, for the acquisition of property. The proposal for a

1 nonbinding, advisory referendum on the question of whether
2 nonelectoral debt should be incurred may be the sole subject of
3 the petition, or it may be included with a proposal for a
4 referendum on the question of imposing a tax.

5 (c) Requirements.--

6 (1) A petition must be signed by electors of the county
7 comprising at least 2% of the number of electors voting for
8 the office of Governor in the last gubernatorial general
9 election in the county.

10 (2) A petition must be filed not later than the 13th
11 Tuesday prior to the next primary, general or municipal
12 election at which the referendum will be held. A petition may
13 not be signed or circulated prior to the 20th Tuesday before
14 the election.

15 (3) A petition under subsection (a) must identify the
16 tax and the millage or rate at which it will be imposed by
17 the county and the purpose or purposes for which the tax
18 revenues are to be used.

19 (4) A petition under subsection (b) must state the
20 amount of the nonelectoral debt to be incurred and the
21 purpose or purposes for which the debt proceeds are to be
22 used.

23 (5) A petition and the proceedings related to the
24 petition shall be in the manner and subject to the provisions
25 of the election statutes which relate to the signing, filing
26 and adjudication of nomination petitions insofar as those
27 provisions are applicable.

28 Section 7. Referendum ordinance.

29 (a) Binding.--In lieu of an initiative petition filed by
30 electors under section 6, the governing body of a county may, by

1 ordinance, provide for a referendum on the question of imposing
2 a tax as specified in section 9 for the purpose of dedicating
3 the tax revenues for:

- 4 (1) the acquisition of property; or
- 5 (2) the repayment of debt incurred for the acquisition
6 of property as authorized by section 5.

7 (b) Nonbinding.--An ordinance may contain a proposal for a
8 nonbinding, advisory referendum on the question of whether
9 nonelectoral debt should be incurred, as authorized by section
10 5, for the acquisition of property. The proposal for a
11 nonbinding, advisory referendum on the question of whether
12 nonelectoral debt should be incurred may be the sole subject of
13 the ordinance, or it may be included with a proposal for a
14 referendum on the question of imposing a tax.

15 (c) Requirements.--

16 (1) An ordinance under subsection (a) must identify the
17 tax and the millage or rate at which it will be imposed by
18 the county and the purpose for which the tax revenue is to be
19 used.

20 (2) An ordinance under subsection (b) must state the
21 amount of the nonelectoral debt to be incurred and the
22 purpose for which the debt proceeds are to be used.

23 (3) An ordinance under this section must be filed with
24 the county board of elections not later than the 13th Tuesday
25 prior to the next primary, general or municipal election at
26 which the referendum will be held.

27 Section 8. Authorizing referendum.

28 A referendum under this act shall be subject to the act of
29 June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania
30 Election Code. Election officials shall cause the question to be

1 submitted to the electors of the county at the next primary,
2 general or municipal election occurring not less than the 13th
3 Tuesday following the filing, with the county board of
4 elections, of the petition under section 6 or the ordinance
5 under section 7. Either one or both of the following questions,
6 as directed in the referendum petition or the referendum
7 ordinance, are to be placed upon the ballot and shall be framed
8 in the following form:

9 Do you favor the imposition of a (identify the tax or
10 taxes and the millage or rate or rates at which the tax
11 or taxes will be imposed) by (insert the name of the
12 county) to be used for (identify the purpose or
13 purposes)?

14 Do you favor incurring nonelectoral debt within the debt
15 limits provided by law for (insert the name of the
16 county) in the amount of (identify the amount of the debt
17 to be incurred) by (insert the name of the county) to be
18 used for (identify the purpose or purposes)?

19 Section 9. Taxes authorized.

20 If approved by a majority of those voting in a referendum
21 authorized by ordinance or initiative in accordance with this
22 act, a county may impose, by ordinance, any of the following
23 taxes, not exceeding the millage or rate authorized by the
24 referendum, for the purpose of dedicating the tax revenues for
25 the acquisition of property or for repayment of debt incurred
26 for the acquisition of property, as authorized by section 5:

27 (1) A tax on real property. The tax imposed under this
28 paragraph:

29 (i) shall be in addition to other real estate taxes
30 authorized for counties in the act of July 28, 1953

(P.L.723, No.230), known as the Second Class County Code,
or any other statute; and

(ii) shall be in addition to and shall not otherwise
affect or prevent an increase in the millage rate for
real estate taxes for general county purposes within
limits otherwise authorized in section 1970 of the Second
Class County Code.

(2) A tax on the transfer of real property, or of any
interest in real property, situate within the county,
regardless of where the instruments making the transfer is
made, executed or delivered or where the actual settlement on
the transfer takes place. This paragraph is subject to the
limitations and restrictions placed on political subdivisions
imposing a tax on the transfer of real property in accordance
with the act of December 31, 1965 (P.L.1257, No.511), known
as The Local Tax Enabling Act. The tax authorized by this
paragraph may be imposed at a maximum rate of 1%, in
increments of .5%, but not exceeding the rate authorized by
the referendum, and shall be in addition to the realty
transfer tax authorized by either The Local Tax Enabling Act
or the act of March 4, 1971 (P.L.6, No.2), known as the Tax
Reform Code of 1971.

(3) A dedicated county sales and use tax as authorized
in section 10.

Section 10. Dedicated county sales and use tax.

(a) Construction of section.--The tax imposed by the
governing body of a county under this section shall be in
addition to any tax imposed by the Commonwealth under Article II
of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
Reform Code of 1971. Except for the differing situs provisions

1 under subsection (c), the provisions of Article II of the Tax
2 Reform Code of 1971 shall apply to the tax.

3 (b) Imposition.--

4 (1) The governing body of a county may levy and assess
5 upon each separate sale at retail of tangible personal
6 property or services, as defined in Article II of the Tax
7 Reform Code of 1971, within the boundaries of the county, a
8 tax on the purchase price. The tax shall be collected by the
9 vendor from the purchaser and shall be paid over to the
10 Commonwealth as provided in this section. A person shall not
11 be liable for the sales tax under this paragraph if the
12 person has paid, in an amount at least equal to the amount of
13 the tax imposed under this paragraph, the tax imposed under:

14 (i) Chapter 5 of the act of June 5, 1991 (P.L.9,
15 No.6), known as the Pennsylvania Intergovernmental
16 Cooperation Authority Act for Cities of the First Class;
17 or

18 (ii) Article XXXI-B(e) of the act of July 28, 1953
19 (P.L.723, No.230), known as the Second Class County Code.

20 (2) In a county within which the tax authorized in
21 paragraph (1) is imposed, there shall be levied, assessed and
22 collected upon the use, within the county, of tangible
23 personal property purchased at retail and on services
24 purchased at retail, as defined in Article II of the Tax
25 Reform Code of 1971, a tax on the purchase price. The tax
26 shall be paid over to the Commonwealth by the person who
27 makes the use. A person shall not be liable for the use tax
28 imposed under this paragraph if any of the following apply:

29 (i) The person has paid:

30 (A) the tax imposed under paragraph (1); or

1 (B) the tax imposed under this paragraph to the
2 vendor.

3 (ii) The person has paid, in an amount at least
4 equal to the tax imposed under this paragraph or
5 paragraph (1), the tax imposed under:

6 (A) Chapter 5 of the Pennsylvania
7 Intergovernmental Cooperation Authority Act for
8 Cities of the First Class; or

9 (B) Article XXXI-B(e) of the Second Class County
10 Code.

11 (3) In any county within which a tax authorized by
12 paragraph (1) is imposed, there shall be levied, assessed and
13 collected an excise tax on the rent upon occupancy of a room
14 in a hotel in the county. The tax shall be collected by the
15 operator or owner from the occupant and paid over to the
16 Commonwealth.

17 (4) Rate and uniformity shall be as follows:

18 (i) The tax authorized under this subsection shall
19 be imposed at a maximum rate of 1%, in increments of .5%,
20 but not exceeding the rate authorized by the referendum.

21 (ii) The tax imposed under this subsection shall be
22 uniform.

23 (5) The tax imposed under this subsection shall be
24 computed in the manner set forth in section 503(e)(2) of the
25 Pennsylvania Intergovernmental Cooperation Authority Act for
26 Cities of the First Class.

27 (c) Situs.--

28 (1) Except as provided in paragraphs (2) and (3), the
29 situs of sales at retail or uses, including leases, of motor
30 vehicles, aircraft, motorcraft and utility services, shall be

1 determined in the manner specified by:

2 (i) section 504 of the Pennsylvania
3 Intergovernmental Cooperation Authority Act for Cities of
4 the First Class; and

5 (ii) the Tax Reform Code of 1971.

6 (2) The sale or use of premium cable service shall be
7 deemed to occur at the service address in the county which is
8 the address where the customer cable connection is located.
9 This paragraph shall determine the situs of premium cable
10 service for the purpose of all local sales taxes, including
11 those imposed under:

12 (i) Chapter 5 of the Pennsylvania Intergovernmental
13 Cooperation Authority Act for Cities of the First Class;
14 and

15 (ii) Article XXXI-B(e) of the Second Class County
16 Code.

17 (3) The situs of telecommunications service under this
18 section shall be determined in accordance with regulations
19 adopted by the department. The situs shall be uniform among
20 all counties. The situs shall be consistent with regulations
21 promulgated under:

22 (i) Article XXXI-B(e) of the Second Class County
23 Code;

24 (ii) Article II of the Tax Reform Code of 1971; and

25 (iii) Chapter 5 of the Pennsylvania
26 Intergovernmental Cooperation Authority Act for Cities of
27 the First Class.

28 (d) Licenses.--A license for the collection of the tax
29 authorized by this section shall be issued in the same manner as
30 is provided for in section 505 of the Pennsylvania

1 Intergovernmental Cooperation Authority Act for Cities of the
2 First Class. Licensees shall be entitled to the same discount as
3 provided in section 227 of the Tax Reform Code of 1971.

4 (e) Regulations; collection costs.--

5 (1) Regulations shall be applicable to the taxes imposed
6 under subsection (b) in the same manner as is provided for in
7 section 506(1) and (2) of the Pennsylvania Intergovernmental
8 Cooperation Authority Act for Cities of the First Class.

9 (2) The department, to cover its costs of administration
10 under this act, shall be entitled to retain a sum equal to
11 the costs of administration. When the annual operating budget
12 for the department is submitted to the General Assembly, the
13 department shall submit to the chairman and minority chairman
14 of the Appropriations Committee of the Senate and to the
15 chairman and minority chairman of the Appropriations
16 Committee of the House of Representatives a report of the
17 actual sums retained for costs of collection in the preceding
18 fiscal year, together with supporting details.

19 (f) Procedure and administration.--

20 (1) In addition to any other requirements imposed by
21 this act or any other law relating to the adoption by a
22 county of an ordinance imposing a tax, the governing body of
23 the county desiring to impose the tax authorized in
24 subsection (b) shall, prior to adopting an ordinance imposing
25 the tax, give public notice of its intent to adopt the
26 ordinance in the manner provided by section 4 of the act of
27 December 31, 1965 (P.L.1257, No.511), known as The Local Tax
28 Enabling Act, and shall conduct at least one public hearing
29 regarding the proposed adoption of the ordinance. The notice
30 and ordinance shall state the tax rate and refer to this

1 section. The ordinance shall authorize the imposition of all
2 taxes provided for in subsection (b).

3 (2) A certified copy of the county ordinance shall be
4 delivered to the department by June 1 of the year prior to
5 the effective date of the ordinance. The county ordinance
6 shall become effective on January 1 following at least seven
7 months after the date of enactment of the county ordinance.

8 (3) A certified copy of a repeal ordinance shall be
9 delivered to the department at least 120 days prior to the
10 effective date of the repeal.

11 (g) County sales and use tax funds.--There is created for
12 each county levying the tax under subsection (b) a county sales
13 and use tax fund. The State Treasurer shall be custodian of the
14 fund, which shall be subject to the provisions of law applicable
15 to funds listed in section 302 of the act of April 9, 1929
16 (P.L.343, No.176), known as The Fiscal Code. Taxes imposed under
17 subsection (b) shall be received by the department and paid to
18 the State Treasurer and, along with interest and penalties, less
19 any collection costs allowed under this act and any refunds and
20 credits paid, shall be credited to the funds not less frequently
21 than every two weeks. During any period prior to the credit of
22 money to the fund, interest earned on money received by the
23 department and paid to the State Treasurer under this act shall
24 be deposited into the fund. All money in the fund, including
25 money credited to the fund under this subsection, prior year
26 encumbrances and the interest earned on money in the fund, shall
27 not lapse nor be transferred to any other fund, but shall remain
28 in the fund. Pending disbursement, money received on behalf of
29 or deposited into the fund shall be invested or reinvested as
30 other money in the custody of the State Treasurer in the manner

1 provided by law. All earnings received from the investment or
2 reinvestment of the money shall be credited to the fund. The
3 Auditor General shall periodically audit the records of the
4 department relative to its duties under this subsection and
5 shall furnish the results of the audit to any county levying the
6 sales and use tax under subsection (b).

7 (h) Disbursements.--

8 (1) On or before the tenth day of every month, the State
9 Treasurer shall make the disbursements on behalf of the
10 county imposing the tax out of the money which is, as of the
11 last day of the previous month, contained in the respective
12 county sales and use tax fund.

13 (2) The State Treasurer shall disburse to a county
14 imposing the tax authorized under subsection (b) an amount of
15 money equal to 100% of the tax collected in that county and
16 remitted to the department and deposited in the respective
17 county sales and use tax fund. The county shall deposit the
18 revenue from the respective county sales and use tax fund
19 into a special county conservation, open space, recreation
20 and revitalization property acquisition fund created under
21 section 11.

22 Section 11. County conservation, open space, recreation and
23 revitalization property acquisition fund.

24 A county imposing a tax or incurring debt in accordance with
25 this act shall establish a county conservation, open space,
26 recreation and revitalization property acquisition fund. Money
27 received by a county from the imposition of a tax, including
28 interest and penalties, or the proceeds of debt incurred, in
29 accordance with this act, shall be deposited in the county
30 conservation, open space, recreation and revitalization property

1 acquisition fund. Appropriations from the county conservation,
2 open space, recreation and revitalization property acquisition
3 fund shall be used exclusively for the acquisition of property
4 or the repayment of debt incurred for the acquisition of
5 property, as authorized by section 5.

6 Section 12. Continuity of tax; tax increases.

7 (a) Continuity.--A tax levied under this act shall continue
8 in force on a calendar year or fiscal year basis, without annual
9 reenactment unless the rate of tax is increased or the tax is
10 subsequently repealed by an ordinance of the governing body of
11 the county. A tax levied under this act may not be repealed
12 within five years following its imposition unless the repeal is
13 first approved by a majority of those voting on a referendum on
14 the question of repeal, which may be presented to the voters in
15 accordance with the procedures set forth in this act for the
16 referendum on the question of levying the tax.

17 (b) Tax increases.--

18 (1) A governing body of a county which has levied a tax
19 in accordance with this act may not increase the rate or
20 millage of the tax, except for any increase in millage
21 required to equalize revenues after a countywide
22 reassessment, without first obtaining the approval of a
23 majority of those voting in a referendum on the question of
24 increasing the rate or millage.

25 (2) A referendum under this subsection shall be governed
26 by the provisions of the act of June 3, 1937 (P.L.1333, No.
27 320), known as the Pennsylvania Election Code. Election
28 officials shall cause the question to be submitted to the
29 electors of the county at the next primary, general or
30 municipal election occurring not less than the 13th Tuesday

1 following the filing, with the county board of elections of
2 an ordinance of the governing body proposing to increase the
3 rate or millage of the tax and proposing a referendum on that
4 question. The question to be placed upon the ballot shall be
5 framed in the following form:

6 Do you favor an increase in the (insert the millage or
7 rate) of (identify the tax or taxes) previously approved
8 by the voters and imposed by (insert the name of the
9 county) for (identify the purpose or purposes for which
10 the tax had been imposed) from (insert the current
11 millage or rate) to (insert the proposed millage or
12 rate)?

13 Section 13. Preemption.

14 No statute shall preempt an ordinance adopted under this act
15 providing for the imposition of a tax by a county unless the
16 statute expressly eliminates the authority to adopt the
17 ordinance.

18 Section 14. Construction of act.

19 The power granted to a county under this act shall be in
20 addition to and not in limitation of any other power or
21 authority granted to a county by any other law and shall be
22 construed to enlarge and not to reduce or limit the power and
23 authority of counties.

24 Section 15. Effective date.

25 This act shall take effect immediately.