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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 911 Session of  
2011

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INTRODUCED BY BRUBAKER, PILEGGI, PICCOLA, SOLOBAY, FOLMER,  
VOGEL, RAFFERTY, EICHELBERGER, ALLOWAY, WAUGH, VANCE, FERLO,  
BROWNE, ORIE, MENSCH AND WARD, MARCH 30, 2011

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REFERRED TO FINANCE, MARCH 30, 2011

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AN ACT

1 Amending the act of June 27, 2006 (1st Sp.Sess., P.L.1873,  
2 No.1), entitled "An act providing for taxation by school  
3 districts, for the State funds formula, for tax relief in  
4 first class cities, for school district choice and voter  
5 participation, for other school district options and for a  
6 task force on school cost reduction; making an appropriation;  
7 prohibiting prior authorized taxation; providing for  
8 installment payment of taxes; restricting the power of  
9 certain school districts to levy, assess and collect taxes;  
10 and making related repeals," further providing for adoption  
11 of preliminary budget proposals and for public referendum  
12 requirements for increasing certain taxes.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Section 311(d) (3) and (4) of the act of June 27,  
16 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer  
17 Relief Act, are amended to read:

18 Section 311. Adoption of preliminary budget proposals.

19 \* \* \*

20 (d) Resolution.--

21 \* \* \*

22 [(3) A board of school directors that adopts a

1 resolution under this section shall not be eligible to seek  
2 referendum exceptions under section 333(f), and section  
3 333(e) shall not apply.]

4 (4) Upon receipt of the information required under  
5 paragraph (2)(ii), the department shall compare the proposed  
6 percentage increase in the rate of the tax with the index.  
7 Within ten days of the receipt of the information required  
8 under this subsection, the department shall inform the school  
9 district whether the proposed tax rate increase is less than  
10 or equal to the index. If the department determines that the  
11 proposed percentage increase in the rate of the tax exceeds  
12 the index, the school district shall be subject to  
13 subsections (a) and (c), and [paragraphs (2)(i) and (3)]  
14 paragraph (2)(i) shall not apply. The department's  
15 determination under this paragraph shall not constitute an  
16 adjudication.

17 Section 2. Section 333(b) introductory paragraph, (c)(3),  
18 (e), (f), (g), (h), (i), (j), (k) and (n) of the act are amended  
19 and the section is amended by adding a subsection to read:

20 Section 333. Public referendum requirements for increasing  
21 certain taxes.

22 \* \* \*

23 (b) Prohibitions.--[Except as set forth in subsection (i)  
24 and (j), unless] Unless there is compliance with subsection (c),  
25 a board of school directors may not do any of the following:

26 \* \* \*

27 (c) Referendum.--

28 \* \* \*

29 (3) [Except as set forth in subsections (i) and (j), a]  
30 A school district acting pursuant to this subsection shall

1 submit the referendum question required under this section to  
2 the election officials of each county in which it is situate  
3 no later than 60 days prior to the election immediately  
4 preceding the fiscal year in which the tax increase would  
5 take effect.

6 \* \* \*

7 (e) Tax rate submissions.--A school district that has  
8 adopted a preliminary budget proposal under section 311 that  
9 includes an increase in the rate of any tax levied for the  
10 support of public schools shall submit information on the  
11 increase to the department on a uniform form prepared by the  
12 department. The school district shall submit such information no  
13 later than 85 days prior to the date of the election immediately  
14 preceding the beginning of the school district's fiscal year.  
15 The department shall compare the proposed percentage increase in  
16 the rate of any tax with the index. Within ten days of the  
17 receipt of the information required under this subsection but no  
18 later than 75 days prior to the date of the election immediately  
19 preceding the beginning of the school district's fiscal year,  
20 the department shall inform the school district whether the  
21 proposed tax rate increase is less than or equal to the index.  
22 If the department determines that the proposed percentage  
23 increase in the rate of the tax exceeds the index, the  
24 department shall notify the school district that:

25 (1) the proposed tax increase must be reduced to an  
26 amount less than or equal to the index; or

27 (2) the proposed tax increase must be approved by the  
28 electorate under subsection (c) (1) [; or

29 (3) an exception must be sought under subsections (i)  
30 and (j)].

1 [(f) Referendum exceptions.--A school district may, without  
2 seeking voter approval under subsection (c), increase the rate  
3 of a tax levied for the support of the public schools by more  
4 than the index if all of the following apply:

5 (1) The revenue raised by the allowable increase under  
6 the index is insufficient to balance the proposed budget due  
7 to one or more of the expenditures listed in paragraph (2).

8 (2) The revenue generated by increasing the rate of a  
9 tax by more than the index will be used to pay for any of the  
10 following:

11 (i) Costs incurred in responding to or recovering  
12 from an emergency or disaster declared pursuant to 35  
13 Pa.C.S. § 7301 (relating to general authority of  
14 Governor) or 75 Pa.C.S. § 6108 (relating to power of  
15 Governor during emergency).

16 (ii) Costs to implement a court order or an  
17 administrative order from a Federal or State agency as  
18 long as the tax increase is rescinded following  
19 fulfillment of the court order or administrative order.

20 (iii) Costs associated with the following:

21 (A) For a board of school directors that elected  
22 to participate in the former act of July 5, 2004  
23 (P.L.654, No.72), known as the Homeowner Tax Relief  
24 Act, to pay interest and principal on any  
25 indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt.  
26 B (relating to indebtedness and borrowing) prior to  
27 September 4, 2004. In no case may the school district  
28 incur additional debt under this clause except for  
29 the refinancing of existing debt, including the  
30 payment of costs and expenses related to such

1 refinancing and the establishment of funding of  
2 appropriate debt service reserves. An increase under  
3 this clause shall be rescinded following the final  
4 payment of interest and principal.

5 (A.1) For a board of school directors that did  
6 not elect to participate in the former act of July 5,  
7 2004 (P.L.654, No.72), known as the Homeowner Tax  
8 Relief Act, to pay interest and principal on any  
9 indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt.  
10 B prior to the effective date of this act. In no case  
11 may the school district incur additional debt under  
12 this clause except for the refinancing of existing  
13 debt, including the payment of costs and expenses  
14 related to such refinancing and the establishment of  
15 funding of appropriate debt service reserves. An  
16 increase under this clause shall be rescinded  
17 following the final payment of interest and  
18 principal.

19 (B) To pay interest and principal on any  
20 electoral debt incurred under 53 Pa.C.S. Pt. VII  
21 Subpt. B. An increase under this clause shall be  
22 rescinded following the final payment of interest and  
23 principal.

24 (C) To pay interest and principal on  
25 indebtedness for up to 60% of the construction cost  
26 average on a square-foot basis if all of the  
27 following apply:

28 (I) The indebtedness is for a school  
29 construction project under 22 Pa. Code Ch. 21  
30 (relating to school buildings).

1 (II) For a board of school directors that  
2 elected to participate in the former Homeowner  
3 Tax Relief Act, the indebtedness to fund  
4 appropriate debt service reserves for the project  
5 is incurred after September 3, 2004.

6 (II.1) For a board of school directors that  
7 did not elect to participate in the former  
8 Homeowner Tax Relief Act, the indebtedness to  
9 fund appropriate debt service reserves for the  
10 project is incurred on or after the effective  
11 date of this act.

12 (III) The increase sought under this clause  
13 is rescinded following final payment of interest  
14 and principal.

15 (IV) The indebtedness is incurred only after  
16 existing fund balances for school construction  
17 and any undesignated fund balances have been  
18 fully committed to fund the project.

19 (V) The indebtedness is for an academic  
20 elementary or academic secondary school building.  
21 For purposes of this subclause, the following  
22 shall not be considered to be an academic  
23 elementary or academic secondary school building:  
24 natatorium, stadium bleachers, athletic field,  
25 athletic field lighting equipment and apparatus  
26 used to promote and conduct interscholastic  
27 athletics.

28 (VI) For school districts of the second,  
29 third and fourth class, the project has been  
30 approved by the department under section 731 of

1 the act of March 10, 1949 (P.L.30, No.14), known  
2 as the Public School Code of 1949. For  
3 nonreimbursable projects in school districts of  
4 the first class A, the plans and specifications  
5 have been approved by the board of school  
6 directors. For reimbursable projects in school  
7 districts of the first class A, the plans and  
8 specifications have been approved by the  
9 department pursuant to 22 Pa. Code Ch. 21.

10 (D) To pay interest and principal on  
11 indebtedness for up to \$250,000 of the construction  
12 cost of a nonacademic school construction project, as  
13 adjusted annually by the percentage increase in the  
14 average of the Statewide average weekly wage and the  
15 employment cost index. An increase under this clause  
16 shall be rescinded following the final payment of  
17 interest and principal.

18 (E) For purposes of this subparagraph, electoral  
19 debt includes the refunding or refinancing of  
20 electoral debt for which an exception is permitted  
21 under clause (B) as long as the refunding or  
22 refinancing incurs no additional debt other than for:

23 (I) costs and expenses related to the  
24 refunding or refinancing; and

25 (II) funding of appropriate debt service  
26 reserves.

27 (F) For purposes of this subparagraph,  
28 indebtedness includes the refunding or refinancing of  
29 indebtedness for which an exception is permitted  
30 under clauses (A), (A.1), (C) and (D) as long as the

1           refunding or refinancing incurs no additional debt  
2           other than for:

3                   (I) costs and expenses related to the  
4                   refunding or refinancing; and

5                   (II) funding of appropriate debt service  
6                   reserves.

7           (iv) Costs to respond to conditions which pose an  
8           immediate threat of serious physical harm or injury to  
9           the students, staff or residents of the school district  
10          but only until the conditions causing the threat have  
11          been fully resolved.

12          (v) Costs incurred in providing special education  
13          programs and services to students with disabilities if  
14          the increase in expenditures on special education  
15          programs and services was greater than the index. The  
16          dollar amount of this exception shall be equal to the  
17          portion of the increase that exceeds the index.

18          (vi) Costs which:

19                   (A) were incurred in the implementation of a  
20                   school improvement plan required under section  
21                   1116(b) of the Elementary and Secondary Education Act  
22                   of 1965 (Public Law 89-10, 20 U.S.C. § 6316(b)); and

23                   (B) were not offset by a State allocation.

24          (vii) Costs necessary to maintain:

25                   (A) per-student local tax revenue, adjusted by  
26                   the index, if the percentage growth in average daily  
27                   membership between the school year determined under  
28                   subsection (j)(4) and the third school year preceding  
29                   the school year determined under subsection (j)(4)  
30                   exceeds 7.5%; or



1 (B) actual instruction expense per average daily  
2 membership, adjusted by the index, if the increase in  
3 actual instruction expense per average daily  
4 membership between the school year determined under  
5 subsection (j)(4) and the school year preceding the  
6 school year determined under subsection (j)(4) is  
7 less than the index.

8 (viii) The maintenance of revenues derived from real  
9 property taxes, earned income and net profits taxes,  
10 personal income taxes, basic education funding  
11 allocations and special education funding allocations,  
12 adjusted by the index, for a school district where the  
13 percentage increase in revenues derived from real  
14 property taxes, earned income and net profits taxes,  
15 personal income taxes, basic education funding  
16 allocations and special education funding allocations  
17 between the school year determined under subsection (j)  
18 (4) and the school year preceding the school year  
19 determined under subsection (j)(4) is less than the  
20 index.

21 (ix) Costs incurred for providing health care-  
22 related benefits which are directly attributable to a  
23 collective bargaining agreement in effect on January 1,  
24 2006, between the school district and its employees'  
25 organization if the anticipated increase in the cost of  
26 health care-related benefits between the current year and  
27 the upcoming year is greater than the index. The dollar  
28 amount of this exception shall be equal to the portion of  
29 the increase which exceeds the index. This subparagraph  
30 shall not apply to a collective bargaining agreement

1 renewed, extended or entered into after January 1, 2006.]

2 (f.1) Rescission.--

3 (1) Any increase in a rate of a tax levied for support  
4 of the public schools imposed prior to or during the  
5 2011-2012 school year under a referendum exception granted  
6 under section 333 or section 333 of the former Homeowner Tax  
7 Relief Act shall be rescinded:

8 (i) immediately following fulfillment of the court  
9 order or administrative order that was the basis for the  
10 referendum exception;

11 (ii) immediately following the payment of costs to  
12 resolve a condition which posed an immediate threat of  
13 serious physical harm or injury to the students, staff or  
14 residents of the school district that was the basis for  
15 the referendum exception; or

16 (iii) following the final payment of interest and  
17 principal related to the indebtedness.

18 (2) For the purposes of this subsection, the term "final  
19 payment of interest and principal" shall not include a school  
20 district's payment of debt as a result of refunding or  
21 refinancing the debt unless the original debt has been fully  
22 paid.

23 [(g) Revenue derived from increase.--Any revenue derived  
24 from an increase in the rate of any tax allowed pursuant to  
25 subsection (f) (2) (iii) shall not exceed the anticipated dollar  
26 amount of the expenditure.

27 (h) Limitation on tax rate.--The increase in the rate of any  
28 tax allowed pursuant to an exception under subsection (f) (2) (i),  
29 (ii), (iv), (v), (vi), (vii), (viii) or (ix) or (n) shall not  
30 exceed the rate increase required as determined by a court of

1 common pleas or the department pursuant to subsection (i) or  
2 (j).

3 (i) Court action.--

4 (1) Prior to the imposition of a tax increase under  
5 subsection (f) (2) (i), (ii) and (iv) and no later than 75 days  
6 prior to the election immediately preceding the beginning of  
7 the school district's fiscal year, approval by the court of  
8 common pleas in the judicial district in which the  
9 administrative office of the school district is located must  
10 be sought. The board of school directors shall publish in a  
11 newspaper of general circulation and on the district's  
12 publicly accessible Internet site, if one is maintained,  
13 notice of its intent to file a petition under this subsection  
14 at least one week prior to the filing of the petition. The  
15 board of school directors shall also publish in a newspaper  
16 of general circulation and on the district's publicly  
17 accessible Internet site, if one is maintained, notice, as  
18 soon as possible following notification from the court that a  
19 hearing has been scheduled, stating the date, time and place  
20 of the hearing on the petition. The following shall apply to  
21 any proceedings instituted under this subsection:

22 (i) The school district must prove by clear and  
23 convincing evidence that it qualifies for each exception  
24 sought.

25 (ii) The school district must prove by clear and  
26 convincing evidence the anticipated dollar amount of the  
27 expenditure for each exception sought.

28 (2) The court shall rule on the school district's  
29 petition and inform the school district of its decision no  
30 later than 55 days prior to the date of the election

1 immediately preceding the beginning of the school district's  
2 fiscal year. If the court approves the petition, the court  
3 shall also determine the dollar amount of the expenditure for  
4 which an exception is granted, the tax rate increase required  
5 to fund the exception and the appropriate duration of the  
6 increase. If the court denies the petition, the school  
7 district may submit a referendum question under subsection  
8 (c)(1). The question must be submitted to the election  
9 officials no later than 50 days prior to the date of the  
10 election immediately preceding the beginning of the school  
11 district's fiscal year.

12 (j) Department approval.--

13 (1) A school district that seeks to increase the rate of  
14 tax due to an expenditure under subsection (f)(2)(iii), (v),  
15 (vi), (vii), (viii) or (ix) or (n) shall obtain the approval  
16 of the department before imposing the tax increase. The  
17 department shall establish procedures for administering the  
18 provisions of this subsection, which may include an  
19 administrative hearing on the school district's submission.

20 (2) A school district proceeding under the provisions of  
21 this subsection shall publish in a newspaper of general  
22 circulation and on the district's publicly accessible  
23 Internet site, if one is maintained, notice of its intent to  
24 seek department approval at least one week prior to  
25 submitting its request for approval to the department. If the  
26 department schedules a hearing on the school district's  
27 request, the school district shall publish notice of the  
28 hearing in a newspaper of general circulation and on the  
29 district's publicly accessible Internet site, if one is  
30 maintained, immediately upon receiving the information from

1 the department. The notice shall include the date, time and  
2 place of the hearing.

3 (3) The department shall approve a school district's  
4 request under this subsection if a review of the data under  
5 paragraph (4) demonstrates that:

6 (i) the school district qualifies for one or more  
7 exceptions under subsection (f)(2)(iii), (v), (vi),  
8 (vii), (viii) or (ix) or (n); and

9 (ii) the sum of the dollar amounts of the exceptions  
10 for which the school district qualifies makes the school  
11 district eligible under subsection (f)(1).

12 (4) For the purpose of determining the eligibility of a  
13 school district for an exception under subsection (f)(2)(v),  
14 (vi), (vii) or (viii), the department shall utilize data from  
15 the most recent school years for which annual financial  
16 report data required under section 2553 of the Public School  
17 Code of 1949 has been received. The department shall inform  
18 school districts of the school years determined under this  
19 subsection no later than 30 days prior to the date on which  
20 public inspection of proposed school budgets is required  
21 under section 311(c).

22 (5) (i) The department shall rule on the school  
23 district's request and shall inform the school district  
24 of its decision no later than 55 days prior to the date  
25 of the election immediately preceding the beginning of  
26 the school district's fiscal year.

27 (ii) If the department approves the request, the  
28 department shall determine the dollar amount of the  
29 expenditure for which the exception is sought and the tax  
30 rate increase required to fund the exception.

1           (iii) If the department denies the request, the  
2 school district may submit a referendum question under  
3 subsection (c)(1). The question must be submitted to the  
4 election officials no later than 50 days prior to the  
5 date of the election immediately preceding the beginning  
6 of the school district's fiscal year.

7           (6) Within 30 days of the deadline under paragraph (5)  
8 (i), the department shall submit a report to the President  
9 pro tempore of the Senate, the Minority Leader of the Senate,  
10 the Speaker of the House of Representatives and the Minority  
11 Leader of the House of Representatives enumerating the school  
12 districts which sought an exception under this subsection.  
13 The department shall also publish the report on its publicly  
14 accessible Internet site. The report shall include:

15           (i) The name of each school district making a  
16 request under this subsection.

17           (ii) The specific exceptions requested by each  
18 school district and the dollar amount of the expenditure  
19 for each exception.

20           (iii) The department's ruling on the request for the  
21 exception.

22           (iv) If the exception was approved, the dollar  
23 amount of the expenditure for which the exception was  
24 sought and the tax rate increase required to fund the  
25 exception.

26           (v) A statistical summary of the information in  
27 subparagraphs (ii), (iii) and (iv).

28           (k) Objections.--Any person who resides within or pays real  
29 property taxes to the school district filing a petition under  
30 subsection (i) may file with the court written objections to any

1 petition filed under this section.]

2 \* \* \*

3 [(n) Treatment of certain required payments.--The provisions  
4 of subsections (f) and (j) shall apply to a school district's  
5 share of payments to the Public School Employees' Retirement  
6 System as required under 24 Pa.C.S. § 8327 (relating to payments  
7 by employers) if the increase in the actual dollar amount of  
8 estimated payments between the current year and the upcoming  
9 year is greater than the index. The dollar amount to which  
10 subsection (f) applies shall equal that portion of the increase  
11 which exceeds the product of the index and the actual dollar  
12 value of payments for the current year.]

13 Section 3. The amendment of section 333 of the act shall  
14 apply to any proposed tax increase that takes effect in a fiscal  
15 year beginning after December 31, 2011.

16 Section 4. This act shall take effect July 1, 2011, or  
17 immediately, whichever is later.