

LOCAL TAXING OPTIONS

Act of Dec. 18, 2013, P.L. 1191, No. 115

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No. 2013-115

HB 1523

AN ACT

Amending the act of January 19, 1968 (1967 P.L.992, No.442), entitled, as amended, "An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," further providing for local taxing options.

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

Section 1. Section 7.1 of the act of January 19, 1968 (1967 P.L.992, No.442), entitled "An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," amended February 2, 2006 (P.L.15, No.4) and November 29, 2006 (P.L.1418, No.154), is amended to read:

Section 7.1. Local Taxing Options.--(a) A local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the statutory rate limits on real estate taxes set forth in the municipal code of that local government unit, [a] **an open space** tax on real property not exceeding the millage authorized by referendum under [this subsection] **subsection (a.3)**. In the alternative, a local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the earned income tax rate limit set forth in the act of December 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling Act," [a] **an open space** tax on the earned income of the residents of that local government unit not exceeding the rate authorized by referendum under [this subsection] **subsection (a.3)**. Revenue from the levy [shall be used] **may only be used for the following:**

(1) to retire the indebtedness incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing an open space benefit or benefits under the provisions of this act or the act of June 30, 1981 (P.L.128, No.43), known as the ["Agricultural Area Security Law." Revenue from the levy may also be used] **"Agricultural Area Security Law";**

(2) for transactional fees that are incidental to acquisitions made in accordance with this act, including, but not limited to, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs[.];

(3) for expenses necessary to prepare the resource, recreation or land use plan required under section 3; or

(4) (i) annually, up to 25% of any accumulated balance of the fund from the levy authorized by referendum, to develop, improve, design, engineer and maintain property acquired pursuant to this act for an open space benefit or benefits; or

(ii) alternatively, for purposes of allocation, the local government unit may create a maintenance fund into which the local government unit may deposit in an amount up to 25% of the annual revenue from the levy authorized by referendum, to

develop, improve, design, engineer and maintain property acquired pursuant to this act for an open space benefit or benefits.

(a.1) In no event, however, shall any revenue in a particular year be used to develop, improve, design, engineer and maintain the property acquired unless the annual debt service under subsection (a)(1) or acquisition fees under subsection (a)(2) will be satisfied. The acquisition fees shall be paid in their entirety at the time of acquisition.

(a.2) Nothing in subsection (a)(4) shall prevent a local government unit from using funds set aside for development, improvement, design, engineering and maintenance of real property for acquisition of real property to secure an open space benefit or benefits pursuant to subsection (a)(1).

(a.3) The local taxing option for an open space tax authorized by [this] subsection (a) shall not be exercised unless the governing body of the local government unit shall by ordinance first provide for a referendum on the question of the imposition at a specific rate of the additional tax to be imposed and a majority of those voting on the referendum question vote in favor of the imposition of the tax. **The additional tax shall not be repealed any sooner than five years after the imposition of the tax or when any indebtedness incurred for payment of the property or properties acquired has been repaid, whichever is later.** The ordinance of the governing board of the local government unit providing for a referendum on the question shall be filed with the county board of elections. The referendum shall be governed by the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code." The election official shall cause the question to be submitted to the electors of the local government unit at the next primary, general or municipal election occurring not less than the thirteenth Tuesday following the filing of the ordinance with the county board of elections. At such election, the question shall be submitted to the voters in the same manner as other questions are submitted under the provisions of the "Pennsylvania Election Code." The question to be placed upon the ballot shall be framed in the following form:

Do you favor the imposition of a (describe tax in millage or **earned income tax** rate) by (local government unit) to be used to (purpose)?

(a.4) In local government units whose electors voted in a referendum pursuant to subsection (a.3) to impose the open space tax, whether before or after the effective date of this subsection, the method of repeal of the open space tax shall be by referendum, and the procedures for the filing of the ordinance and the conduct of the referendum shall be as set forth in subsection (a.3), except the question to be placed upon the ballot shall be framed in the following form:

Do you favor the continued imposition of the (describe tax in millage or earned income tax rate) by (local government unit) to be used to (purpose)?

If the referendum question passes, the open space tax shall continue to be imposed at the rate described in the question. If the referendum question fails, the increase in the rate limit of the real estate or the earned income tax provided for by subsection (a.3) shall be repealed effective in the fiscal year following the referendum. Regardless of whether the referendum question passes or fails, a referendum on either the reimposition of the open space tax pursuant to subsection (a.3)

**or the continued imposition of the open space tax pursuant to this subsection shall not be held any sooner than five years after the approval or disapproval of the referendum question.**

(b) (1) Any of the following categories of real property may be exempted from further millage increases:

(i) Real property in which the open space property interests have been acquired by a local government unit in accordance with this act.

(ii) Real property that is subject to an easement acquired in accordance with the [act of June 30, 1981 (P.L.128, No.43), known as the] "Agricultural Area Security Law."

(iii) Real property from which TDRs have been transferred and retired by a local government unit without their development potential having occurred on other lands.

(2) The exemption from further millage increases authorized by clause (1) shall become effective only if the governing body of each taxing district that imposes a tax on the real property approves the exemption either by ordinance in the case of a county or municipal corporation or by resolution in the case of a school district.

(3) The exemption from further millage increases for real property as provided for in this subsection shall be authorized only for real property qualifying for such exemption under the provisions of section 2(b)(1) of Article VIII of the Constitution of Pennsylvania.

(4) If the governing body of each taxing district so resolves, the millage freeze authorized herein shall apply to all eligible real property, whether the real property met the criteria of this subsection prior to or subsequent to the date of the ordinances and resolution imposing the millage freeze. For prior acquisitions, the date on which the millage rate shall be frozen is the date that the last of the required ordinances or resolution becomes effective. For subsequent acquisitions, the date on which the millage rate shall be frozen is the date the local government unit completes the acquisition. The governing body of each taxing district shall give prompt notice to the appropriate tax collection agent of the exact amount of the millage, the date it was frozen and each parcel to which the freeze applies.

(5) The exemptions granted under this act shall not be considered by the State Tax Equalization Board in deriving the market value of school district real property so as to reduce the subsidy to that school district or to increase the subsidy to any other school district.

Section 2. This act shall take effect immediately.

APPROVED--The 18th day of December, A.D. 2013.

TOM CORBETT