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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1523 Session of  
2013

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INTRODUCED BY TOEPEL, STURLA, MILLARD, SCHLOSSBERG, HENNESSEY,  
WATSON, CARROLL, R. MILLER, GROVE, MURT, MILNE, CLYMER,  
PETRI, SANTARSIERO, GOODMAN, FREEMAN, PAINTER, HARPER AND  
GINGRICH, JUNE 12, 2013

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REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 12, 2013

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AN ACT

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

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

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

14 Section 7.1. Local Taxing Options.--(a) A local government  
15 unit, excluding counties and county authorities, may by  
16 ordinance impose, in addition to the statutory rate limits on  
17 real estate taxes set forth in the municipal code of that local  
18 government unit, [a] an open space tax on real property not

1 exceeding the millage authorized by referendum under [this  
2 subsection] subsection (a.3). In the alternative, a local  
3 government unit, excluding counties and county authorities, may  
4 by ordinance impose, in addition to the earned income tax rate  
5 limit set forth in the act of December 31, 1965 (P.L.1257,  
6 No.511), known as "The Local Tax Enabling Act," [a] an open  
7 space tax on the earned income of the residents of that local  
8 government unit not exceeding the rate authorized by referendum  
9 under [this subsection] subsection (a.3). Revenue from the levy  
10 [shall be used] may only be used for the following:

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

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

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

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

29 (ii) alternatively, for purposes of allocation, the local  
30 government unit may create a maintenance fund into which the

1 local government unit may deposit in an amount up to 25% of the  
2 annual revenue from the levy authorized by referendum, to  
3 develop, improve, design, engineer and maintain property  
4 acquired pursuant to this act for an open space benefit or  
5 benefits.

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

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

17 (a.3) The local taxing option for an open space tax  
18 authorized by [this] subsection (a) shall not be exercised  
19 unless the governing body of the local government unit shall by  
20 ordinance first provide for a referendum on the question of the  
21 imposition at a specific rate of the additional tax to be  
22 imposed and a majority of those voting on the referendum  
23 question vote in favor of the imposition of the tax. The  
24 additional tax shall not be repealed any sooner than five years  
25 after the imposition of the tax or when any indebtedness  
26 incurred for payment of the property or properties acquired has  
27 been repaid, whichever is later. The ordinance of the governing  
28 board of the local government unit providing for a referendum on  
29 the question shall be filed with the county board of elections.  
30 The referendum shall be governed by the provisions of the act of

1 June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania  
2 Election Code." The election official shall cause the question  
3 to be submitted to the electors of the local government unit at  
4 the next primary, general or municipal election occurring not  
5 less than the thirteenth Tuesday following the filing of the  
6 ordinance with the county board of elections. At such election,  
7 the question shall be submitted to the voters in the same manner  
8 as other questions are submitted under the provisions of the  
9 "Pennsylvania Election Code." The question to be placed upon the  
10 ballot shall be framed in the following form:

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

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

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

25 If the referendum question passes, then the open space tax shall  
26 continue to be imposed at the rate described in the question. If  
27 the referendum question fails, then the increase in the rate  
28 limit of the real estate or the earned income tax provided for  
29 by subsection (a.3) shall be repealed effective in the fiscal  
30 year following the referendum. Regardless of whether the

1 referendum question passes or fails, a referendum on either the  
2 reimposition of the open space tax pursuant to subsection (a.3)  
3 or the continued imposition of the open space tax pursuant to  
4 this subsection shall not be held any sooner than five years  
5 after the approval or disapproval of the referendum question.

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

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

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

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

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

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

28 (4) If the governing body of each taxing district so  
29 resolves, the millage freeze authorized herein shall apply to  
30 all eligible real property, whether the real property met the

1 criteria of this subsection prior to or subsequent to the date  
2 of the ordinances and resolution imposing the millage freeze.  
3 For prior acquisitions, the date on which the millage rate shall  
4 be frozen is the date that the last of the required ordinances  
5 or resolution becomes effective. For subsequent acquisitions,  
6 the date on which the millage rate shall be frozen is the date  
7 the local government unit completes the acquisition. The  
8 governing body of each taxing district shall give prompt notice  
9 to the appropriate tax collection agent of the exact amount of  
10 the millage, the date it was frozen and each parcel to which the  
11 freeze applies.

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

17 Section 2. This act shall take effect immediately.