

No. 2011-25

AN ACT

SB 330

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

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

Section 1. Section 333 of the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, is amended to read:

Section 333. Public referendum requirements for increasing certain taxes.

(a) Applicability.—The following provisions shall apply to this section:

(1) For the 2006-2007 fiscal year, the tax increase proposed by any board of school directors shall not exceed the index unless an exception under subsection (f) or (n) is approved pursuant to subsection [(i) or] (j), provided that a board of school directors that did not elect to participate in the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, shall have the authority to petition the court of common pleas for an additional tax rate increase if the tax rate increase allowed by the index and any exception approved pursuant to subsection [(i) or] (j) is insufficient to balance the proposed budget. No later than July 15, 2006, the court shall grant the school district's request for the tax rate increase upon good cause shown if the school district proves by clear and convincing evidence that the tax rate increase authorized under this paragraph is insufficient to balance the proposed budget. For a board of school directors subject to this paragraph, the dates by which the board of school directors, the department and the court of common pleas shall be required to comply with section 311 and subsections (e)[, (i)] and (j) shall be 92 days after the dates set forth in those provisions, except that the date by which the board of school directors shall be required to comply with all of the provisions of section 311(c) shall be ten days prior to the date by which the board of school directors is required to adopt a preliminary budget. Any exceptions granted to a board of school directors under section 333 of the former Homeowner Tax Relief Act shall remain in full force and effect. Notwithstanding the provisions of this paragraph, a board of school directors that sought and was granted approval for one or more exceptions under section 333 of the former Homeowner Tax Relief Act may apply for any exception under subsections (f)(v) [and (ix)] and (n), where the dollar amount of an exception approved by the department under the former Homeowner Tax Relief Act is less than the dollar

amount of the exception for which the school district is eligible under this act.

(2) This section shall apply to each board of school directors beginning with any proposed tax increase that takes effect in the 2007-2008 fiscal year and each fiscal year thereafter.

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

(1) Increase the rate of a tax levied for the support of the public schools by more than the index. For purposes of compliance with this paragraph, a school district which is situated in more than one county and which levies real estate taxes under section 672.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall apply the index to each separate rate of real estate taxes levied.

(2) Levy a tax for the support of the public schools which was not levied in the 2005-2006 fiscal year.

(3) Raise the rate of the earned income and net profits tax if already imposed under the authority of the Local Tax Enabling Act except as otherwise provided for under section 331.2 or 332.

(4) Notwithstanding any other provision of this chapter to the contrary, the adoption of a referendum under section 331.2 or 332 confers on the board of school directors the authority to raise income taxes only to the extent contained in the language of the referendum, and any future increase of an income tax to be used for the purpose of property tax reduction shall be submitted to the electors of the school district at a subsequent municipal election pursuant to the provisions of section 332.

(c) Referendum.—

(1) In order to take an action prohibited under subsection (b)(1), at the election immediately preceding the start of the school district fiscal year in which the proposed tax increase would take effect, a referendum stating the specific rate or rates of the tax increase must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the increase.

(2) In order to take an action under subsection (b)(2), at the election immediately preceding the start of the school district fiscal year in which the proposed tax would take effect, a referendum stating the proposed tax and the rate at which it will be levied must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the tax.

(3) Except as set forth in [subsections (i) and] subsection (j), a school district acting pursuant to this subsection shall submit the referendum question required under this section to the election officials of each county in which it is situate no later than 60 days prior to the election immediately preceding the fiscal year in which the tax increase would take effect.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the

Pennsylvania Election Code. The nonlegal interpretative statement shall include information that references the items of expenditure for which the tax increase is sought and the consequence of the referendum being disapproved by the electorate.

(d) Failure to approve referendum.—

(1) If a referendum question submitted under subsection (c)(1) is not approved, the board of school directors may approve an increase in the tax rate of not more than the index.

(2) If a referendum question submitted under subsection (c)(2) is not approved, the board of school directors may not levy the tax.

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

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

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

(3) an exception must be sought under **[subsections (i) and] subsection (j)**.

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

(1) The revenue raised by the allowable increase under the 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 index will be used to pay for any of the following:

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

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

(iii) Costs associated with the following:

(A) For a board of school directors that elected to participate in the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, to pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to September 4, 2004. In no case may the school district incur additional debt under this clause except for the refinancing of existing debt, including the payment of costs and expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

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

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

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

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

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

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

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

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

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

(VI) For school districts of the second, third and fourth class, the project has been approved by the department under section 731 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. For nonreimbursable projects in school districts of the first class A, the plans and specifications have been approved by the board of school directors. For reimbursable projects in school districts of the first class A, the plans and specifications have been approved by the department pursuant to 22 Pa. Code Ch. 21.

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

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

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

(II) funding of appropriate debt service reserves.

(F) For purposes of this subparagraph, indebtedness includes the refunding or refinancing of indebtedness for which an exception is permitted under clauses (A)[, (A.1), (C) and (D)] *and (A.1)* as long as the refunding or refinancing incurs no additional debt other than for:

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

(II) funding of appropriate debt service reserves.

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

(v) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services, *net of State special education payments*, was greater than the index. The dollar amount of this exception shall be equal to the portion of the increase that exceeds the index.

[(vi) Costs which:

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

(B) were not offset by a State allocation.

(vii) Costs necessary to maintain:

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

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

(viii) The maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations, adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits which are directly attributable to a collective bargaining agreement in effect on January 1, 2006, between the school district and its employees' organization if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index. This subparagraph shall not apply to a collective bargaining agreement renewed, extended or entered into after January 1, 2006.]

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

(h) Limitation on tax rate.—The increase in the rate of any tax allowed pursuant to an exception under subsection [(f)(2)(i), (ii), (iv), (v), (vi), (vii), (viii) or (ix)] (f)(2)(v) or (n) shall not exceed the rate increase required as determined by [a court of common pleas or] the department pursuant to subsection [(i) or](j).

[(i) Court action.—

(1) Prior to the imposition of a tax increase under subsection (f)(2)(i), (ii) and (iv) and no later than 75 days prior to the election

immediately preceding the beginning of the school district's fiscal year, approval by the court of common pleas in the judicial district in which the administrative office of the school district is located must be sought. The board of school directors shall publish in a newspaper of general circulation and on the district's publicly accessible Internet site, if one is maintained, notice of its intent to file a petition under this subsection at least one week prior to the filing of the petition. The board of school directors shall also publish in a newspaper of general circulation and on the district's publicly accessible Internet site, if one is maintained, notice, as soon as possible following notification from the court that a hearing has been scheduled, stating the date, time and place of the hearing on the petition. The following shall apply to any proceedings instituted under this subsection:

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

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

(2) The court shall rule on the school district's petition and inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the court approves the petition, the court shall also determine the dollar amount of the expenditure for which an exception is granted, the tax rate increase required to fund the exception and the appropriate duration of the increase. If the court denies the petition, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.]

(j) Department approval.—

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

(2) A school district proceeding under the provisions of this subsection shall publish in a newspaper of general circulation and on the district's publicly accessible Internet site, if one is maintained, notice of its intent to seek department approval at least one week prior to submitting its request for approval to the department. If the department schedules a hearing on the school district's request, the school district shall publish notice of the hearing in a newspaper of general circulation and on the district's publicly accessible Internet site, if one is maintained, immediately upon receiving the information from the department. The notice shall include the date, time and place of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

[(k) Objections.—Any person who resides within or pays real property taxes to the school district filing a petition under subsection (i) may file with the court written objections to any petition filed under this section.]

(l) Index calculation.—No later than August 15, 2005, and each August 15 thereafter, the department shall calculate the index. The department shall

publish the index by September 1, 2005, and each September 1 thereafter in the Pennsylvania Bulletin.

(m) Election interference prohibited.—

(1) No public funds may be used to urge any elector to vote for or against a referendum or be appropriated for political or campaign purposes.

(2) This subsection shall not be construed to prohibit the use of public funds for dissemination of factual information relative to a referendum appearing on an election ballot.

(3) As used in this subsection, the term "public funds" means any funds appropriated by the General Assembly or by a political subdivision.

(n) Treatment of certain required payments.—

(1) The provisions of subsections (f) and (j) shall apply to a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the increase in [the actual dollar amount of] estimated payments between the current year and the upcoming year, *as determined by the department under this section*, is greater than the index. [The dollar amount to which subsection (f) applies shall equal that portion of the increase which exceeds the product of the index and the actual dollar value of payments for the current year.]

(2) For purposes of this subsection, the following apply:

(i) *The school district's share of payments as required by 24 Pa.C.S. § 8327 for the current year shall be determined by the department using:*

(A) *The lesser of the school district's total compensation for the current year or the school district's total compensation for the 2011-2012 school year.*

(B) *The employer contribution rate under 24 Pa.C.S. § 8328 (relating to actuarial cost method) for the current year.*

(C) *A State retirement subsidy calculation based on the school district's total compensation under clause (A) and the employer contribution rate under clause (B).*

(ii) *The school district's share of payments as required by 24 Pa.C.S. § 8327 for the upcoming year shall be determined by the department using all of the following:*

(A) *The lesser of the school district's:*

(I) *estimated total compensation for the upcoming year;*

or

(II) *total compensation for the 2011-2012 school year.*

(B) *The employer contribution rate under 24 Pa.C.S. § 8328 for the upcoming year.*

(C) *A State retirement subsidy calculation based on the school district's total compensation under clause (A) and the employer contribution rate under clause (B).*

(3) *The dollar amount to which subsection (f) applies shall be determined as follows:*

(i) *Multiply:*

(A) *the index; by*

(B) the school district's share of payments for the current year, as determined by the department under this subsection.

(ii) Subtract:

(A) the product under subparagraph (i); from

(B) the amount of increase, as determined by the department under this subsection, in the school district's share of payments between:

(I) the current year; and

(II) the upcoming year.

(4) As used in this subsection, the term "compensation" has the meaning ascribed in 24 Pa.C.S. § 8102 (relating to definitions).

(o) Rescission.—

(1) Any increase in a rate of a tax levied for support of the public schools imposed prior to or during the 2011-2012 school year under a referendum exception granted, prior to the effective date of this subsection, under subsection (f)(2)(i), (ii) or (iii)(C) and (D) shall be rescinded:

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

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

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

(2) For the purposes of this subsection, the term "final payment of interest and principal" does not include a school district's payment of debt as a result of refunding or refinancing the debt.

Section 2. Section 1502(d) of the act is amended and the section is amended by adding subsections to read:

Section 1502. Installment payment of school real property taxes.

* * *

(b.1) Adoption of resolution for small business.—No later than June 30, 2012, a board of school directors of a school district of the second, third or fourth class shall adopt a resolution which, for calendar year 2012 and each year thereafter, authorizes the collection and payment of school real property taxes, excluding any interim or delinquent school property taxes, in installments from small business owners.

* * *

(c.1) Contents of resolution for small business.—The resolution adopted pursuant to subsection (b.1) shall set forth all of the following:

(1) Permit taxpayers that own small businesses to be eligible to pay school real property taxes in installments.

(2) The same requirements as set forth under subsection (c)(2), (3) and (4).

(d) Notice.—A board of school directors of a school district to which this section applies shall annually set forth information regarding the payment of school real property taxes in installments and the dates on which such

payments are due or delinquent on the tax notice sent to a homestead or farmstead property owner *or to a small business owner*.

(e) Definition.—*For purposes of this section, "small business" means a business that is located in this Commonwealth and has no more than 50 employees.*

Section 3. The amendment of section 333 of the act shall apply to fiscal years of school districts which begin after January 1, 2012.

Section 4. This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
 - (i) The amendment of section 333 of the act.
 - (ii) Section 3 of this act.
 - (iii) This section.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 30th day of June, A.D. 2011

TOM CORBETT