

Homeowner Tax Relief Act
Act 72 of 2004
Referendum Exceptions Submitted to PDE
Guidelines for the 2006-2007 Fiscal Year

I. Preliminary Budget and Approval of Tax Rate Increases (Section 311, 333(e))

Beginning with the 2006-2007 fiscal year, school districts that opted in to property tax relief, as enacted by Act 72 of 2004, must adopt a preliminary budget. For the 2006-2007 fiscal year, the preliminary budget must be adopted by February 15, 2006. The adopted preliminary budget, along with a schedule of proposed tax rate increases, must be submitted to the Department of Education (PDE) by February 20, 2006.

After review of the school district's proposed tax rate increases, PDE will inform school districts in writing by March 2, 2006, of what further actions, if any, must be taken. If proposed tax rate increases exceed the school district's index, (1) the tax rate increase must be reduced to the index, (2) a referendum exception must be sought or (3) the tax rate increases must be approved by voters at the primary election on May 16, 2006.

Note: Dates above do not apply to the two school districts (Pittsburgh SD, Scranton City SD) that operate on a calendar year.

II. Index (Section 302, 313, 333(l))

Each September, PDE will publish the index for use in the determination of allowable tax rate increases in the following fiscal year. The base index is the average of the percentage increase in the statewide average weekly wage, as determined by the PA Department of Labor and Industry, for the preceding calendar year and the percentage increase in the Employment Cost Index for Elementary and Secondary Schools, as determined by the Bureau of Labor Statistics in the U.S. Department of Labor, for the previous 12-month period ending June 30. For a school district with a market value/personal income aid ratio (MV/PI AR) greater than .4000, its index equals the base index multiplied by the sum of .75 and its MV/PI AR for the current year.

For the 2006-2007 fiscal year, the base index is 3.9%. Each school district must go to the PDE website to find its individual index (www.pde.state.pa.us/proptax).

III. Referendum Exceptions (Section 333(f), (j), (n))

Section 333(f) provides for nine referendum exceptions. A tenth exception is provided for in Section 333(n). Three of the ten exceptions (response to an emergency or disaster declared by the Governor; implementation of a court order or administrative order from a Federal or State agency; response to conditions that pose an immediate threat of serious harm or injury) must be approved by the Court of Common Pleas and are not described in this document.

For the 2006-2007 fiscal year, requests for referendum exceptions must be submitted to PDE or the Court of Common Pleas, as applicable, by March 2, 2006. At least one week prior to submitting its request to PDE, a school district requesting a referendum exception must

publish in a newspaper of general circulation and on the school district's publicly accessible World Wide Web site, if one is maintained, notice of its intent to seek PDE approval.

PDE has developed specific formats for submitting the data needed to review the requests for referendum exceptions. These formats, and the descriptions below, are based on the account code structure described in the "Manual of Accounting and Financial Reporting for PA Public Schools."

General provisions (Section 333 (f)(1), (2))

If approved by PDE or the Court of Common Pleas, a school district may, without seeking voter approval, increase the rate of a tax levied for the support of public schools by more than its index if all of the following apply:

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

- **School Construction** (Section 333(f)(2)(iii))

General Instructions for All School Construction Exceptions

For each issue/note/loan issued prior to adoption of the preliminary budget and with budgeted payments in 2005-2006 or 2006-2007, provide copies of the following:

- settlement sheet with date of issuance,
- debt payment schedule, and
- executed board resolution incurring the indebtedness only if debt was incurred before September 3, 2004, but issued on or after September 3, 2004.

For a refunding issued on or after September 3, 2004, also include a copy of the following:

- executed board resolution incurring the indebtedness for the original issue.

For each issue/note/loan not yet issued for which payments in 2006-2007 are being budgeted, provide copies of the following:

- proposed debt payment schedule for each issue and
- executed board resolution, if available, for debt incurred prior to September 3, 2004, or statement of intent to incur and issue indebtedness signed by superintendent.

(A) Indebtedness incurred prior to September 3, 2004

1. Costs associated with paying principal and interest on indebtedness incurred under the Local Government Unit Debt Act prior to September 3, 2004, qualify for an exception.
2. Costs associated with any subsequent refinancing of this indebtedness will also qualify for an exception. The amount of refunding bonds that a district may

issue is limited to a principal amount equal to the following: (1) the current outstanding principal amount of the bonds to be refunded, plus (2) any additional principal issued to meet the issuance costs of the refunding such as underwriter's fees, bond insurance, legal fees, etc.

3. Liquidity, remarketing and other fees on a variable bond issue are not principal or interest on indebtedness. Therefore, beginning with the 2006-2007 fiscal year, a school district will need to seek voter approval if taxes must be increased by more than its index to meet these costs.
4. With respect to swap payments, if a school district (a) makes swap payments to an authority (State Public School Building Authority or a municipal authority) on a swap agreement entered into by the authority on the school district's behalf, and (b) the swap payment is a component of the interest charge the school district makes to the authority on indebtedness, and (c) the debt (underlying that swap agreement) was incurred prior to September 3, 2004, and (d) the proposed tax increase will be used to make those swap payments, then those swap payments will qualify for the referendum exception.
5. If a school district makes swap payments to a swap counterparty (i.e., not through an authority as described above), those payments will not qualify for a referendum exception. Therefore, beginning with the 2006-2007 fiscal year, a school district will need to seek voter approval if taxes must be increased by more than its index to meet these costs.
6. A referendum exception can only be requested if the total of budgeted payments on that indebtedness increases, and the available exception will be limited to the amount of the increase in total budgeted payments. For example:

FY 2005-2006 total scheduled debt service payments	\$1,000,000
FY 2006-2007 total scheduled debt service payments	\$1,000,000
No exception available based on level debt service	-
FY 2007-2008 total scheduled debt service payments	\$1,100,000
Referendum exception available	\$100,000

7. Any tax rate increase to pay these costs must be rescinded following the final payment of principal and interest.

(B) Electoral debt

Costs associated with paying principal and interest on any voter-approved debt incurred under the Local Government Unit Debt Act qualify for an exception.

Note: For each issue/note/loan with budgeted payments in 2005-2006 or 2006-2007, provide a copy of the certification of electoral approval to issue bonds or notes.

(C) Academic elementary or academic secondary school building

Costs associated with paying principal and interest on indebtedness incurred on or after September 3, 2004, for up to 60% of the construction cost average on a square-foot basis for each academic elementary or secondary school building project qualify for an exception if all of the following apply:

1. The indebtedness is for a school construction project approved by PDE as authorized by Section 731 of the "Pennsylvania Public School Code of 1949" and Chapter 21, School Buildings, of the "State Board of Education Regulations" no later than February 20, 2006.
 - For reimbursable projects, PDE approval of final plans and specifications only occurs upon the issuance of written approval of PlanCon Part F, Construction Documents.
 - For non-reimbursable projects, PDE approval of the Self-Certification for Non-Reimbursable Construction Project (PDE-3074) fulfills this requirement.
2. The indebtedness is incurred only after existing fund balances for the specific school construction project (in the Capital Projects Fund, Capital Reserve Fund or Debt Service Fund) and any unreserved undesignated fund balances, including but not limited to the General Fund, have been fully committed to fund the project. PDE will also review any special funds established by the school district to determine if any unreserved undesignated fund balance in those funds can lawfully be used to pay for school construction debt service. Reserved and unreserved *designated* fund balances do not have to be used for the school construction project to qualify for this exception.
3. The indebtedness is for an academic elementary or academic secondary school building. Note: Costs for natatoriums, stadium bleachers, athletic fields, athletic field lighting equipment and apparatus, as well as for district administration and other non-academic school facilities, will not qualify for this referendum exception. (See (D) below for nonacademic projects.)
4. Area vocational-technical schools will be viewed as secondary school buildings for the purpose of this section. A school district that issues indebtedness for its share of the AVTS project can request a referendum exception for the debt payments. Appropriation leases do not qualify as indebtedness.
5. The tax rate increase approved is rescinded following final payment of principal and interest.

Definitions:

1. Debt is "incurred" under the Local Government Unit Debt Act (LGUDA) when the school district has taken all necessary steps to finally adopt its required debt resolution (for all debt except electoral debt) (See Section 8002(b) of LGUDA). There is no requirement that the debt proceedings be filed with the Department of Community and Economic Development (DCED) and/or approved by DCED in order to meet this definition. By contrast, the LGUDA does require DCED approval, where applicable, prior to issuance of the debt.

2. The construction cost average on a square-foot basis is an amount equal to \$128 per square foot for an elementary school building and \$133 per square foot for a secondary school building, as adjusted annually after the 2006-2007 fiscal year, by the percentage increase in the average of the statewide average weekly wage and the employment cost index.
3. The grades to be housed in a school building at the completion of a planned project will determine how a building will be classified.
 - An academic elementary school building will house pre-kindergarten through sixth grade.
 - An academic secondary school building will house seventh through twelfth grade.
 - For buildings housing both elementary and secondary grades, the architectural area assigned to the elementary grades will first be multiplied by the Act 72 elementary construction cost average per square foot. Next, the architectural area assigned to the secondary grades will be multiplied by the Act 72 secondary construction cost average per square foot. The elementary and secondary construction cost limits will then be added together and multiplied by 60% to determine the referendum exception limit for a planned project.

Examples:

1. Academic elementary school: 200,000 square feet
 $200,000 \times \$128 \times 60\% = \$15,360,000$
 Allowable exception: principal and interest payments due in 2006-2007 for a bond issue up to \$15,360,000
2. Academic secondary school: 200,000 square feet
 $200,000 \times \$133 \times 60\% = \$15,960,000$
 Allowable exception: principal and interest payments due in 2006-2007 for a bond issue up to \$15,960,000
3. Academic middle school:
 Elementary architectural area: 100,000 square feet
 Secondary architectural area: 100,000 square feet
 $(100,000 \times \$128 + 100,000 \times \$133) \times 60\% = \$15,660,000$
 Allowable exception: principal and interest payments due in 2006-2007 for a bond issue up to \$15,660,000

(D) Nonacademic projects

Costs associated with paying 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 qualify for an exception.

School districts may request an exception for each nonacademic school construction project. In addition, for any nonacademic work included in the scope of an academic elementary or secondary school building project, an exception for the nonacademic construction costs may be requested as one nonacademic project.

Note: As part of the approval process under Section 333(j)(1), PDE will evaluate the scope of each project submitted by a school district to ensure that projects have not been unreasonably divided into multiple projects for purposes of seeking multiple referendum exceptions. In this evaluation, PDE will consider the following factors: location of the projects planned by the district, the bidding and construction timeline, and the planned scope of construction. If the school district is submitting a nonacademic school construction referendum exception, a complete list must be provided of all nonacademic projects for which an exception is requested.

- **Special Education** (Section 333(f)(2)(v))

If expenditures for special education programs and services for students with disabilities increased by more than 10% between 2003-2004 and 2004-2005, the school district is eligible for an exception equal to the portion of the increase that exceeds 10%.

For the purpose of calculating the exception in 2006-2007, special education expenditures are defined as 1200 Special Programs-Elementary/Secondary minus 1243 Gifted Support.

Beginning with fiscal year 2007-2008, additional special education services will be included in the calculation of this exception. Special education services expenditures are defined as the portion of the expenditures spent on services described in the Individualized Education Plan (IEP) for students with disabilities from the following accounts: 2120 Guidance Services, 2140 Psychological Services, 2150 Speech Pathology and Audiology Services, 2160 Social Work Services, 2260 Instruction and Curriculum Development Services (expenditures for the Director of Special Education only), 2350 Legal Services, 2420 Medical Services, 2440 Nursing Services and 2700 Student Transportation Services.

Example:

2004-2005 special education expenditures:	\$1,703,437
2003-2004 special education expenditures:	\$1,412,689
10% of 2003-2004 special education expenditures:	\$ 141,269
2004-2005 - 2003-2004 special education expenditures:	\$ 290,748
Allowable exception: \$290,748 - \$141,269 = \$149,479	

- **School Improvement Plan** (Section 333(f)(2)(vi))

If the school district incurred costs (exclusive of costs covered by Federal funds) for the implementation of a school improvement plan required by No Child Left Behind in 2004-2005, the school district will be eligible for an exception equal to the expenditures not offset by a State allocation dedicated to school improvement (including, but not necessarily limited to, the School Improvement Grant plus the portion of the Pennsylvania Accountability Grant and Education Assistance Program funding used for school improvement).

- ***Maintenance of local revenue or actual instruction expense per average daily membership*** (Section 333(f)(2)(vii))

(A) Fast growing school districts: local tax revenue per average daily membership

To qualify, the school district's average daily membership (ADM) must have increased more than 7.5% between 2001-2002 and 2004-2005. If local tax revenue (revenue codes 6111 through 6400) per ADM for 2004-2005 does not exceed local tax revenue per ADM for 2003-2004 increased by its 2006-2007 index, the qualifying school district will be eligible for an exception equal to the difference multiplied by the 2004-2005 ADM.

Example:

School district 2006-2007 index is 3.9%

2001-2002 ADM: 2,742.369 2004-2005 ADM: 2,980.167 8.7% increase

2004-2005 local tax revenue: \$14,757,846
2004-2005 local tax revenue per ADM: \$4,952

2003-2004 local tax revenue: \$13,689,276 2003-2004 ADM: 2,827.286
2003-2004 local tax revenue per ADM: \$4,842

2003-2004 local tax revenue per ADM increased by index:
 $\$4,842 \times 1.039 = \$5,031$

Difference: $\$5,031 - \$4,952 = \$79$

Allowable exception: $\$79 \times 2,980.167 = \$235,433$

or (B) All school districts: Actual instruction expense per average daily membership

If the actual instruction expense (AIE) per ADM for 2004-2005 does not exceed the AIE per ADM for 2003-2004 increased by its 2006-2007 index, the school district will be eligible for an exception equal to the difference multiplied by the 2004-2005 ADM.

Example:

School district 2006-2007 index is 3.9%

2004-2005 AIE: \$15,985,125 2004-2005 ADM: 2,760.338
2004-2005 AIE per ADM: \$5,791

2003-2004 AIE: \$15,418,426 2003-2004 ADM: 2,755.247
2003-2004 AIE per ADM: \$5,596

2003-2004 AIE per ADM increased by index
 $\$5,596 \times 1.039 = \$5,814$

Difference: $\$5,814 - \$5,791 = \$23$

Allowable exception: $\$23 \times 2,760.338 = \$63,488$

- **Maintenance of selected revenue sources** (Section 333(f)(2)(viii))

If the sum of real property taxes (revenue codes 6111, 6112, 6411, 6412), earned income and net profits taxes (EIT) (revenue codes 6151, 6451) (or personal income taxes (PIT)), Basic Education Funding allocation and Special Education Funding allocation (includes contingency funding) for 2004-2005 does not exceed the sum of these amounts for 2003-2004 increased by its 2006-2007 index, the school district will be eligible for an exception equal to the difference.

Example:

School district 2006-2007 index is 4.2%

2004-2005 real estate taxes:	\$ 5,111,610
2004-2005 earned income tax:	\$ 961,214
2004-2005 Basic Education Funding:	\$ 6,212,501
2004-2005 Special Education Funding:	\$ 917,469
2004-2005 total selected revenue:	\$13,202,794

2003-2004 real estate taxes:	\$ 5,113,039
2003-2004 earned income tax:	\$ 905,335
2003-2004 Basic Education Funding:	\$ 6,090,688
2003-2004 Special Education Funding:	\$ 873,683
2003-2004 total selected revenue:	\$12,982,744

2003-2004 total selected revenue increased by index
 $\$12,982,744 \times 1.042 = \$13,528,019$

Allowable exception: $\$13,528,019 - \$13,202,794 = \$325,225$

- **Health care-related benefits** (Section 333(f)(2)(ix))

To qualify, the collective bargaining agreement between the school district and its employees' organization must have been in effect on September 3, 2004. Collective bargaining agreements that were renewed, extended or entered into after September 3, 2004 are not eligible for this exception. If the anticipated percentage increase in the cost of health care-related benefits (expenditure object codes 211, 212, 215, 216, 271, 272, 275, 276) between 2005-2006 and 2006-2007 is greater than its 2006-2007 index, the qualifying school district will be eligible for an exception equal to the portion of the increase that exceeds its index.

Example:

Collective bargaining agreement was in effect on September 3, 2004.
 School district 2006-2007 index is 4.1%

2006-2007 estimated health care-related benefits: \$1,322,688

2005-2006 estimated health care-related benefits: \$1,016,045

2005-2006 estimated health care-related benefits increased by index
 $\$1,016,045 \times 1.041 = \$1,057,703$

Allowable exception: $\$1,322,688 - \$1,057,703 = \$264,985$

- ***Retirement contributions*** (Section 333(n))

If the anticipated increase in the school district's share of payments to the Public School Employees' Retirement System (expenditure object code 230 minus revenue code 7820) between 2005-2006 and 2006-2007 is greater than 7.5%, the school district will be eligible for an exception equal to the portion of the payment increase that exceeds 7.5%.

Example:

2006-2007 estimated school district share of payments to PSERS: \$239,700

2005-2006 estimated school district share of payments to PSERS: \$213,950

7.5% of 2005-2006 estimated SD share of payments to PSERS: \$ 16,046

2006-2007 - 2005-2006 estimated SD share of payments to PSERS: \$ 25,750

Allowable exception: \$25,750 - \$16,046 = \$9,704

Department approval/disapproval (Section 333(j))

PDE shall approve the referendum exception request if a review of the data demonstrates that the school district qualifies for one or more of the exceptions.

If the request for an exception is approved, PDE shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If PDE denies the request, the school district must (1) reduce the tax rate increase to no more than its index or (2) submit a referendum question for voter approval in the primary election (for school districts with a July 1 through June 30 fiscal year).