

**Taxpayer Relief Act**  
**Special Session Act 1 of 2006**  
**Referendum Exceptions Submitted to PDE**  
**Guidelines for the 2007-2008 Fiscal Year**

(Superseding guidelines issued under the former Act 72 of 2004)

(Does not apply to Philadelphia City SD)

(Dates do not apply to Pittsburgh SD and Scranton SD)

**I. Preliminary Budget and Approval of Tax Rate Increases** (Section 311, 333(a)(1), 333(e))

School districts must adopt a preliminary budget by February 14, 2007. The adopted preliminary budget, along with a schedule of proposed tax rate increases, must be submitted to the Department of Education (PDE) by February 19, 2007.

After review of the school district's proposed tax rate increases as reported on the preliminary budget, PDE will inform school districts in writing by March 1, 2007, 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 from PDE or the Court of Common Pleas, or (3) the tax rate increases must be approved by voters at the primary election on May 15, 2007.

In lieu of a preliminary budget process, school districts have the option of adopting a resolution indicating that the rate of any tax will not be raised by more than its index. School districts must submit a copy of this resolution and a schedule of proposed tax rate increases to PDE by January 30, 2007. After review of the school district's resolution and proposed tax rate increases, PDE will inform school districts in writing by February 9, 2007, whether the proposed tax rate increases are less than or equal to their index. If proposed tax rate increases exceed the school district's index, the school district is required to adhere to sections 311(a) and (c)—relating to preliminary budget adoption—and will be permitted to submit referendum exceptions to PDE or the Court of Common Pleas.

**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 2007-2008 fiscal year, the base index is 3.4%. Each school district must go to the PDE website to find its adjusted index ([www.pde.state.pa.us/proptax](http://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 2007-2008 fiscal year, requests for referendum exceptions must be submitted to PDE or the Court of Common Pleas in the judicial district in which the administrative office of the school district is located, as applicable, by March 1, 2007. 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 worksheets for calculating and submitting the data needed to review the requests for referendum exceptions. These worksheets, and the descriptions of the referendum exceptions 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**

The phrase *effective date*<sup>1</sup> will be used throughout the School Construction section of this document and has two possible meanings, depending on the school district:

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<sup>1</sup> Although the actual effective date of Act 72 of 2004 was September 3, 2004, for functional reasons these Guidelines treat it as September 4, 2004. Special Session Act 1 of 2006 provides that school districts that opted in to Act 72 (the Homeowner Tax Relief Act) may seek referendum exceptions for indebtedness incurred prior to September 4, 2004, and for indebtedness incurred *on or after September 4, 2004*, for school construction projects. Act 1 also provides that school districts that did not elect to participate in Act 72 may seek referendum exceptions for indebtedness incurred prior to the effective date of Act 1 and for indebtedness incurred *on or after the effective date of Act 1*. Since these provisions in Act 1 use the term "effective date" in reference to both non-Act 72 school districts and Act 72 districts, we have constructed a meaning for the phrase "effective date" in order to facilitate discussion of the referendum exceptions for both groups. Although this is a slight aberration from the actual effective date of Act 72, it does not change the substance of any provisions.

- for the 109 school districts that opted in to Act 72, *effective date* refers to September 4, 2004, and
- for all remaining school districts, *effective date* refers to June 27, 2006.

For each issue/note/loan issued prior to adoption of the preliminary budget and with budgeted payments in 2006-2007 or 2007-2008, provide copies of the following:

- settlement sheet with date of issuance,
- debt payment schedule,
- for variable rate issues/notes/loans, information to substantiate variable interest rates and payments in 2006-2007 and 2007-2008, and
- executed board resolution incurring the indebtedness only if debt was incurred before the *effective date*, but issued on or after the *effective date*.

For each issue/note/loan not yet issued for which payments in 2007-2008 are being budgeted, provide copies of the following:

- proposed debt payment schedule for each issue,
- for variable rate issues/notes/loans, information to substantiate variable interest rates and payments in 2006-2007 and 2007-2008, and
- executed board resolution, if available, for debt incurred prior to the *effective date*, or statement of intent to incur and issue indebtedness signed by superintendent.

Costs associated with any subsequent refinancing of this indebtedness will also qualify for an exception. The amount of refinancing 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 refinanced, plus (2) any additional principal issued to meet the issuance costs of the refinancing such as underwriter's fees, bond insurance, legal fees, etc.

If a refinancing was issued, also include a copy of the following:

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

**(A)** Indebtedness incurred prior to *effective date*

1. Costs associated with paying principal and interest on the indebtedness incurred under the Local Government Unit Debt Act prior to the *effective date* qualify for an exception.
2. Liquidity, remarketing and other fees on a variable rate bond issue are not principal or interest on indebtedness. Therefore, beginning with the 2007-2008 fiscal year, a school district will need to seek voter approval if taxes must be increased by more than the amount allowable by its index and any approved referendum exceptions to meet these costs.
3. 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 the *effective date*, and (d) the

proposed tax increase will be used to make those swap payments, then those swap payments will qualify for the referendum exception.

4. 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 2007-2008 fiscal year, a school district will need to seek voter approval if taxes must be increased by more than the amount allowable by its index and any approved referendum exceptions to meet these costs.
5. A referendum exception may be requested if the total budgeted payments—for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments. For example:

FY 2006-2007 local share of debt service payments	\$1,000,000
Nonrecurring revenues applied to debt service	- \$ <u>500,000</u>
FY 2006-2007 local share from recurring revenue	\$ 500,000

FY 2007-2008 local share of debt service payments	\$1,100,000
Nonrecurring revenues applied to debt service	- \$ <u>200,000</u>
FY 2007-2008 local share from recurring revenue	\$ 900,000
FY 2006-2007 local share from recurring revenue	- \$ <u>500,000</u>
Referendum exception available	\$ 400,000

FY 2008-2009 local share of debt service payments	\$1,100,000
Nonrecurring revenues applied to debt service	- \$ <u>0</u>
FY 2008-2009 local share from recurring revenue	\$1,100,000
FY 2007-2008 local share from recurring revenue	- \$ <u>900,000</u>
Referendum exception available	\$ 200,000

6. 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.

A referendum exception may be requested if the total budgeted payments—for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments.

**Note:** For each issue/note/loan with budgeted payments in 2006-2007 or 2007-2008, 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 the *effective date*, 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 no later than February 19, 2007 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," in accordance with the following:
  - 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 in school districts of the 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> class, PDE approval of the Self-Certification for Non-Reimbursable Construction Project (PDE-3074) fulfills this requirement.
  - For non-reimbursable projects in school districts of the 1<sup>st</sup> class A, board approval of plans and specifications meets 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 *designated* unreserved fund balances for a purpose other than this project 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 / career and technical centers 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/CTC project can request a referendum exception for the debt payments. Appropriation leases do not qualify as indebtedness.
5. A referendum exception may be requested if the total budgeted payments— for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an

increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments.

6. 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 \$137 per square foot for an elementary school building and \$142 per square foot for a secondary school building, as adjusted annually after the 2007-2008 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 SS Act 1 elementary construction cost average per square foot. Next, the architectural area assigned to the secondary grades will be multiplied by the SS Act 1 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  
 $200,000 \times \$137 \times 60\% = \$16,440,000$   
Allowable referendum exception: principal and interest payments due in 2006-2007 for a bond issue up to \$16,440,000
2. Academic secondary school: 200,000 square feet  
 $200,000 \times \$142 \times 60\% = \$17,040,000$   
Allowable referendum exception: principal and interest payments due in 2006-2007 for a bond issue up to \$17,040,000

3. Academic middle school:

Elementary architectural area: 100,000 square feet

Secondary architectural area: 100,000 square feet

$(100,000 \times \$137 + 100,000 \times \$142) \times 60\% = \$16,740,000$

Allowable referendum exception: principal and interest payments due in 2006-2007 for a bond issue up to \$16,740,000

**(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.

A referendum exception may be requested if the total budgeted payments— for principal and interest on indebtedness incurred under 53 Pa. C.S. Pt. VII, Subpart B, which is supported by recurring revenues—increase due to an increase in the local share (debt service payments net of state reimbursement) or a decrease in nonrecurring revenues. The school district will be eligible for an exception for the amount of the increase in recurring revenue needed for the budgeted payments.

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.

The tax rate increase approved must be rescinded following final payment of principal and interest.

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

If expenditures for special education programs and services for students with disabilities increased by more than the school district's index between 2004-2005 and 2005-2006, the school district is eligible for an exception equal to the portion of the increase that exceeds its index.

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:

School district 2007-2008 index is 3.4%

2005-2006 special education expenditures: \$1,703,437

2004-2005 special education expenditures: \$1,412,689

3.4% of 2004-2005 special education expenditures: \$ 48,031

2005-2006 - 2004-2005 special education expenditures: \$ 290,748

Allowable referendum exception: \$290,748 - \$48,031 = \$242,717

- ***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 2005-2006, 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 2002-2003 and 2005-2006. If local tax revenue (revenue codes 6111 through 6400) per ADM for 2005-2006 does not exceed local tax revenue per ADM for 2004-2005 increased by its 2007-2008 index, the qualifying school district will be eligible for an exception equal to the difference multiplied by the 2005-2006 ADM.

Example:

School district 2007-2008 index is 3.4%

2002-2003 ADM: 2,742.369    2005-2006 ADM: 2,980.167    8.7% increase

2005-2006 local tax revenue: \$14,757,846

2005-2006 local tax revenue per ADM: \$4,952

2004-2005 local tax revenue: \$13,689,276    2004-2005 ADM: 2,827.286

2004-2005 local tax revenue per ADM: \$4,842



2004-2005 local tax revenue per ADM increased by index:  
 $\$4,842 \times 1.034 = \$5,007$

Difference:  $\$5,007 - \$4,952 = \$55$

Allowable referendum exception:  $\$55 \times 2,980.167 = \$163,909$

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

If the actual instruction expense (AIE) per ADM for 2005-2006 does not exceed the AIE per ADM for 2004-2005 increased by its 2007-2008 index, the school district will be eligible for an exception equal to the difference multiplied by the 2005-2006 ADM.

Example:

School district 2007-2008 index is 3.4%

2005-2006 AIE:	\$15,985,125	2005-2006 ADM:	2,760.338
2005-2006 AIE per ADM:	\$5,791		

2004-2005 AIE:	\$15,418,426	2004-2005 ADM:	2,755.247
2004-2005 AIE per ADM:	\$5,596		

2004-2005 AIE per ADM increased by index  
 $\$5,596 \times 1.034 = \$5,786$

Difference:  $\$5,791 - \$5,786 = \$5$

Allowable referendum exception:  $\$5 \times 2,760.338 = \$13,802$

- ***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, 6161, 6451, 6461) or (personal income taxes (PIT)), Basic Education Funding allocation and Special Education Funding allocation (includes contingency funding) for 2005-2006 does not exceed the sum of these amounts for 2004-2005 increased by its 2007-2008 index, the school district will be eligible for an exception equal to the difference.

Example:

School district 2007-2008 index is 4.2%

2005-2006 real estate taxes:	\$ 5,111,610
2005-2006 earned income tax:	\$ 961,214
2005-2006 Basic Education Funding:	\$ 6,212,501
2005-2006 Special Education Funding:	<u>\$ 917,469</u>
2005-2006 total selected revenue:	\$13,202,794

2004-2005 real estate taxes:	\$ 5,113,039
2004-2005 earned income tax:	\$ 905,335
2004-2005 Basic Education Funding:	\$ 6,090,688
2004-2005 Special Education Funding:	<u>\$ 873,683</u>
2004-2005 total selected revenue:	\$12,982,745

2004-2005 total selected revenue increased by index  
 $\$12,982,745 \times 1.042 = \$13,528,020$

Allowable referendum exception:  $\$13,528,020 - 13,202,794 = \$325,226$

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

To qualify, the collective bargaining agreement between the school district and its employees' organization for the 2007-2008 school year must have been in effect on January 1, 2006. Collective bargaining agreements that were renewed, extended or entered into after January 1, 2006, 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 2006-2007 and 2007-2008 is greater than its 2007-2008 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 January 1, 2006 and will not expire during 2007-2008.

School district 2007-2008 index is 4.1%

2007-2008 estimated health care-related benefits:  $\$1,322,688$

2006-2007 estimated health care-related benefits:  $\$1,016,045$

2006-2007 estimated health care-related benefits increased by index  
 $\$1,016,045 \times 1.041 = \$1,057,703$

Allowable referendum 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 2006-2007 and 2007-2008 is greater than the school district's index, the school district will be eligible for an exception equal to the portion of the payment increase that exceeds its index. The amount of revenue listed for 7820 must be at least 50% of the expenditures listed for object code 230.

Example:

School district 2007-2008 index is 3.4%

2007-2008 estimated school district share of payments to PSERS: \$239,700  
2006-2007 estimated school district share of payments to PSERS: \$213,950  
3.4% of 2006-2007 estimated SD share of payments to PSERS: \$ 7,274  
2007-2008 - 2006-2007 estimated SD share of payments to PSERS: \$ 25,750  
Allowable referendum exception: \$25,750 - \$7,274 = \$18,476

***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).