Referendum Exception Guidelines for the 2020-2021 Fiscal Year
Special Session Act 1 of 2006

(Does not apply to Philadelphia City SD)

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

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

School districts must adopt a preliminary budget by January 29, 2020. The adopted preliminary budget, which includes a schedule of proposed tax rate increases, must be submitted to the Pennsylvania Department of Education (PDE) by February 3, 2020.

After review of the school district's proposed tax rate increases as reported on the preliminary budget, PDE will inform each school district in writing by February 13, 2020, if any further actions 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 (3) the tax rate increases must be approved by voters at the general primary election on April 28, 2020.

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 14, 2020. After review of the school district's resolution and proposed tax rate increases, PDE will inform each school district in writing by January 24, 2020, whether the proposed tax rate increases are less than or equal to its 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. PDE will only approve referendum exceptions if the school district demonstrates a need for exceptions by adopting a balanced preliminary budget that contains a tax rate increase greater than the school district's index.

2. The Index
(Sections 302, 313, 333(l))

Each September, PDE publishes 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 thirty-six months ending December 31 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 0.4000, its index equals the base index multiplied by the sum of 0.75 and its MV/PI AR for the current year.

Note: Section 404(e)(2) of the Unemployment Compensation Law was amended by Act 6 of 2011, which required that the average weekly wage be calculated for a 36-month period.

For the 2020-2021 fiscal year, the base index is 2.6%. The index for each school district is available on the PDE website at www.education.pa.gov. Click on Quick Links at the bottom of the page, then Property Tax Relief.

3. Referendum Exceptions
(Sections 333(f), (j), (n))

Section 333(f), as amended by Act 25 of 2011, provides for three referendum exceptions. A fourth exception is provided for in section 333(n).

For the 2020-2021 fiscal year, requests for referendum exceptions must be submitted to PDE by February 13, 2020. At least one week prior to submitting its request to PDE, a school district requesting a referendum exception must publish notice of its intent to seek PDE approval in a newspaper of general circulation and on the school district's publicly accessible website, if one is maintained.

The Referendum Exception System (RES) web-based application is to be used for submitting the data necessary to calculate and review the requests for referendum exceptions. In addition, Excel templates have been provided on the PDE website for use by school districts in estimating potential exception amounts before RES opens for the upcoming fiscal year.

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

If approved by PDE, 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 School Construction Exceptions

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

[1] 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" 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 of 2004, *effective date* refers to September 4, 2004, and
- for all other school districts, *effective date* refers to June 27, 2006.

2. For each issue/note/loan issued prior to adoption of the preliminary budget **with** PlanCon Part H or K approval and with budgeted payments in 2019-2020 or 2020-2021, provide copies of the following:
   - for indebtedness incurred before *effective date*, but issued on or after *effective date*:
     - complete copy of the executed board resolution, including the signature page, incurring the indebtedness,
   - for variable rate issues/notes/loans:
     - debt payment schedule based on budgeted interest rates,
     - rationale for the budgeted interest rates used in preparing the payment schedule
     - for vocational project financing: calculation showing the school district's share of scheduled payments

3. For each issue/note/loan issued prior to adoption of the preliminary budget **without** PlanCon Part H or K approval and with budgeted payments in 2019-2020 or 2020-2021, provide copies of the following:
   - complete copy of the executed board resolution, including the signature page, incurring the indebtedness -- if the amount issued is less than the amount incurred, include an amended or supplemental resolution <u>or</u> a statement signed by the superintendent or business manager that ties the issue to the resolution,
   - settlement sheet with date of issuance,
   - debt payment schedule,
   - for variable rate issues/notes/loans:
     - debt payment schedule based on budgeted interest rates,
     - rationale for the budgeted interest rates used in preparing the payment schedule,
   - for vocational project financing: calculation for the school district's share of scheduled payments,
   - for refunding: signed verification report for advance refunding or certification for current refunding from paying agent/trustee,
   - for partial refunding: payment schedule for the debt service not refunded; this should include any payments made in 2019-2020 prior to the refunding,
   - for issues funding reimbursable projects or refunding any reimbursable issues: estimated reimbursable percent calculations (for original financing refer to the page D14 calculations in PlanCon Part D; for refinancings refer to PlanCon Part K). Calculations must be based on the most up-to-date information on project costs. The estimated reimbursable percent for projects with bids awarded must be based on the bid costs, not previous estimates.

4. For each issue/note/loan not yet issued for which payments in 2020-2021 are being budgeted, provide copies of the following:
   - complete copy of the executed board resolution, including the signature page, or statement of intent to incur and issue indebtedness signed by superintendent or business manager,

- proposed debt payment schedule,
- for variable rate issues/notes/loans:
    - debt payment schedule based on budgeted interest rates,
    - rationale for the budgeted interest rates used in preparing the payment schedule,
- for vocational project financing: calculation for the school district's share of scheduled payments,
- for issues funding reimbursable projects or refunding any reimbursable issues but without PlanCon Part H or K approval: estimated reimbursable percent calculations (for original financing refer to the page D14 calculations in PlanCon Part D; for refinancings refer to PlanCon Part K). Calculations must be based on the most up-to-date information on project costs. The estimated reimbursable percent for projects with bids awarded must be based on the bid costs, not previous estimates.

5. Costs associated with any subsequent refinancing of this indebtedness will also qualify for an exception. The amount of refinancing bonds that a school district may issue is limited to a principal amount equal to the following: (1) the amount needed to pay, discharge or redeem the 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.

6. For refinancing incurred *after* the *effective date*, also include a copy of the following:
    - complete copy of the executed board resolution, including the signature page, incurring the indebtedness for the original issue.

7. The required documentation described above may be submitted electronically to ra-RES@pa.gov or via regular mail to the Division of Subsidy Data and Administration for receipt by PDE within 3 days of the date that referendum exceptions are submitted. Failure to timely submit requested documentation could result in disapproval of the referendum exception.

8. Based on the original language contained in the Taxpayer Relief Act, PDE previously interpreted "final payment of interest and principal" – a phrase found in section 333(f) in conjunction with approved debt exceptions – to require the rescission of tax rates following either the last scheduled payment of a bond issue or the refinancing of a bond issue.

   Note: Act 25 of 2011 added section 333(o) to clarify "final payment of interest and principal" ***for previously-approved Academic or Nonacademic school building projects*** to not include a school district's payment of debt as a result of refunding or refinancing the debt. However, previously-approved Grandfathered Debt (indebtedness incurred prior to the *effective date*) and Electoral Debt referendum exceptions must still be rescinded per the language in the Taxpayer Relief Act – following either the last scheduled payment of a bond issue or the refinancing of a bond issue. If indebtedness was refinanced, school districts may request approval of a referendum exception for the refinanced indebtedness but **only** in the fiscal year immediately following rescission of the originally-approved tax rate increase related to the refinanced principal.

(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 *effective date*, qualify for an exception.

2. 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 increase in recurring revenue needed for the budgeted payments.

3. Liquidity, remarketing and other fees on a variable rate bond issue are not principal or interest on indebtedness. Therefore, if taxes must be increased by more than the amount allowable by its index and any approved referendum exceptions to meet these costs, a school district must seek voter approval.

4. Swap payments will qualify for the referendum exception 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 *effective date*, and
   d) the proposed tax increase will be used to make those swap payments.

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, 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.

6. For example**:**

2019-2020 local share of debt service payments		$1,000,000
Nonrecurring revenues applied to debt service	-	$ 500,000
2019-2020 local share from recurring revenue		$ 500,000
2020-2021 local share of debt service payments		$1,100,000
Nonrecurring revenues applied to debt service	-	$ 200,000
2020-2021 local share from recurring revenue		$ 900,000
2019-2020 local share from recurring revenue	-	$ 500,000
Referendum exception available		$ 400,000

2020-2021 local share of debt service payments		$1,100,000
Nonrecurring revenues applied to debt service	-	$ 0
2020-2021 local share from recurring revenue		$1,100,000
2019-2020 local share from recurring revenue	-	$ 900,000
Referendum exception available		$ 200,000

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

(B) Electoral debt

1. Costs associated with paying principal and interest on any voter-approved debt, incurred under the Local Government Unit Debt Act, qualify for an exception. Voter approval must have occurred prior to requesting a referendum exception.

2. 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 increase in recurring revenue needed for the budgeted payments.

Note: For each issue/note/loan with budgeted payments in 2019-2020 or 2020-2021, provide a copy of the certification of electoral approval to issue bonds or notes.

Special Education Expenditures (Section 333(f)(2)(v))

If costs for special education programs and services for students with disabilities increased by more than the school district's index between 2017-2018 and 2018-2019, the school district is eligible for an exception equal to the increase in the school district's share of expenditures (i.e. costs in each year not offset by state Special Education Funding and Contingency Funds) that exceed its index.

'Special education program' expenditures are defined as total special education expenditures (function 1200) minus gifted support expenditures (function 1243).

'Special education services' expenditures are defined as the portion of the support services expenditures for costs described in the Individualized Education Program (IEP) for students with disabilities from the following expenditure 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 2020-2021 index is 2.6%

2018-2019 special education expenditures:	$1,703,437
2018-2019 Special Education Funding and Contingency Funds:	$1,250,000
2018-2019 net special education expenditures	$453,437

2017-2018 special education expenditures:	$1,412,689
2017-2018 Special Education Funding and Contingency Funds:	$1,250,000
2017-2018 net special education expenditures	$162,689

2.6% of 2017-2018 net special education expenditures:	$4.230
2018-2019 minus 2017-2018 special education expenditures:	$290,748

Allowable referendum exception: $290,748 - $4.230 = $286,518

Retirement contributions (Section 333(n))

If the anticipated increase in the school district's (i.e. local) share of payments to the Public School Employees' Retirement System between 2019-2020 or 2020-2021 is greater than the school district's index, the school district will be eligible for an exception equal to the portion of the estimated payment increase that exceeds its index. The amount of state revenue reported for function 7820 must be at least 50% of the expenditures listed for object code 230.

The school district will be required to use the most up-to-date PSERS contribution rates for 2019-2020 and 2020-2021. The salary base for 2012-2013 and beyond is capped at the 2011-2012 level.

Example:

School district 2020-2021 index is 2.6%

2020-2021 estimated SD share of payments to PSERS (at 34.51%):	$710,200
2019-2020 estimated SD share of payments to PSERS (at 34.29%):	$685,800
2.6% of 2019-2020 estimated SD share of payments to PSERS:	$17,831
2020-2021 minus 2019-2020 estimated SD share of payments to PSERS:	$24,400

Allowable referendum exception: $24,400 - $17,831 = $6,569

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).