



## Pennsylvania's Taxpayer Relief Act: Big Gamble Pays Off for Some, But Most Lose Their Shirt

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## I. INTRODUCTION

There is perhaps no greater debate in America than the one surrounding taxes, whether it is at the national, state, or local level. While taxes serve the important purpose of funding government programs, they also bear quite a burden on taxpayers. For example, property taxes account for the majority of revenue for local governments across the country.<sup>1</sup> Pennsylvania is no different. In 2000, property taxes accounted for nearly \$10 billion of revenue in Pennsylvania, which was 30 percent of total local government revenues and 70 percent of all local government tax revenues.<sup>2</sup>

Property taxes accounted for an even larger piece of the pie when it came to school districts: approximately 85 percent of the total tax revenues for Pennsylvania school districts in 2000.<sup>3</sup> Nearly half of all school district revenue came from the collection of property taxes.<sup>4</sup> Only counties relied more heavily on property taxes as a source of revenue.<sup>5</sup>

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1. GOVERNOR'S CTR. FOR LOCAL GOV'T SERVS., PA. DEP'T OF CMTY. & ECON. DEV., TAXATION MANUAL 3 (8th ed. 2004). New Jersey is currently battling its own war on property taxes. Six counties in that state rank in the top ten most taxed in the nation. Kevin Post, *Property taxes, education rank high in N.J.*, THE PRESS OF ATLANTIC CITY, Sept. 29, 2009, at A-1.

2. *Id.*

3. *Id.*

4. *Id.*

5. In 2000, 97 percent of total tax revenues of counties came from property taxes, but property taxes accounted for less than a quarter of all revenue for counties. *Id.*

The state's heavy reliance on property taxes by school districts hit the wallets of Pennsylvania taxpayers and led to several attempts by legislators to harness the spending.<sup>6</sup> The most recent attempt was Act 1 of 2006.<sup>7</sup> Act 1 attempts to do what other legislation failed to do: provide property tax relief to all Pennsylvanians, but it, too, falls short of its mark.<sup>8</sup>

Although it was enacted more than three years ago, the Act still plays a prominent role today. Less than two years ago, homeowners started reaping the benefits of Act 1 when the first reduction in property tax bills occurred.<sup>9</sup> Last fall, taxpayers could have faced another referendum on their ballots, asking whether they favor increasing the local income tax to offset a decrease in property tax.<sup>10</sup> Officials faulted public confusion for the last referendum overwhelmingly failing across the Commonwealth.<sup>11</sup> Also, last year's budget impasse resulted in new legislation that could significantly alter property tax relief in the future.<sup>12</sup>

This Comment will examine the state of local school property taxes in Pennsylvania and discuss Act 1's implications. Part II.A of this Comment explores prior attempts by legislators to reform Pennsylvania's school property tax system. In the decade leading up to Act 1, the General Assembly passed three other laws dealing with local taxes.<sup>13</sup> These laws stopped short of mandating schools to participate in the reform, however. In Part II.B, this Comment will examine the ins and outs of Act 1, the first law mandating participation, including its purpose, how it compares to prior legislation, and its key features.

Part III of this Comment features an analysis of Act 1. First, the law is broken down into its pros in Part III.A. In Part III.B, the focus of this Comment shifts to the lengthy list of cons associated with Act 1. In Part III.C, several proposed fixes to the property tax system are examined.

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6. *See infra* part II.A.

7. Taxpayer Relief Act, 53 P.S. § 6926.101-6926.5006 (2009).

8. *See infra* part III.B.

9. *See infra* part III.A.3.

10. *See infra* part III.A.4.

11. *See infra* notes 316-317 and accompanying text.

12. *See infra* part III.C.3.

13. *See infra* part II.A.

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## II. BACKGROUND

### A. *A Trilogy of Acts*

#### 1. Act 50: Scene 1

In the decade leading up to Act 1, the state legislature enacted three statutes in an attempt to harness out-of-control taxes. The first attempt came in 1998 with Act 50.<sup>14</sup> Like Act 1, Act 50 was a tax shift, not a tax reduction, aimed at reducing or eliminating some taxes in favor of others.<sup>15</sup> Under Act 50, a school district could levy a higher earned income tax (EIT) or net profits tax provided it used the revenue generated from the increased tax to eliminate nuisance taxes, such as the occupation, occupational privilege, and per capita taxes.<sup>16</sup> The increased revenue was also to be used to reduce property taxes.<sup>17</sup>

Act 50 gave rise to the homestead exclusion, which would become a recurring theme throughout subsequent tax reform efforts.<sup>18</sup> The homestead exclusion allowed for a reduction in property taxes by allowing governing bodies to exclude from taxation a fixed amount of the assessed value of each homestead property.<sup>19</sup> For example, a homestead exclusion of \$10,000 would reduce the assessed value of a \$50,000 home to \$40,000. Because property tax millage is paid on the assessed value of a home, the homeowner would owe less in property taxes because of the homestead exclusion. The homestead exclusion applies only to the primary residence.<sup>20</sup> The rationale behind this decision is to prevent a “windfall” to businesses, which would have benefited from an across-the-board reduction.<sup>21</sup>

Act 50 also included another provision that would become commonplace in subsequent tax reform efforts: a referendum requirement.<sup>22</sup> This became the first time taxpayers had a say on local tax increases.<sup>23</sup> If a district attempted to increase its property tax rate

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14. 53 Pa. C.S. § 8401-8916 (2009).

15. 53 Pa. C.S. § 8717.

16. *Id.*

17. *Id.*

18. Homestead Property Exclusion Program Act, 53 Pa. C.S. § 8581 (2009).

19. 53 Pa. C.S. § 8583.

20. A homestead is a dwelling and its accompanying land that is used primarily as the domicile of an individual owner. 53 Pa. C.S. § 8401.

21. See COLL. OF AGRIC. SCIS. AGRIC. RESEARCH & COOP. EXTENSION, THE PA. STATE UNIV., UNDERSTANDING SCHOOL TAX CHANGE UNDER ACT 50 OF 1998 at 5 (1998), available at <http://cax.aers.psu.edu/taxreform/Materials/SchoolTax.pdf> [hereinafter UNDERSTANDING ACT 50].

22. 53 Pa. C.S. § 8703.

23. UNDERSTANDING ACT 50, *supra* note 21, at 6.

beyond the prior year's inflation rate, it would have to seek voter approval via a back-end referendum.<sup>24</sup>

Finally, Act 50 allowed eligible taxpayers to defer property tax increases.<sup>25</sup> School districts could opt to allow such deferrals,<sup>26</sup> and taxpayers who met income requirements could utilize them.<sup>27</sup> The amount of the tax increase would then be deferred until either the taxpayer died, in which case the taxes would become payable by the heirs, or until the taxpayer ceased to use the property as his or her primary residence.<sup>28</sup>

Despite the promise of Act 50, fewer than a handful of school districts signed off on the legislation.<sup>29</sup> Since it was signed into law in 1998, only four school districts in Pennsylvania have enacted Act 50.<sup>30</sup> In those few districts that implemented Act 50, some of the district's nuisance taxes were eliminated, the earned income tax (EIT) was increased, and the budgeted increase in local tax revenues was limited.<sup>31</sup>

Although those districts that enacted Act 50 saw a smaller increase in real estate taxes than those that did not enact it,<sup>32</sup> the implementation of Act 50 also required those districts to reconsider their priorities. Insufficient funds and the limited ability to raise additional funding caused cuts to many programs and services, which could have a negative effect on student education and may lead to higher taxes to compensate for earlier reductions.<sup>33</sup>

## 2. Act 24: Scene 2

The legislature's next turn at property tax reform came three years later with Act 24, or the Optional Occupation Tax Elimination Act.<sup>34</sup> Act 24 was narrower than its predecessor, Act 50.<sup>35</sup> Act 24 merely

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24. 53 Pa. C.S. § 8703.

25. Real Estate Tax Deferment Program Act, 53 Pa. C.S. §§ 8571-8578 (2009).

26. 53 Pa. C.S. § 8573.

27. See 53 Pa. C.S. § 8574. A deferral also was not available if the amount of deferred taxes combined with unpaid liens and any outstanding mortgage on the homestead exceeded 85 percent of the property's market value or if the outstanding mortgage alone exceeded 70 percent of the market value. 53 Pa. C.S. § 8575(b).

28. 53 Pa. C.S. § 8578(b).

29. WILLIAM T. HARTMAN, THE CTR. FOR RURAL PA., IMPACT AND ANALYSIS OF ACT 50 at 3 (2007).

30. *Id.*

31. *Id.* at 7.

32. *Id.* at 8.

33. *Id.* at 8-9.

34. 53 P.S. §§ 6927.1-6927.8 (2009).

35. See *supra* part II.A.1.

enabled districts to eliminate the occupation tax<sup>36</sup> and replace it with a higher EIT to compensate for the lost revenues.<sup>37</sup> A district that enacted Act 24 could raise its EIT just enough to offset its losses from eliminating the occupation tax.<sup>38</sup>

Act 24 had many similarities to Act 50. Like Act 50, Act 24 was optional.<sup>39</sup> In order to enact Act 24, a district had to pose a referendum asking voters if they favored eliminating the occupation tax by increasing the EIT.<sup>40</sup> It also posed as a tax shift, not a tax cut, since it merely replaced one tax with another.<sup>41</sup> Its key difference from Act 50 was its lack of a back-end referendum that gave voters a say in future tax increases.<sup>42</sup>

### 3. Act 72: Scene 3

With a new governor at the helm pushing for property tax reform, the legislature made another attempt to reform taxes with Act 72, the Homeowner Tax Relief Act of 2004.<sup>43</sup> This attempt at tax relief was largely based on the revenue from the state's new slot machines.<sup>44</sup> In addition to the gambling revenue, Act 72 utilized a tax shift similar to that found in previous legislation to reduce property tax bills.<sup>45</sup> In fact, Act 72 was virtually identical to its successor law, Act 1,<sup>46</sup> except that Act 72 was optional for school districts.<sup>47</sup>

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36. Typically, the occupation tax is levied in one of two ways: (1) a proportional amount based on the assessed valuation of a particular occupation, or (2) a flat rate on all working residents. 53 P.S. § 6927.2. Note that the occupation tax is not the same as the occupational privilege tax, which is levied upon individuals employed in a taxing district. *Id.* See COLL. OF AGRIC. SCIS. AGRIC. RESEARCH & COOP. EXTENSION, THE PA. STATE UNIV., UNDERSTANDING ACT 24 OF 2001: THE OPTIONAL OCCUPATION TAX ELIMINATION ACT at 3 (2001), available at <http://pubs.cas.psu.edu/freepubs/pdfs/ua356.pdf> [hereinafter UNDERSTANDING ACT 24] for a discussion of the occupation tax's origins.

37. 53 P.S. § 6927.3.

38. 53 P.S. § 6927.4.

39. 53 P.S. § 6927.6.

40. 53 P.S. § 6927.7.

41. 53 P.S. § 6917.1-6927.8.

42. See UNDERSTANDING ACT 24, *supra* note 36, tbl. 2 at 8 for a comparison between Act 24 and Act 50.

43. 53 P.S. §§ 6925.101-6925.704, *repealed by* The Taxpayer Relief Act, 53 P.S. § 6926.5005(4) (2009).

44. 53 P.S. § 6925.501-6925.505 (repealed 2006).

45. 53 P.S. §§ 6925.331-6925.334 (repealed 2006).

46. See *infra* part IIB for a complete overview of Act 1 (and consequently Act 72) and its provisions.

47. See 53 P.S. § 6925.321(A) (repealed 2006) (“A board of school directors *may* levy, assess and collect a tax on earned income . . . for the purpose of funding homestead and farmstead exclusions to reduce school district property taxes.”) (emphasis added).

### B. Overview of Act 1

Entering 2006, the Pennsylvania legislature was reeling from three failed attempts to reform school taxes. Its latest attempt to reign in property tax increases, Act 72, failed miserably. Of the state's 501 school districts, approximately four-fifths opted not to participate in Act 72.<sup>48</sup> Former Senate President Pro Tempore Robert Jubelirer, a Republican from Altoona, called Act 72 "a mess."<sup>49</sup> Governor Edward G. Rendell said lawmakers "made a mistake" by giving school districts the option to participate in Act 72.<sup>50</sup>

The decisive "no" to Act 72 left Pennsylvania as virtually the only state where school districts had the unfettered ability to tax and spend.<sup>51</sup> As of 2004, nine states gave absolutely no independent control over tax increases to school districts.<sup>52</sup> Thirty-five states limited a school district's ability to raise taxes.<sup>53</sup> Also, twelve states limited school spending.<sup>54</sup>

In spite of the failure of Act 72, the governor vowed to deliver property tax relief to Pennsylvania homeowners.<sup>55</sup> During a special session in 2006, lawmakers went back to work drafting new property tax

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48. See Brad Bumsted, *Cleaning Act 72 'mess' may take time*, PITTSBURGH TRIBUNE-REVIEW, May 28, 2005, available at [http://www.pittsburghlive.com/x/pittsburghtrib/print\\_338759.html](http://www.pittsburghlive.com/x/pittsburghtrib/print_338759.html).

Since Act 72 (and Act 1) was enacted, two school districts—Monaca and Center Area—merged making Central Valley School District and reducing the number of school districts in the state to 500. See Brian David, *A Fresh Start: State Education Secretary Visits New Central Valley School District, Pushes for More Mergers*, PITTSBURGH POST-GAZETTE, Sept. 3, 2009, at W1.

49. Bumsted, *supra* note 48.

50. *Id.*

51. See PA. DEP'T OF EDUC., STATE LIMITS ON SCHOOL TAXING AND SPENDING INCREASES, available at <http://www.pde.state.pa.us/proptax/lib/proptax/Taxing&SpendingLimits-OtherStates.pdf> (last visited Dec. 30, 2008) [hereinafter STATE LIMITS] (quoting Michael Griffith of the Education Commission of the States: "Pennsylvania is the only state I know of where there is no limit for how much a local school board can increase local property taxes. They have essentially a blank check.").

52. Educ. Comm'n of the States, Taxation and Spending Policies 1, available at <http://www.ecs.org/clearinghouse/52/94/5294.pdf> (last visited Nov. 27, 2009).

53. *Id.* at 2. Of those thirty-five states, twenty-two states set a maximum tax rate, three limited the size of tax increases, and four required voter approval for increases above a certain level. STATE LIMITS, *supra* note 51.

54. Educ. Comm'n of the States, *supra* note 52. Six of those states limited per-student spending, five limited the overall budget increase from year to year, and one required state approval of all school budgets. STATE LIMITS, *supra* note 51.

55. See Press Release, Commonwealth of Pa., Governor Rendell Comments on Act 72 (May 31, 2005), available at <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=443327> (quoting Gov. Rendell: "I remain committed to my goal, and to working with the legislature to ensure that ALL homeowners benefit from the gaming revenue that the commonwealth will collect in the coming years.").

reform legislation. The result was Act 1, the Taxpayer Relief Act, which extended property tax relief to *all* school districts.<sup>56</sup>

Act 72 was repealed by Act 1,<sup>57</sup> but many of its provisions survive in the new law.<sup>58</sup> First, the homestead and farmstead exclusions remain as a source of property tax reductions.<sup>59</sup> The homestead and farmstead exclusions apply in the same way as they did under Act 50, which established them.<sup>60</sup> The exclusions reduce the assessed value of an eligible property, thus reducing the value subject to the property tax.<sup>61</sup> This results in property tax savings for eligible homeowners.

For example, Mr. Jones owns a home assessed at \$75,000. If the millage rate is ten mills (or 1 percent) in his school district, Mr. Jones would owe \$750 in property tax (\$75,000 assessed value X 10-mill tax rate = \$750 tax owed). However, if there is a \$25,000 homestead exclusion in the district, only \$50,000 of Mr. Jones's home will be subject to the 10-mill property tax (\$75,000 assessed value - \$25,000 homestead exclusion = \$50,000 subject to tax). At the same 10-mill tax rate, Mr. Jones will receive a tax bill for just \$500 after the homestead exclusion (\$50,000 subject to tax X 10-mill tax rate = \$500 tax owed).<sup>62</sup> This equals a \$250 savings for Mr. Jones, but in order to qualify for the homestead exclusion he must apply.<sup>63</sup>

Next, Act 1 reinstated something that first appeared in Act 50: voter input on taxes.<sup>64</sup> Act 1 requires voter approval in several circumstances, including future tax increases that exceed an inflationary index.<sup>65</sup> This base index is calculated by averaging the percent increases in the statewide average weekly wage and the federal employment cost index for elementary and secondary schools.<sup>66</sup> If a school district has a

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56. Commonwealth of Pa., *Tax Relief for All Pa. Homeowners*, [http://www.governor.state.pa.us/portal/server.pt?open=512&objID=3073&&level=1&css=L1&mode=2&in\\_hi\\_userid=2&cached=true](http://www.governor.state.pa.us/portal/server.pt?open=512&objID=3073&&level=1&css=L1&mode=2&in_hi_userid=2&cached=true) (last visited Nov. 27, 2009) (emphasis added).

57. 53 P.S. § 6926.5005(4).

58. See *supra* part II.A.3 for a discussion of Act 72.

59. See 53 P.S. §§ 6926.341-6926.343.

60. See *supra* part II.A.1 for a discussion of Act 50. See also COLL. OF AGRIC. SCIS. AGRIC. RESEARCH & COOP. EXTENSION, THE PA. STATE UNIV., UNDERSTANDING THE HOMESTEAD AND FARMSTEAD EXCLUSIONS (1998), available at <http://www.cax.aers.psu.edu/taxreform/materials/homestead.pdf> [hereinafter EXCLUSIONS] for an in-depth discussion of the homestead and farmstead exclusions.

61. See EXCLUSIONS, *supra* note 60, at 4.

62. See *id.* for another example of how the homestead exclusion works.

63. 53 P.S. § 6926.341.

64. See *supra* notes 22-24 and accompanying text.

65. 53 P.S. § 6926.333.

66. PA. DEP'T OF EDUC., REPORT ON REFERENDUM EXCEPTIONS FOR SCHOOL YEAR 2009-10 at 3 (2009), available at <http://www.pde.state.pa.us/proptax/lib/proptax/2009->



market value/personal income aid ratio greater than 0.4000, the value of the district's index is adjusted upward by multiplying the base index by the sum of 0.75 and its market value/personal income aid ratio.<sup>67</sup> The Pennsylvania Department of Education (PDE) is required to calculate and publish the index each year.<sup>68</sup> After reviewing the district's preliminary budget,<sup>69</sup> PDE will also notify the school district each year if it exceeds the index.<sup>70</sup>

The back-end referendum must be posed to voters at the primary election immediately preceding the start of the school district's fiscal year in which the proposed tax increase is to take effect.<sup>71</sup> If the referendum fails, the school board cannot raise taxes beyond the index.<sup>72</sup> This back-end referendum gives voters something they had previously been missing: a say in school finance.

Another key component of Act 1 is its front-end referendum.<sup>73</sup> Beginning with the 2007 primary election, school boards were required to pose a front-end referendum to voters, asking if they favor reducing property tax by increasing the EIT rate or personal income tax (PIT) rate of the district.<sup>74</sup> Voters also had a third option: elect to convert the school's existing EIT to a PIT.<sup>75</sup> If voters approve the referendum, the revenue generated by the increased PIT or EIT would be used to reduce taxes on qualified properties.<sup>76</sup>

Finally, taxpayers have yet another say in whether their school district accepts or rejects a property tax reduction allocation from the

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10\_act1report\_may09\_web.pdf (last visited Oct. 28, 2009) [hereinafter 2009-10 REPORT OF EXCEPTIONS].

67. *Id.*

68. 53 P.S. § 6926.333(l). For an already calculated listing of the adjusted index for each school district in the state for the 2010-11 fiscal year, see PA. DEP'T OF EDUC., 2010-11 SCHOOL DISTRICT ADJUSTED INDEX LISTING, *available at* <http://www.pde.state.pa.us/proptax/cwp/view.asp?a=3&q=111849> (last visited Oct. 28, 2009). The Web site also includes a historical look at the base index and adjusted index from 2006 through present. *Id.* See also *infra* notes 218-221 and accompanying text for a discussion of how the index has evolved.

69. A district must adopt a preliminary budget by mid-February, which is at least two months before they know what to expect in state subsidies, and the delay may be much longer, such as in 2009 when the budget impasse lasted into the fall. See Arlene Martinez, *ASD proposes opting out of Act 1*, THE MORNING CALL (Allentown, Pa.), Nov. 14, 2008, at B4 for a discussion of one district's frustration with the unrealistic timing deadlines.

70. 53 P.S. § 6926.333(e).

71. 53 P.S. § 6926.333(c). A school district is required to follow a similar route if it desires to levy a tax not levied in the 2005-06 fiscal year. 53 P.S. § 6926.333(b)(2).

72. 53 P.S. § 6926.333(d)(1).

73. See 53 P.S. § 6926.331.2.

74. 53 P.S. § 6926.331.2(a).

75. 53 P.S. § 6926.331.2(e)(iii).

76. 53 P.S. § 6926.331.2(e)(i)-(iii).

state.<sup>77</sup> A board of school directors may elect to reject the allocation by passing a resolution, but this does not guarantee voters will not overturn the board.<sup>78</sup> Any district that passes a resolution turning down the allocation must pose a referendum to the electors of the district, asking whether the electors favor receiving a property tax reduction allocation.<sup>79</sup> If a majority of the electors vote in favor of receiving the allocation, the district will be eligible for it, despite its governing school board previously turning it down.<sup>80</sup> The allocation will then be used to fund homestead and farmstead exclusions or to reduce the property tax rate on all properties subject to the tax in the district.<sup>81</sup>

The key difference between Act 1 and Act 72 is that Act 1 is not optional.<sup>82</sup> School districts were mandated by the legislature to participate, eliminating one major flaw the governor had cited for the prior act's demise.<sup>83</sup>

### III. ANALYSIS

While lawmakers heralded Act 1 as the piece of legislation that would finally deliver property tax relief to Pennsylvanians,<sup>84</sup> careful examination of the law reveals its strengths and weaknesses.

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77. 53 P.S. §§ 6926.903-6926.904.

78. 53 P.S. § 6926.903(a). In May 2008, the Eastern Lancaster County School Board (Elanco) became the first, and only, school district to reject more than \$400,000 in slot machine funds. See Brian Wallace, *Elanco: No to \$lot\$; Lone district in state to reject gambling revenue*, INTELLIGENCER JOURNAL (Lancaster, Pa.), July 2, 2008, available at <http://articles.lancasteronline.com/local/4/223883>. Pursuant to Act 1, the board placed a referendum on the November ballot, asking residents if they favored receiving the funds to reduce property taxes. Michael C. Upton, *Elanco proposes tax ballot question*, INTELLIGENCER JOURNAL, Aug. 20, 2008, available at <http://articles.lancasteronline.com/local/4/226137>. Voters subsequently approved the referendum with more than 70 percent of the district's voters in favor of receiving the slots money. Patrick Burns, *Elanco OKs slots money; Was only district in state to refuse tax relief dollars*, INTELLIGENCER JOURNAL, Nov. 5, 2008, available at <http://articles.lancasteronline.com/local/4/229739>. But in the time between the board's decision and the November vote, the issue split the community. See *infra* part III.B.8 for more discussion about Elanco.

79. 53 P.S. § 6926.904(a), (c).

80. 53 P.S. § 6926.904(f).

81. 53 P.S. § 6926.334(c)(1).

82. See *supra* note 47 and accompanying text.

83. See *supra* note 50 and accompanying text.

84. See Press release, Commonwealth of Pa., Governor Rendell Signs Bill to Deliver Largest Property Tax Cut in Pennsylvania History (June 27, 2006), available at <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=453995> (quoting Gov. Rendell: "This day is a major victory for Pennsylvanians who have fought for decades to have their property taxes cut.").

A. *The Pros of Act 1*

1. Expansion of the Tax/Rent Rebate Program

Act 1 has accomplished some of the objectives it set out to achieve. First, it expanded the Senior Citizens Property Tax and Rent Rebate Program.<sup>85</sup> The program was originally established under Act 3 of 1971, also known as the Senior Citizens Rebate and Assistance Act.<sup>86</sup> Although the tax and rent rebate program underwent numerous changes over the years,<sup>87</sup> Act 1's enactment led to the most drastic change.

Under Act 1, the income eligibility guidelines for homeowners more than doubled, from \$15,000 to \$35,000.<sup>88</sup> A homeowner with \$8,000 or less of household income now qualifies for up to a \$650 tax rebate; a homeowner with \$8,001 to \$15,000 of household income will receive up to a \$500 tax rebate; a homeowner with \$15,001 to \$18,000 of household income will receive up to a \$300 tax rebate; and a homeowner with \$18,001 to \$35,000 of household income will receive up to a \$250 tax rebate.<sup>89</sup>

Previously, the maximum tax rebate received was based on a percentage of taxes paid and the percentage allowed depended upon income.<sup>90</sup> For example, those with a household income up to \$5,499 received 100 percent of what they paid in taxes, whereas someone with a household income in the highest allowed bracket, \$13,000 to \$15,000, received just 10 percent.<sup>91</sup>

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85. 53 P.S. §§ 6926.1301-6926.5006. Although senior citizens are the primary benefactors of the rebate program, other groups also benefit. Eligible claimants include: (1) a senior citizen, defined as someone at least 65 years old, or a person whose spouse is at least 65 years old and lives in the household; (2) a widow or widower who is at least 50 years old; and (3) a permanently disabled person at least 18 years old. 53 P.S. § 6926.1303. All ages are determined by the age of the claimant during the calendar year in which the taxes or rent were due and payable. *Id.* There are certain exceptions that may limit claims. For example, someone who lived in a home for only part of a year, a widow or widower who remarried, or someone no longer disabled is eligible for a pro rata portion of the rebate. 53 P.S. § 6926.1304(c)(1)(i)-(iii). Also, a claimant who received public welfare assistance is not eligible for the months in which he or she received the assistance, 53 P.S. § 6926.1304(c)(2), and rent paid through government subsidies is excluded. 53 P.S. § 6926.1304(d).

86. Act 3 was repealed by Act 1. 53 P.S. § 6926.5005(3).

87. See PA. DEP'T OF REVENUE, PROPERTY TAX/RENT REBATE PROGRAM 2007 STATISTICAL REPORT 6-7 (2009), available at <http://www.revenue.state.pa.us/revenue/lib/revenue/PTRRSTAT07.pdf> [hereinafter 2007 STATISTICAL REPORT] for a history of various changes to the rebate program.

88. 53 P.S. § 6926.1304(a)(2)(i). One half of all Social Security benefits are excluded from calculating income. See 53 P.S. § 6926.1303 for definition of income.

89. 53 P.S. § 6926.1304(a)(2)(i).

90. 53 P.S. § 6926.1304(a)(1).

91. *Id.*

The expanded Property Tax/Rent Rebate Program no doubt benefited Pennsylvania seniors. As a result of the increased income eligibility, the state received 232,751 more property tax rebate claims in 2006 than the year before.<sup>92</sup> The amount of people who took advantage of the expanded program is just a fraction of the number that the state projects are eligible under the new rules. The state actually projects an additional 420,000 residents are eligible for rebate assistance.<sup>93</sup>

Although the income eligibility guidelines did not change for renters,<sup>94</sup> both renters and homeowners benefited from an increase in the maximum rebate amount, which rose from \$500 to \$650.<sup>95</sup> Like the property tax rebate that saw an increase, an additional 17,737 rent rebate claims were paid in 2006 as compared to 2005.<sup>96</sup>

Nearly half of all claims, property tax or rent, were filed by first-time claimants in 2006,<sup>97</sup> another figure attributable to the expanded program. In 2006, the first year of the expanded rebate program, more than \$243 million in rebates were paid out, with the average rebate amounting to \$430.83.<sup>98</sup> Of the 564,393 claims paid, almost a quarter of the claimants (125,137) received the \$650 maximum rebate,<sup>99</sup> and 35,389 claimants received a rebate that equaled 100 percent of their property tax bills.<sup>100</sup>

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92. See PA. DEP'T OF REVENUE, PROPERTY TAX/RENT REBATE PROGRAM 2006 STATISTICAL REPORT 4 (2008), available at <http://www.revenue.state.pa.us/revenue/lib/revenue/PTRRSTAT06.pdf> [hereinafter 2006 STATISTICAL REPORT]. In 2007, property tax rebate claims increased by only 3,869. See 2007 STATISTICAL REPORT, *supra* note 87, at 4.

93. Pa. Property Tax Relief, Expanded Relief for Seniors, [http://www.governor.state.pa.us/portal/server.pt/community/expanded\\_relief\\_for\\_seniors/3071](http://www.governor.state.pa.us/portal/server.pt/community/expanded_relief_for_seniors/3071) (last visited Oct. 28, 2009).

94. The maximum household income for an individual seeking the rent rebate remained \$15,000. 53 P.S. § 6926.1304(a)(3).

95. 53 P.S. § 6926.1304(a)(2)(i) (setting the rebate amount for homeowners) and 53 P.S. § 6926.1304(a)(3) (setting the rebate amount for renters). Note, however, that the actual amount a qualified individual will receive is limited by the maximum amount listed in the Act, the amount of real property taxes actually paid, or 20 percent of the gross rent actually paid, whichever is lesser. 53 P.S. § 6926.1304(b)(2).

96. 2006 STATISTICAL REPORT, *supra* note 92, at 4. In 2007, the number of rent rebate applications increased by 8,591. 2007 STATISTICAL REPORT, *supra* note 87, at 4.

97. 2006 STATISTICAL REPORT, *supra* note 92, at 4. The following year also saw a significant climb in new claimants: 106,606 or 18 percent of all claims. 2007 STATISTICAL REPORT, *supra* note 87, at 4.

98. 2006 STATISTICAL REPORT, *supra* note 92, at 5. The average rebate for homeowners claiming the rebate was slightly lower, \$388.78, whereas the average rebate for renters was much higher, \$522.90. *Id.*

99. *Id.*

100. *Id.*

In 2007, more than \$276.1 million was paid out in either property tax or rent rebates.<sup>101</sup> The average rebate was \$475.72.<sup>102</sup> More than 39,000 claimants received a rebate that equaled their property tax bills, and 124,087 of the 580,517 claims paid received the maximum rebate of \$650.<sup>103</sup> Since its inception in 1971, approximately \$4.2 billion in rebates have been issued.<sup>104</sup>

In the year prior to enactment of Act 1, 154,711 homeowners claimed the tax rebate and 159,194 renters claimed the rent rebate under the old scheme.<sup>105</sup> The amount paid out for property tax and rent rebates in 2005 was \$58 million and \$62 million, respectively.<sup>106</sup> The large increase is attributable to an increase in eligible applicants as well as larger rebates.<sup>107</sup>

Additional relief is available to Philadelphia, Pittsburgh, and Scranton seniors who will not benefit from Act 1's other provisions.<sup>108</sup> Each eligible household in these three areas with income of \$30,000 or less will receive an additional property tax rebate equal to 50 percent of its base rebate.<sup>109</sup>

A supplemental amount is also available for senior homeowners in the remainder of the state.<sup>110</sup> If claimants have income of \$30,000 or less and a property tax bill that equals more than 15 percent of their income,

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101. 2007 STATISTICAL REPORT, *supra* note 87, at 4. It should be noted that state actually extended the deadline to apply for the rebate program from June 30 until the end of the year. See Press release, Commonwealth of Pa., PA Property Tax/Rent Rebate Program Deadline Extended to End of the Year (June 4, 2008), available at [http://www.portal.state.pa.us/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news\\_releases/revenue/news\\_releases/property\\_tax\\_rent\\_rebate\\_program\\_deadline\\_extended\\_to\\_end\\_of\\_the\\_year.html](http://www.portal.state.pa.us/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/revenue/news_releases/property_tax_rent_rebate_program_deadline_extended_to_end_of_the_year.html). Even absent the six-month extension, the program was still successful, as more than 515,000 applications were received by May 30. *Id.*

102. 2007 STATISTICAL REPORT, *supra* note 87, at 4.

103. *Id.* at 5.

104. *Id.* at 4.

105. 2006 STATISTICAL REPORT, *supra* note 92, at 14.

106. *Id.*

107. On the governor's Property Tax Relief Web site, several elderly people who have benefited from the expanded program are spotlighted. Among them are Walter and Marilyn Sondermann of Drexel Hill, Delaware County. The Sondermann's previously failed to qualify for the state's Property Tax/Rent Rebate Program, but under the expanded income eligibility limits in 2006, the couple did qualify, along with a projected 22,000 other seniors in Delaware County. Pennsylvania Property Tax Relief, Seniors who have Benefited, [http://www.governor.state.pa.us/portal/server.pt?open=512&objID=3072&&level=1&css=L1&mode=2&in\\_hi\\_userid=2&cached=true](http://www.governor.state.pa.us/portal/server.pt?open=512&objID=3072&&level=1&css=L1&mode=2&in_hi_userid=2&cached=true) (last visited Nov. 24, 2009).

108. Act 1 provides that residents of a city of the first class, a city of the second class A, or a resident of a school district of the first class A qualify for this additional relief. 53 P.S. § 6926.704(a)(1).

109. 53 P.S. § 6926.704(a)(1).

110. 53 P.S. § 6926.1304(a)(2)(ii).

they, too, are eligible to receive an additional payment equal to 50 percent of their base rebate.<sup>111</sup> In 2007, 125,608 claimants were eligible for a supplemental rebate.<sup>112</sup>

## 2. Creation of Installment Payment Plans

Another benefit of Act 1 is its installment plan for taxpayers.<sup>113</sup> All school districts, except Philadelphia and Pittsburgh, are required to adopt a resolution offering property owners the option of paying school property taxes in installments, instead of one lump sum, as previously required.<sup>114</sup> School districts are given some latitude when it comes to developing an installment plan.<sup>115</sup> Installments cannot be payable on a more than monthly basis and at least three installment payments are required.<sup>116</sup> For instance, in Clearfield County business managers from the nine school districts met with county officials and decided on the following schedule of installment payments: first payment, 50 percent of total bill due on or before August 31; second payment, 30 percent of total bill due on or before October 31; and third payment, remaining 20 percent of total bill due on or before December 31.<sup>117</sup> If a taxpayer is delinquent on an installment payment, a 10 percent penalty applies, and if he or she is late on two or more payments, he or she becomes ineligible for the installment payment option in the following year.<sup>118</sup> The installment payment plan is sure to benefit taxpayers unable to squeeze a huge tax bill out of one check.

## 3. Reduction of Property Tax Bills

Although many expressed doubt as to when homeowners across the Commonwealth would actually start seeing some savings on property tax bills, "Pennsylvania's slot machines are finally spitting some coins into taxpayer's hands."<sup>119</sup> In April 2008, former Budget Secretary Michael J. Masch announced that the state would provide nearly \$800 million in its

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111. *Id.*

112. 2007 STATISTICAL REPORT, *supra* note 87, at 5.

113. 53 P.S. §§ 6926.1501-6926.1505.

114. 53 P.S. § 6926.1501. The Act, however, does not require the taxpayer pay in installments. The taxpayer remains free to pay in full.

115. *See* 53 P.S. § 6926.1502(c).

116. 53 P.S. § 6926.1502(c)(3).

117. Jaime Bumbarger, *Business manager to board: It's fiscally irresponsible not to raise taxes*, THE PROGRESS, May 22, 2007, at 1, available at <http://www.theprogressnews.com/default.asp?read=7443>.

118. 53 P.S. § 6926.1502(c)(4).

119. Daniel Patrick Sheehan & Brian Callaway, *Some get cherries, some get lemons; Slots payoff a mixed bag: What you need to know*, THE MORNING CALL, May 2, 2008, at A1.

first round of statewide property tax relief.<sup>120</sup> The budget secretary must certify the amount of revenue in the Property Tax Relief Fund by April 15 of each year.<sup>121</sup> Masch certified that \$600.1 million was available for property tax relief, with an additional \$101.9 million in the Property Tax Relief Reserve Fund.<sup>122</sup>

The initial round of funding reduced school property tax across the state by 10 percent, or an average of \$169 per household,<sup>123</sup> and in Philadelphia, the funding reduced the city's wage tax.<sup>124</sup> "The basic formula is high-tax, low-wealth districts get more relief," said Michael Race, PDE spokesman.<sup>125</sup> Tax relief ranged from a low of \$54 in Dallas School District in Luzerne County to a high of \$623 in Chester-Upland School District in Delaware County.<sup>126</sup>

In 2009, the savings continued to roll in. In the second year of property tax relief under Act 1, approximately \$770 million was saved by eligible homeowners.<sup>127</sup> In April 2009, Budget Secretary Mary Soderberg certified that the Property Tax Relief Fund had a \$561.7 million balance, which included \$105.2 million in the reserve fund.<sup>128</sup>

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120. Press release, Commonwealth of Pa., Budget Secretary Says Property Tax Relief Certain This Year, Homeowners Will See an Average Cut of \$169 (April 2008), available at <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=473056> [hereinafter Relief Certain].

121. 53 P.S. § 6926.503(a)(1).

122. Relief Certain, *supra* note 120.

123. *Id.*

124. 53 P.S. § 6926.505(d).

125. Daniel Patrick Sheehan & Brian Callaway, *Some get cherries, some get lemons; Slots payoff a mixed bag: What you need to know*, THE MORNING CALL, May 2, 2008, at A1.

126. PA. DEP'T OF EDUC., ESTIMATED TAX RELIEF PER HOMESTEAD AND FARMSTEAD (2008), available at [http://www.pde.state.pa.us/proptax/lib/proptax/taxreliefperhs\\_5-1-08\\_web.pdf](http://www.pde.state.pa.us/proptax/lib/proptax/taxreliefperhs_5-1-08_web.pdf) (last visited Oct. 28, 2009). Once school districts establish their tax rates, each individual school district will then calculate the actual amount of property tax relief. *Id.*

127. Press Release, Commonwealth of Pa., Governor Rendell Announces Another Year of Property Tax Relief for Homeowners (April 13, 2009), available at [http://www.pa.gov/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news\\_releases/governor\\_s\\_office/news\\_releases/governor\\_rendell\\_announces\\_another\\_year\\_of\\_property\\_tax\\_relief\\_for\\_homeowners.html](http://www.pa.gov/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_announces_another_year_of_property_tax_relief_for_homeowners.html) [hereinafter Another Year].

128. Press Release, Commonwealth of Pa., Budget Secretary Certifies \$770 Million for Second Year of Statewide Property Tax Relief (April 15, 2009), available at [http://www.portal.state.pa.us/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news\\_releases/governor\\_s\\_office/news\\_releases/budget\\_secretary\\_certifies\\_770\\_million\\_for\\_second\\_year\\_of\\_statewide\\_property\\_tax\\_relief.html](http://www.portal.state.pa.us/portal/server.pt?open=512&objID=3053&PageID=431159&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/budget_secretary_certifies_770_million_for_second_year_of_statewide_property_tax_relief.html).

The average statewide reduction in 2009 was estimated at \$200 per eligible household, approximately the same as the year before.<sup>129</sup> When PDE released its estimates, tax relief ranged from a low of \$32 in Bryn Athyn School District in Montgomery County to a high of \$641 in Chester-Upland School District in Delaware County.<sup>130</sup> The tax relief was expected to result in 110,000 senior citizens owing nothing on their tax bills.<sup>131</sup>

#### 4. Public Control Over School Budgets

One final advantage to Act 1 cited by its proponents is that residents finally have some control over school spending. Act 1 requires voter approval and includes a front-end referendum<sup>132</sup> and a back-end referendum.<sup>133</sup> At first glance, the proposal of asking taxpayers if they favored a tax increase seemed ludicrous because what type of taxpayer would approve an increase in income taxes. Act 1, however, required each school district to include an explanation of how the referendum's passage would benefit taxpayers by explaining how much the income tax increase would reduce property taxes.<sup>134</sup> This explanatory statement could serve as a way to sway voter opinion about substituting one tax for another.

Act 1 also includes a back-end referendum, which requires a school district to gain voter approval if it wants to increase its taxes beyond an

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129. Another Year, *supra* note 127. See *infra* part III.B.7 for a discussion of how property tax relief does not measure up to what was promised.

130. PA. DEP'T OF EDUC., ESTIMATED TAX RELIEF PER HOMESTEAD AND FARMSTEAD (2009), available at [http://www.pde.state.pa.us/proptax/lib/proptax/TaxReliefPerHS\\_5-1-09\\_Web.pdf](http://www.pde.state.pa.us/proptax/lib/proptax/TaxReliefPerHS_5-1-09_Web.pdf) (last visited Oct. 28, 2009).

131. Another Year, *supra* note 127.

132. 53 P.S. § 6926.331.2(a). See *supra* notes 73-76 and accompanying text for an explanation of the front-end referendum.

133. 53 P.S. § 6926.333(c). See *supra* notes 64-72 and accompanying text for an explanation of the back-end referendum.

134. 53 P.S. § 6926.331.2(e)(2). In fact, the Act went as far as spelling out exactly how the front-end referendum question was to be posed to voters. See 53 P.S. § 6926.331.2(e)(1)(i)-(iii). Some school districts, disenchanted by Act 1, attempted to pass resolutions that deviated from the required language. For example, Donegal School District in Lancaster County was forced by the Department of State and Pennsylvania Board of Elections to reword its referendum question, using the more generic language delineated in the Act. Dean Lee Evans, *Donegal revises referendum wording; District warned by state to use generic version*, INTELLIGENCER JOURNAL, March 28, 2007, at B5. The board had been seeking to include information about the negative effects of Act 1 in the interpretative statement that accompanied its referendum. *Id.*

Despite the seemingly biased nature of the wording, voters overwhelmingly rejected the referenda across the state. Districts have the option of including a similar referendum on the ballot again, beginning with the municipal election of 2009. 53 P.S. § 6926.332(a). There is no trace of any district that opted to do so, however.



inflationary index established by the state.<sup>135</sup> There are a number of exceptions that may allow a school district to bypass voter approval, however.<sup>136</sup> These exceptions include costs incurred in responding to or recovering from an emergency or disaster,<sup>137</sup> costs of implementing a court or administrative order as long as the tax is rescinded following the order's fulfillment,<sup>138</sup> or costs of responding to conditions that pose an immediate threat of serious physical harm or injury to students, staff, or residents of the school district until the conditions are resolved.<sup>139</sup> Each of the above exceptions requires approval by a court of common pleas in the county of the district.<sup>140</sup>

A school district may seek approval from PDE<sup>141</sup> for any of the following exceptions: (1) costs associated with several debt repayment and construction issues,<sup>142</sup> (2) costs associated with special education if the increase in those costs is greater than the index,<sup>143</sup> (3) costs associated with implementing a school improvement plan that are not offset by a state subsidy,<sup>144</sup> (4) costs associated with maintaining per-student local tax revenue or the actual instruction expense per average daily membership,<sup>145</sup> (5) costs associated with maintaining revenue derived from property and income taxes and basic and special education allocations,<sup>146</sup> (6) costs associated with provided health care benefits to its employees as required by a collective bargaining agreement that was effective on Jan. 1, 2006,<sup>147</sup> and (7) costs associated with the district's share of payments to the Public School Employees' Retirement System if the increase in the district's share exceeds the index.<sup>148</sup> If either the court of common pleas or PDE denies a request for an exception, the district may resort to the referendum process<sup>149</sup> or reduce its proposed tax increase to fall at or below the index rate.<sup>150</sup>

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135. 53 P.S. § 6926.333.

136. *Id.*

137. 53 P.S. § 6926.333(f)(2)(i).

138. 53 P.S. § 6926.333(f)(2)(ii).

139. 53 P.S. § 6926.333(f)(2)(iv).

140. 53 P.S. § 6926.333(i)(1).

141. 53 P.S. § 6926.333(j)(1).

142. 53 P.S. § 6926.333(f)(2)(iii).

143. 53 P.S. § 6926.333(f)(2)(v).

144. 53 P.S. § 6926.333(f)(2)(vi).

145. 53 P.S. § 6926.333(f)(2)(vii).

146. 53 P.S. § 6926.333(f)(2)(viii).

147. 53 P.S. § 6926.333(f)(2)(ix).

148. 53 P.S. § 6926.333(n).

149. 53 P.S. §§ 6926.333(i)(2), (j)(5)(iii).

150. 53 P.S. § 6926.333(e)(1).

## 5. Creation of New Funding Sources

Funding to support the property tax reductions comes from the state's legalization of slot machines, but the state's new casinos also provide funding for many other initiatives.<sup>151</sup> The host municipalities receive a cut of the taxes levied on casinos, and that money has proven to be significant. For instance, the Sands Resort Casino Bethlehem generated more than \$3.5 million for the cities of Bethlehem and Allentown and the counties of Northampton and Lehigh in its first five months of operation.<sup>152</sup> During Fiscal Year 2007-08, more than \$74 million in revenue was generated for host counties and municipalities.<sup>153</sup>

Additionally, the casinos are generating jobs in a time when jobless rates are hitting all-time highs. The Sands employs more than 900 people, despite double-digit unemployment rates in Lehigh Valley.<sup>154</sup>

A total of 8,346 jobs are attributed to the nine casinos in operation as of November 2009.<sup>155</sup> Another 8,000 construction jobs were created.<sup>156</sup> The casinos are also credited with returning an average of \$3.2 million in new tax revenue daily to residents of Pennsylvania, most notably through property tax relief.<sup>157</sup> Another \$57.8 million per month is spent by the casinos to purchase goods and services needed to operate the facilities.<sup>158</sup>

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151. Admittedly, these other benefits are not directly attributable to Act 1, but the gaming law. However, one of the driving forces behind legalizing gambling in Pennsylvania was using the funding to reduce property taxes. Therefore, I credit, correctly or incorrectly, these indirect benefits to Act 1.

152. Ray Angeli, *Gaming board's casino decisions led to stories of success*, THE MORNING CALL, Nov. 5, 2009, at A17.

153. PA. GAMING CONTROL BOARD, 2008 ANNUAL REPORT 2 (2009). See *id.* at 19 for a detailed breakdown of local share distributions.

While counties are benefiting from the tax revenue generated by the casinos, some are losing property tax money because of casinos being under assessed. The Rivers Casino, which is a glass and steel structure housing eight restaurants and bars, a riverfront promenade and outdoor amphitheater along the river in Pittsburgh, is listed on the Allegheny County tax rolls for just \$7.7 million. Mark Belko, *Assessing casino value slow process for county*, PITTSBURGH POST-GAZETTE, Sept. 23, 2009, at A1. The land alone is valued at \$4.1 million, and it cost between \$320 million to \$340 million to build. *Id.* Until the casino is reassessed, the county, city, and school district is collecting a fraction of what it should be. *Id.* If assessed at \$340 million, the county would receive \$1.6 million, the city would receive \$3.7 million, and the district would receive \$4.7 million each year for property taxes. *Id.*

154. Angeli, *supra* note 152.

155. Gregory C. Fajt, Opinion, *Pa. Gaming Control Board looking out for the citizens*, THE YORK DISPATCH, Nov. 19, 2009.

156. *Id.*

157. See Press Release, Pa. Gaming Control Board, New Pennsylvania casinos spur 20 percent revenue increase in August, PR Newswire (Sept. 2, 2009).

158. PA. GAMING CONTROL BOARD, *supra* note 153, at 2.

Host municipalities are not the only ones reaping the benefits of casino revenue. The state's horseracing industry was revived thanks to gambling revenue.<sup>159</sup> More than \$500 million has been funneled into horseracing since 2006, including \$210 million in Fiscal Year 2008-09.<sup>160</sup> The infusion put a once struggling industry to the front of the pack. Pennsylvania's purse money increased fourfold, leaving other states in the dust and Pennsylvania on equal footing with horse racing's heavy hitters—Kentucky, California, and New York.<sup>161</sup>

Public libraries may be next in line. Several legislators are checking into the possibility of filtering some slots revenue into saving public libraries, which are struggling to stay afloat, much like horseracing previously.<sup>162</sup> The move is being led by Allegheny County legislators whose districts encompass several branches of the Carnegie Library.<sup>163</sup> Facing a \$1.2 million deficit, a handful of the library's nineteen branches are set to close.<sup>164</sup> “[C]asino money already has been used in a roundabout way to support public schools via property-tax relief for homeowners (‘slots for tots!’), it seems fitting that a slice from the more challenging card games go toward libraries (‘baccarat for books!’).”<sup>165</sup>

Five percent of the gaming money is earmarked for economic development and tourism.<sup>166</sup> Thus far, the money has been authorized for expansion of the Pennsylvania Convention Center in Philadelphia (\$880 million) and eight projects in Allegheny County, including the Pittsburgh Penguins new hockey arena (\$225 million) and the David Lawrence Convention Center (\$150 million).<sup>167</sup>

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159. Matt Assad, *Alive again: Horse-racing gets infusion from casinos*, THE MORNING CALL, Nov. 1, 2009, at A1. Arguably, this influx of money to horseracing is not a benefit of Act 1, but rather a detraction. As Charles E. Greenawalt II, a senior fellow at Susquehanna Valley Center for Public Policy said, “There’s no shortage of things to spend tax money on—and this one (horseracing) should not make the list.” *Id.* I save debate on the merits of the decision for a later date, but it should be noted that lawmakers appear to agree, somewhat. In October 2009, they cut the percentage of the gaming tax going to horse racing from 12 percent to 10 percent in an effort to close the budget deficit. *Id.*

160. *Id.*

161. *Id.*

162. *No quiet in these libraries: the battle is on*, PITTSBURGH POST-GAZETTE, Oct. 13, 2009, at A2.

163. *Id.*

164. *Id.*

165. *Id.* Table games were approved as part of a contentious budget negotiation process in 2009. *See infra* part III.C.3.

166. Matt Assad, *Casinos rake it in for Philly, Pittsburgh*, THE MORNING CALL, Aug. 24, 2009, at A1.

167. *Id.* I would be remiss to not mention that the cities benefiting most from the economic development funding—Pittsburgh and Philadelphia—have only contributed in small part, thus far, to generating that funding. In fact, no casino has yet to open its doors in Philadelphia. *See id.* (quoting Rep. James Wansacz, a member of the House’s Gaming

## B. *The Cons of Act 1*

At first glance, Act 1 appears to do exactly what the legislators hoped to accomplish for some time but failed at with three other acts. But a closer examination of the highly-touted law shows that the advantages of Act 1 are easily outweighed by its disadvantages.

### 1. Replacement of One Tax with Another

Although Act 1 has its advantages, it is also replete with drawbacks.<sup>168</sup> First, despite its name as the Taxpayer Relief Act, Act 1 is really a tax *shift*, not a form of tax *relief*.<sup>169</sup> The front-end referendum posed to voters in the spring of 2007 asked whether they were in favor of higher income taxes, which would be used to offset property taxes.<sup>170</sup> In reality, some taxpayers will see no relief, and others will pay more than under the previous scheme. Consider the following hypotheticals.<sup>171</sup>

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Oversight Committee, "I found it ironic that the city getting the bulk of the money wasn't putting its share in the pot.")

168. One administrator actually blamed Act 1 for his retirement. *See Act 1 prompts Hempfield superintendent to retire*, PITTSBURGH TRIBUNE REVIEW, Jan. 24, 2007. Dr. Wayne Doyle called it quits as superintendent at Hempfield Area School District after 43 years, saying, "I just can't work under this new law. I can't sit in this chair and tell my staff, my parents, and my community that I'm doing my absolute best job. Act 1 doesn't allow me to do that." *Id.*

169. *See* Preamble, 53 P.S. §§ 6926.101-6926.5007 ("Act 1 of Special Session 2006 creates the Taxpayer Relief Act that utilizes gaming dollars and a local shift to an earned or personal income tax to fund the plan.") (emphasis added). *See also* PA. DEP'T OF EDUC., THE TAXPAYER RELIEF ACT SPECIAL SESSION ACT OF 2006 FREQUENTLY ASKED QUESTIONS FOR TAXPAYERS 2 (2006), available at [http://www.pde.state.pa.us/proptax/lib/proptax/FAQ\\_Act1\\_Taxpayers\\_11-15-06.pdf](http://www.pde.state.pa.us/proptax/lib/proptax/FAQ_Act1_Taxpayers_11-15-06.pdf) (last visited Nov. 24, 2009) [hereinafter ACT 1 FAQs (explaining voters can further reduce property taxes by "shifting" to a local income tax)]; COLL. OF AGRIC. SCIS. AGRIC. RESEARCH & COOP. EXTENSION, THE PA. STATE UNIV., UNDERSTANDING THE TAXPAYER RELIEF ACT: ACT 1 OF SPECIAL SESSION 2005-06 at 2 (2007), available at <http://cax.aers.psu.edu/taxreform/UndrstngAct1.pdf> (calling Act 1 a "tax shift rather than an overall tax cut").

Tim Allwein, assistant executive director of governmental and member relations at the Pennsylvania School Boards Association, said, "The hardest thing for people to get their heads around is this tax shift. They hear 'tax relief,' and they think their taxes will go down." Diana Fishlock, *The Tax-Shift Referendum: Would you be a Winner?*, THE PATRIOT-NEWS (Harrisburg, Pa.), April 10, 2007, at A1.

170. *See supra* notes 73-76 and accompanying text.

171. *See, e.g.*, FERRIS BAKER WATTS, PUBLIC HEARING MATERIALS PREPARED FOR THE WEST BRANCH AREA SCHOOL DISTRICT TAX STUDY COMMISSION 11-14 (2006) (on file with author). A similar comparison was done using fictitious families in the Harrisburg area. *See* Fishlock, *supra* note 169.

However, anyone can figure out their projected savings or costs. Simply determine what the homestead exclusion is for your district. *See* PA. DEP'T OF EDUC., ESTIMATED TAX RELIEF PER HOMESTEAD AND FARMSTEAD (2008), available at [http://www.pde.state.pa.us/proptax/lib/proptax/TaxReliefPerHS\\_5-1-08\\_Web.pdf](http://www.pde.state.pa.us/proptax/lib/proptax/TaxReliefPerHS_5-1-08_Web.pdf), for an estimated property tax relief amount per district. Next, multiply your household taxable income by whatever

The Williams are a married couple living in a rented apartment, making \$33,000 per year.<sup>172</sup> Because they rent their home, they would not receive any property tax relief.<sup>173</sup> However, if they lived in the West Branch Area School District in rural Clearfield County and the 2007 referendum had passed, the PIT would have increased from 0.5 percent to 1.5 percent, so they would have paid an additional \$250 per year.<sup>174</sup>

Meanwhile, down the road, the Browns own an average valued home in the district.<sup>175</sup> They would have qualified for the district's projected \$140 property tax savings, but because of the increased PIT rate, they would have paid an additional \$600 on their \$60,000 household wages.<sup>176</sup> The Browns would have suffered a net loss of \$460 under Act 1, as compared to the former tax structure.<sup>177</sup>

On the other hand, Mrs. Moore, a retired widow whose only source of income is her Social Security, would not have to pay anything on her income, as Social Security is exempt.<sup>178</sup> Yet, she would benefit fully from the homestead exclusion and have her property tax bill reduced by \$140.<sup>179</sup>

In every district, some taxpayers will be winners and some will be losers. Generally, retirees win because their Social Security and pensions are exempt as income.<sup>180</sup> Single-income families who own their own homes also win, provided the wage-earner's income does not exceed the break-even point.<sup>181</sup> At the other end of the spectrum are the

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the proposed income tax increase is in your district. Finally, subtract the additional income tax you will have to pay from the estimated property tax relief amount to determine if you will save or owe more under the plan.

172. FERRIS BAKER WATTS, *supra* note 171, at 13.

173. *Id.*

174. *Id.*

175. *Id.* at 12.

176. *Id.*

177. FERRIS BAKER WATTS, *supra* note 171, at 12.

178. *Id.* at 14.

179. *Id.*

180. An EIT would be assessed on compensation and net profits, which include salaries, wages, and commissions; bonuses, stock options, and incentive payments; fees; tips; and net profits from the operation of a business, profession, or farm. ACT 1 FAQs, *supra* note 169. PIT taxes the same items as the EIT but also taxes interest, dividends, net gains or income from dispositions of property or rents, royalties, patents, and copyrights, income derived through estates and trusts, and gambling and lottery winnings. *Id.* Therefore, it is feasible that a retiree with substantial investments may lose, but nine out of ten school districts chose the EIT as part of its 2007 front-end referendum. PA. SCH. BDS. ASS'N., SURVEY RESULTS: ACT 1 BALLOT QUESTION, *available at* <http://www.psba.org/issues-advocacy/issues-research/act1-tax-reform/act-1-ballot-question-survey.asp> (last visited Nov. 27, 2009).

181. *See* Fishlock, *supra* note 169. There is a point in each school district in which taxpayers would "break even," *i.e.* the decrease in property taxes would be cancelled out by the increase in EIT or PIT. *Id.* If a household exceeds the break-even point, it would pay more in taxes, such as the Browns and Williams from the hypotheticals. *Id.* Any

losers: high income earners and dual-income families who exceed the break-even point, and landlords and tenants, who do not qualify for the homestead exclusion.<sup>182</sup> Finally, Act 1 would not benefit taxpayers who did not apply for the homestead/farmstead exclusion.<sup>183</sup>

## 2. Creation of a Complex System of Taxes

Because some taxpayers will win and others will lose, Act 1 has the potential to create “class warfare.”<sup>184</sup> It has been predicted that residents may flee a school district where income taxes are raised by referendum in favor of another district that sees voters reject a front-end referendum.<sup>185</sup> That is exactly what happened in Pittsburgh in the 1990s when the city had a 4-percent wage tax.<sup>186</sup>

The issue is further complicated by the complexity of the state’s tax structure. At the 2007 primary election, voters across the state saw 498 different referendums on their ballots, one for each of the school districts

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household earning less than the break-even point would save money, such as Mrs. Moore. *Id.*

182. *See id.* Renters, obviously, do not own a home, therefore they cannot receive the property tax relief. Landlords also do not benefit because rental properties do not qualify as homesteads. *See* 53 Pa. C.S. § 8401 (defining homestead as the dwelling that is primarily used as a place of domicile for the owner). Both landlords and tenants, however, would be subject to the higher income tax. For this reason, the Pennsylvania Residential Owners Association, an organization that represents landlords, urged members to vote against the front-end referendum. Barbara Miller, *Tax-shift votes likely to divide communities*, THE PATRIOT-NEWS, April 27, 2007, at A1. “The landlords pay first. Then they pass along that increase to their tenants,” said Rita Dallago, the association’s director. *Id.*

183. Diana Fishlock, *supra* note 181.

184. *See* Jan Ackerman, *The question is ‘Who pays?’ School districts ask whether to shift property taxes to wages or to investments and real estate gains*, PITTSBURGH POST-GAZETTE, April 29, 2007, at W-1 (quoting Kevin Fischer, president of the Baldwin-Whitehall school board); *see also* Miller, *supra* note 182 (quoting Palmyra resident Ken Schaefer). Because of a fear that its membership would be pitted against one another, AARP Pennsylvania remained neutral. *Id.* Although most senior citizens would benefit, half of its membership still works, thus they would have been subjected to the increased wage taxes. *Id.*

185. *See* Ackerman, *supra* note 184. *See also* Alan T. Shuckrow, Opinion, *Vote ‘No’ on Act 1*, PITTSBURGH TRIBUNE REVIEW, May 11, 2007, available at [http://www.pittsburghlive.com/x/pittsburghtrib/s\\_507086.html](http://www.pittsburghlive.com/x/pittsburghtrib/s_507086.html) (“People who have made decisions as to where to live based on certain assumptions about taxes will have to re-evaluate their decision.”). Mr. Shuckrow also said, “In the future, as a result of Act 1, when people are deciding where to locate their families, they will be compelled to look at the local income tax rate as a new and additional factor.” *Id.*

186. *See* Ackerman, *supra* note 184 (quoting Kevin Fischer, president of the Baldwin-Whitehall school board, “There was a mass exodus to the suburbs.”). *See also* Shuckrow, *supra* note 185 (“We have long witnessed the parade of families moving out of Allegheny County because of differences in property tax rates.”). Mr. Shuckrow said his family considered tax rates in their move, and he purposely avoided the City of Pittsburgh because of its higher tax rate. *Id.*

covered by Act 1.<sup>187</sup> Had each of the referendums passed, there would have been twenty-six different local tax structures across the state.<sup>188</sup>

### 3. Illusion of Voter Input

Although Act 1 appears to give taxpayers some “control” over school spending through its multiple referendums,<sup>189</sup> this “control” is nothing more than another farce. First, the 2007 front-end referendum was flawed for many reasons. The referendum was on the ballot at the May primary election, where historically a smaller percentage of voters show up at the polls.<sup>190</sup> Also, Pennsylvania is a closed primary state, meaning only the two major parties, Democrats and Republicans, may participate, leaving independents and voters affiliated with other parties without a say.<sup>191</sup>

The exceptions to the referendum requirements create another loophole.<sup>192</sup> With ten exceptions at their disposal, school boards can bypass voter approval in a variety of ways,<sup>193</sup> and many school boards do. For the 2008-09 school year, 107 of Pennsylvania's school districts adopted a preliminary budget in which their proposed tax increase exceeded the state's inflationary index rate.<sup>194</sup> These districts could

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187. Ackerman, *supra* note 184.

188. Shuckrow, *supra* note 185.

189. See *supra* part III.A.4.

190. The percentage of the voting age population to vote in a Pennsylvania primary ranged from a low of 11 percent to a high of 32 percent. FRANKLIN & MARSHALL CTR. FOR POLITICS AND PUB. AFFAIRS, PENNSYLVANIA PRIMARY ELECTION TURNOUT 1960-2000, available at <http://www.fandm.edu/x4523.xml>. Notably, the high turnout was during the 1980 presidential primary. *Id.* The 2007 primary was not a presidential year. Rather it was a municipal primary, in which county row officers and municipal officials were selected.

By comparison, the lowest turnout at a general election in Pennsylvania exceeded the highest turnout at a primary election in Pennsylvania. See FRANKLIN & MARSHALL CTR. FOR POLITICS & PUB. AFFAIRS, PENNSYLVANIA GENERAL ELECTION TURNOUT 1960-2004, available at <http://www.fandm.edu/x4524.xml>. The percentage of the voting age population to vote in a Pennsylvania general election ranged from 33 percent to 70 percent during the same time period. *Id.*

191. 25 P.S. § 2812 (2009).

192. See *supra* notes 131-145.

193. 53 P.S. § 6926.333(c).

194. PA. DEP'T OF EDUC., REPORT ON REFERENDUM EXCEPTIONS FOR SCHOOL YEAR 2008-09 (2008) at 3 [hereinafter 2008-09 REFERENDUM EXCEPTIONS]. Of the state's 501 school districts, 341 passed resolutions certifying that they would not increase taxes above their index, 157 submitted preliminary budgets, two operated on a calendar year basis instead of a fiscal year basis and were not included in the report, and one was not subject to Act 1's preliminary budget requirements. *Id.* at 4. Of the 157 that submitted preliminary budgets, fifty-two districts did not exceed the district's index, so they did not have to seek an exception. *Id.*

either seek an exception from the court of common pleas or PDE,<sup>195</sup> or they could submit a referendum to the voters for approval.<sup>196</sup> Of the referendum exceptions submitted to PDE, only a handful of districts were denied exceptions.<sup>197</sup> Sixty-nine school districts were approved for exceptions that fully covered their proposed tax increases, and thirty-three school districts were approved for exceptions that partially covered their proposed tax increases.<sup>198</sup> Approximately \$143.3 million in exceptions were approved.<sup>199</sup> This total was approximately \$9.6 million less than the total requested by the school districts.<sup>200</sup>

Seventy school districts out of the 112 that adopted preliminary budgets exceeded their respective index for the 2009-10 school year.<sup>201</sup> All but nine of those districts sought exceptions and were approved by PDE.<sup>202</sup> More than two-thirds of the districts that sought exceptions from PDE were approved for an amount that fully covered their proposed tax increase.<sup>203</sup> The remaining districts could either reduce their taxes or submit a referendum for the voters to decide.<sup>204</sup> Nearly \$85 million in exceptions were approved by PDE.<sup>205</sup>

In essence, the exceptions eliminate the public's say in proposed tax increases. As one taxpayer said of the exceptions, "So much of school budgets is out of voters' hands, so property taxes will go higher and higher!"<sup>206</sup> With so many exceptions at their disposal, it is almost impossible for a school district not to qualify for at least one or more exceptions, thus sidestepping voter approval.

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195. 53 P.S. § 6926.333(f).

196. 53 P.S. § 6926.333(c).

197. 2008-09 REFERENDUM EXCEPTIONS, *supra* note 194, at 5. A total of 102 school districts had exceptions approved. *Id.* Compared to the referendum exceptions approved by PDE for the 2007-08 school year, this represented a decrease of more than half. *See id.* at 9 tbl.2.

198. *Id.* at 6.

199. *Id.* at 10 tbl.3. Nearly three-quarters of the school districts approved for an exception received approval for their special education expenses. *Id.* at 8 tbl.1. However, exceptions for maintenance of local tax revenue or actual instruction expense per average daily membership proved the most costly, totaling more than \$45 million. *Id.* at 10 tbl.3.

200. *Id.* at 5.

201. 2009-10 REPORT OF EXCEPTIONS, *supra* note 66, at 4.

202. *Id.* at 5.

203. *Id.* at 6.

204. *Id.*

205. *Id.* at 8 tbl. 1.

206. Ron Shegda, Opinion, *Act 1 is "a pig in a poke," so vote it down*, THE MORNING CALL, May 10, 2007, at A13. *See also* Steve Deen, Editorial, *What good is Act 1 for taxpayers?*, INTELLIGENCER JOURNAL, Feb. 28, 2007, at A12 ("What good is Act 1 if they give the district the tax raises they want anyway?").



Although fewer school districts are seeking exceptions<sup>207</sup> and PDE has approved more than 40 percent less in exceptions,<sup>208</sup> there is no guarantee that this trend will continue. In fact, one area that may see an explosion in terms of districts seeking exceptions is pension obligations. Beginning in 2012, pension contributions by school districts are expected to spike.<sup>209</sup> In 2001, the state legislature approved a 25 percent increase in retirement benefits for school employees, and the following year, it reduced the amount districts must contribute from 5.64 percent to 1.15 percent.<sup>210</sup> This resulted in payments being spread out over more time, but it also created a bubble for 2012.<sup>211</sup> In 2009, districts paid 4.76 percent of payroll to the Public School Employees Retirement System (PSERS), but in 2012, the amount could increase to 30 percent.<sup>212</sup> Some school districts have had the foresight to budget for this change.<sup>213</sup> Unfortunately many more have not (or could not) and are now staring down the barrel of a 30 to 50 percent tax increase.<sup>214</sup> This averages out to an estimated \$558 increase per property owner.<sup>215</sup>

Because it is unconstitutional to reduce pension benefits for state employees, including school employees, unless the General Assembly acts (and acts quickly),<sup>216</sup> school districts will have no choice but to raise taxes. As a result, districts will almost be forced apply to PDE for an exception. For the 2009-10 school year, only six of the sixty-one schools approved by PDE for an exception applied for pension obligations, compared to twenty-seven districts the year before.<sup>217</sup> If the pension situation pans out as expected, the number of districts seeking a

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207. See 2009-10 REPORT OF EXCEPTIONS, *supra* note 66, at 9 tbl. 2.

208. *Id.* at 10 tbl. 3.

209. Debra Erdley, *School taxes in Pennsylvania may soar to pay for pension promises*, PITTSBURGH TRIBUNE REVIEW, Nov. 1, 2009.

210. See Gary Weckselblatt, *Seniors warned of pension bubble*, BUCKS COUNTY COURIER TIMES, Sept. 14, 2009, at 1 [hereinafter Weckselblatt, *Seniors warned*] and Gary Weckselblatt, *Seniors hope for property tax freeze*, BUCKS COUNTY COURIER TIMES, Sept. 16, 2009, at 1 [hereinafter Weckselblatt, *Seniors hope*].

211. Weckselblatt's articles, *supra* note 210, as well as Erdley's piece, *supra* note 209, all do an excellent job explaining the events that led up to and exacerbated the problem with pensions.

212. Weckselblatt, *Seniors warned*, *supra* note 210.

213. Erdley, *supra* note 209 (quoting Jay Himes, executive director of the Pennsylvania Association of School Business Officials (PASBO)).

214. Weckselblatt, *Seniors hope*, *supra* note 210. The situation is so grim, Jeff Clay, executive director of PSERS, has traveled from district to district for a year and a half warning administrators. Erdley, *supra* note 209.

215. Erdley, *supra* note 209. An Erie school district estimated it would have to raise taxes 25 percent, or 48 mills, to cover the increase in retirement costs alone. *Id.* (quoting PASBO's Jay Himes).

216. See *infra* part III.C.2 for a discussion of some options the legislature is considering.

217. 2009-10 REPORT OF EXCEPTIONS, *supra* note 66, at 9 tbl. 2.

referendum exception from PDE for pension obligations will likely skyrocket.

The situation is further complicated by a dramatic decrease in the state's base index.<sup>218</sup> Averaging around 4 percent for the first four years of Act 1, the index decreased dramatically for the 2010-11 school year to an average of 2.9 percent.<sup>219</sup> The decrease is attributable, at least in part, to the sluggish economy, as indices are tied to the statewide average weekly wage and the employment cost index and are based on inflationary factors.<sup>220</sup> The lower index means districts have a smaller cap on raising taxes without approval by the court, state, or taxpayers. As one business manager put it, "There is no wiggle room."<sup>221</sup>

#### 4. Absence of Penalties for Non-Compliance

Act 1 also lacks any bite when it comes to dealing with school districts that do not comply with its terms. In 2007, Harrisburg School District approved a \$140 million budget, which called for a property tax increase of 5.28 percent.<sup>222</sup> The adjusted index for the district at the time, however, was just 5.1 percent.<sup>223</sup> Because the district exceeded the index with its proposed tax increase, it should have sought approval from PDE, the court of common pleas, or voters,<sup>224</sup> but it did none of these and raised its taxes by the 5.28 percent.<sup>225</sup>

The district sought permission to have the state deduct the equivalent of \$59,321 from the following year's tax increase limit.<sup>226</sup> However, Education Secretary Gerald Zahorchak said no.<sup>227</sup> He ordered the district to issue rebate checks to approximately 17,000 taxpayers to

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218. See *supra* notes 65-70 and accompanying text for a discussion of the index.

219. See PA. DEP'T OF EDUC., 2010-11 SCHOOL DISTRICT ADJUSTED INDEX LISTING, *supra* note 68.

220. See *id.*; Andrew Shaw, *County schools face tighter tax increase caps*, YORK DISPATCH, Oct. 12, 2009.

221. Shaw, *supra* note 220 (quoting Donna Devlin of Dallastown School District).

222. Jan Murphy, *Does Act 1 have any teeth? Harrisburg School District broke tax cap, but law spells out no penalties*, THE PATRIOT-NEWS, Aug. 7, 2007, at A1.

223. PA. DEP'T OF EDUC., SCHOOL DISTRICT ADJUSTED INDEX 2006-07 THROUGH 2010-11 at 4 (2008), available at [http://www.pde.state.pa.us/proptax/lib/proptax/AdjustedIndexHistory\\_0607-0910.pdf](http://www.pde.state.pa.us/proptax/lib/proptax/AdjustedIndexHistory_0607-0910.pdf) (last visited Nov. 24, 2009).

224. 53 P.S. §§ 6926.333(c),(f).

225. Murphy, *supra* note 222. The district's business manager, William Gretton, explained that he adjusted the tax increase after seeing a revised property assessment from Dauphin County. *Id.* He said the increase was necessary to bring in the additional \$59,321 that the district would have received had property values not declined. *Id.*

226. *Id.*

227. John Luciew, *City schools ordered to issue tax rebates*, THE PATRIOT-NEWS, Sept. 19, 2007, at B6. "The department is very concerned about the district's clear violation of the law when it imposed a tax rate in excess of the index established by Act 1," wrote Secretary Zahorchak in a letter to the district. *Id.*

compensate for the overcharge.<sup>228</sup> The average refund check was expected to be just \$1.94, but it would cost the district nearly \$30,000 to prepare, cut, and mail them.<sup>229</sup> The board subsequently voted to lower its property taxes to comply with Act 1.<sup>230</sup>

There was some confusion as to what, if anything, PDE could do about the district's oversight. PDE maintained that it had no enforcement rights.<sup>231</sup> A drafter of Act 1, however, said PDE did have options, including withholding state subsidies.<sup>232</sup> Several individuals and organizations have since called on legislators to close this loophole.<sup>233</sup> Without some sort of recourse against districts that violate the provisions of the Act, there is nothing to prevent them from doing as they please.

##### 5. Formation of Another Unfunded Mandate

Act 1 has also been costly to implement. Some districts spent more than \$10,000 fulfilling their Act 1 requirements, which includes printing,

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228. *Id.* In rejecting the district's plan to deduct the amount the following year, Secretary Zahorchak insisted that taxpayers be "made whole" during the current fiscal year. *Id.*

229. *Id.*

230. *Id.* Another snafu occurred in Northumberland County, but through no fault of the school district. In 2008, approximately 1,000 homestead exclusion applications were overlooked in the county assessor's office. *Applications to reduce taxes mailed*, THE NEWS-ITEM (Shamokin, Pa.), Jan. 5, 2009. County commissioners ultimately agreed to pay more than \$14,000 to 106 homeowners who were eligible for the homestead exclusion but did not originally receive it. *Id.*

231. Murphy, *supra* note 222 (quoting PDE spokesman Michael Race: "We can't arbitrarily decide punishments. Only the law can give us the authority to do that. We are aware there is no provision in Act 1 for us to penalize noncompliant districts." Mr. Race also stated, "We were asked to enforce a law, but we weren't given any tools to penalize those who don't abide by it.").

232. *Id.* (quoting David Broderic, executive director of the Senate Education Committee, "The department has a clear duty to enforce the provisions of Act 1. And if, in fact, a school district has increased its tax rate higher than the law allows, the department clearly has an obligation to take steps to remedy that.").

233. *See id.* The Reading School District found itself at the opposite end of the spectrum from Harrisburg. Instead of overcharging taxpayers, it distributed almost twice the amount of tax relief that it should have, resulting in some taxpayers receiving bills indicating that they owed nothing. *See David Mekeel, Reading School District weighs options to fix tax error*, READING EAGLE, Oct. 16, 2008, available at <http://readingeagle.com/article.aspx?id=109936>. PDE told the board it had two options: reduce the district's EIT by 0.5 percent and send out corrected tax bills or reduce property taxes by three mills and apply the \$3.5 million in tax relief to all property owners. *See Darrin Youker, District discloses tax relief mix-up*, READING EAGLE, Oct. 7, 2008, available at <http://readingeagle.com/article.aspx?id=108807>. The board ultimately decided to reissue the 2008-09 tax bills. *David Mekeel, Reading School Board votes to reissue property tax bills*, READING EAGLE, Oct. 23, 2008, available at <http://readingeagle.com/article.aspx?id=110899>. There was no estimate available as to how much it will cost the district to reissue the tax bills.

postage, and advertising fees.<sup>234</sup> At least two districts, Chartiers-Houston and Washington, sent invoices to the governor's office for their expenses, and Northampton Area School District drafted a letter to the governor complaining about the unfunded mandate.<sup>235</sup>

Unfortunately for school districts saddled with the implementation costs, Act 1 contains no reimbursement provision.<sup>236</sup> This failure to provide for reimbursement is one reason districts view Act 1 as a way that legislators "passed the buck" onto them in multiple ways.<sup>237</sup>

## 6. Uncertainty for the Future

Yet another drawback to Act 1 is the uncertainty associated with Pennsylvania's relatively new casinos. A school district's receipt of gaming revenue to fund property tax relief is contingent on there being \$400 million available in the Property Tax Relief Fund and \$100 million in the Property Tax Relief Reserve Fund.<sup>238</sup> It took until 2008 for the funds to reach these thresholds, although casinos opened two years

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234. Michael Duck, *Act 1's scene 2: Sticker shock; School officials angered by cost of state's failed tax reform law*, THE MORNING CALL, June 21, 2007, at A1. Northampton Area School District estimated it spent \$15,670, Chartiers-Houston School District estimated it spent \$13,400, and Kutztown Area School District estimated it spent \$10,538. *Id.*

235. *Id.* Spokesman Scott Shewell of the Pennsylvania School Boards Association said other districts did not go as far as these three, but districts across the state were frustrated. *Id.* The districts did not contact the governor's office intending to be reimbursed. *Id.* To the contrary, they knew they would not "get a penny back." *Id.* Geraldine Skrapits, school director at Northampton, said her goal was to inform the public about Act 1's costs, as well as remind legislators that carrying out unfunded mandates, such as Act 1, causes funding reductions in other areas. *Id.*

Districts were also frustrated by the state's actions during the 2009-10 budget impasse, which resulted in a delay of state subsidies, and several sought reimbursement from the state associated with the delay in passing a budget. See Marc Levy, *Schools, counties want Pa. to repay borrowing cost*, CENTRE DAILY TIMES (State College, Pa.), Oct. 12, 2009. See *infra* part III.C.3 for discussion on the budget fiasco.

236. Michael Race of PDE said, "They (school districts) may not be happy about it, but unless there's a change in the law, this is simply how things are." Duck, *supra* note 234. One legislator, Rep. Julie Harhard, a Republican from the 183rd District, near Lehigh and Northampton, said she would support such a change if one was proposed. *Id.*

237. See *id.* (quoting a Northampton school board director, "I just think the legislators wanted us to do their dirty work."). See also Daniel Victor, *Question to ask voters about shift in taxes*, THE PATRIOT-NEWS, March 13, 2007, at B1 (quoting a Derry Township school board member as calling the choice between PIT or EIT for the front-end referendum "cockamamie proposals by our legislators, who are more interested in passing the buck than actually adopting real reform"); Rick Morgan, Editorial, 'Yet another tax' in the form of tax relief, PITTSBURGH POST-GAZETTE, Nov. 23, 2006, at W-2 ("Act 1 was a bad idea; it was politically designed as yet another backdoor tax increase. It will allow the Legislature and governor to claim later, 'We did not raise your taxes—you did.'").

238. 53 P.S. § 6926.503(d)(2)(i)-(ii).

earlier.<sup>239</sup> That year, the budget secretary said the amount he certified would be sustainable for at least five years.<sup>240</sup> But the amount also assumed revenue from seven facilities that had not opened to date.<sup>241</sup> Five casinos were scheduled to open in 2009 and two more were scheduled to open in 2010.<sup>242</sup>

Projections have not panned out, however. The Valley View Downs & Casino project remains in limbo more than two years after it was first approved for a harness racing license.<sup>243</sup> Developers planned to pair the racetrack with a casino, but funding fell through, and the state's Gaming Control Board refuses to even consider the slots license application until financing is in place.<sup>244</sup> Ironically, the developers had financing but lost it for lack of a slots license.<sup>245</sup> If approved, Valley View Downs would be the last of four "racinos" permitted by the state's gaming law.<sup>246</sup>

The SugarHouse casino in Philadelphia is likewise facing delays.<sup>247</sup> It was among the first casinos to be approved for a slots license but just recently broke ground in September 2009, nearly three years after its application was approved.<sup>248</sup> Citizen opposition and problems securing construction permits and financing are credited for its delay.<sup>249</sup> SugarHouse is now projected to open in August 2010.<sup>250</sup>

Another Philadelphia casino, the Foxwoods, also is behind schedule, with a projected opening date of May 2011.<sup>251</sup> It, too, was

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239. See *supra* part III.A.3 and accompanying text.

240. Relief Certain, *supra* note 120.

241. *Id.*

242. Relief Certain, *supra* note 120.

243. *Lawrence County still waiting for its racino*, PITTSBURGH POST-GAZETTE, Aug. 17, 2009.

244. *Id.*

245. *Id.*

246. *Id.* The other three sites are near Harrisburg, Philadelphia, and Erie. *Id.*

Unfortunately for Valley View Downs, the delay could be devastating. Ohio recently approved slot machines, which will compete with Valley View Downs (and other Pennsylvania casinos). See *id.* See also *infra* notes 282-293 and accompanying text (discussing Ohio's competition).

247. *Financing for Philadelphia casino approved*, PITTSBURGH POST-GAZETTE, Sept. 17, 2009.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Pa. regulators grant extension for casino*, THE NEWS JOURNAL (Wilmington, DE), Aug. 29, 2009. It is possible that the opening of Foxwoods will be delayed until May 2012. Jennifer Lin, *Amendment would give Foxwoods another year's extension*, THE PHILADELPHIA INQUIRER, Nov. 17, 2009, at B1. A proposed bill that would legalize table games in Pennsylvania includes an amendment allowing for a three-year extension, instead of the two Foxwoods already received. *Id.*

awarded its slots license in 2006 but was repeatedly delayed.<sup>252</sup> In August 2009, the Gaming Control Board approved a 21-month extension.<sup>253</sup>

In addition, an economic slowdown is hurting casinos across the country,<sup>254</sup> including those that recently opened in Pennsylvania.<sup>255</sup> In 2008, Split Rock Lodge in Carbon County withdrew its application for one of two slot machine licenses available to vacation resorts.<sup>256</sup> Mohegan Sun at Pocono Downs, the first casino to open in Pennsylvania, suffered a 7 percent decline in wagers between Sept. 29 and Oct. 5, 2008, compared to the same week in 2007.<sup>257</sup>

Less than a year later, however, the state's casinos were reporting a 20 percent increase between August 2008 and August 2009 revenues.<sup>258</sup> The following month gross revenue increased nearly 30 percent over the previous year.<sup>259</sup>

So was the decline just a short-term bump in the road? No. What the numbers do not tell is that two more casinos had since opened, adding to the pot of money being generated. Sands Casino Resort Bethlehem and Rivers Casino in Pittsburgh opened May 22, 2009, and August 9, 2009, respectively.<sup>260</sup> In September 2009, Sands posted \$18.5 million in revenue, and Rivers Casino posted nearly \$15.6 million.<sup>261</sup>

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252. *Id.*

253. *Id.*

254. Suzette Parmley, *Telltale signs of hard times in Atlantic City*, THE PHILADELPHIA INQUIRER, Aug. 19, 2009, at E1. Atlantic City revenue is at its lowest in more than a decade, and it suffered its first back-to-back months of double-digit declines in the summer of 2009. *Id.* Even gambling mecca Las Vegas has not been spared. Gambling revenue dropped 3.6 percent in September 2009, which marked the twenty-first straight month for a decline. Suzette Parmley, *Vegas on losing end of rough economy*, THE PHILADELPHIA INQUIRER, Nov. 19, 2009, at A1. Three casino companies posted huge losses in the third quarter of 2009. *Id.* (Las Vegas Sands Corp., \$123 million net loss; MGM Mirage, \$750.4 million net loss; and Harrah's Entertainment Inc., \$1 billion net loss). The city is also losing millions in tourism dollars. *See id.*

255. *See* Rob Bartizek, *Casino copes with slots slowdown: Mohegan Sun CEO says company bracing for slow months ahead, readying for eventual economy rebound*, THE TIMES LEADER, Oct. 12, 2008, available at [http://www.timesleader.com/business/Casino\\_copes\\_with\\_SLOTS\\_SLOWDOWN\\_10-12-2008.html](http://www.timesleader.com/business/Casino_copes_with_SLOTS_SLOWDOWN_10-12-2008.html).

256. *Id.*

257. *Id.* The Las Vegas Strip experienced a similar decline in August 2008 and an even more severe drop in July 2008, when gambling revenue fell 15 percent. *Id.* Atlantic City casinos are also struggling, with revenue dropping 15 percent in the first eight months of 2009. Denise Allabaugh, *Mohegan Sun revenue up in third quarter while Mount Airy drops*, THE CITIZENS' VOICE (Wilkes-Barre, Pa.), Oct. 18, 2009. Because of the decrease, casinos in Atlantic City cut more than 1,000 jobs. *Id.*

258. *August revenue up 20 percent at Pennsylvania casinos*, PITTSBURGH BUSINESS TIMES, Sept. 3, 2009.

259. Press Release, Pa. Gaming Control Board, PA casinos show nearly 30 percent revenue increase for September, PR Newswire (Oct. 2, 2009).

260. *Id.*

261. *Id.*

Subtract the combined \$34.1 million that the two new casinos generated and the gross revenue at the seven casinos operating in 2008 increased by less than \$6 million.<sup>262</sup> Without the additional 8,000 slot machines in operation,<sup>263</sup> the revenue picture is not nearly as rosy.

In fact, a closer look at the numbers reveals a decrease in revenue from 2008 to 2009 at five of the seven original casinos.<sup>264</sup> Take the new casinos out of play and the first seven casinos to open actually posted a 3.54 percent decline in August 2009 compared to August 2008.<sup>265</sup> The losers included Mount Airy Resort and Casino, which posted a 19.19 percent decline; Presque Isle Downs, which posted a 12.23 percent decline; Harrah's Chester Casino and Racetrack, which posted a 10.83 percent decline; Mohegan Sun at Pocono Downs, which posted a 4.92 percent decline; and Philadelphia Park Casino and Racetrack, which posted a 4.04 percent decline.<sup>266</sup>

To rejuvenate the industry, several casinos have been resorting to special promotions. For example, Presque Isle Downs in Erie increased its revenue by more than half a million dollars between Aug. 10 and Aug. 16, 2009, in part because it gave away free slots plays to Players Club members.<sup>267</sup> The Sands, which opened in May, gave away free money to play during its September 2009 promotion.<sup>268</sup> After the September gimmick ended, the amount wagered dropped \$7 million in one week.<sup>269</sup> To revive interest, it offered a limited edition 2009 Chevrolet Corvette ZR1, valued at \$118,000, over Labor Day.<sup>270</sup> The result? Nearly \$61 million in wagers and \$4.8 million in gross terminal revenues.<sup>271</sup>

Gaming consultants predicted Pennsylvania's growth spurt would level out.<sup>272</sup> Even one of the state's newest casinos is feeling the pinch. The Sands was the state's fifth busiest casino during the week of Sept.

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262. See *id.* for comparative gross terminal revenue statistics from each casino. Gross terminal revenue is the amount of money left over after winners are paid.

263. *Id.*

264. *August revenue up 20 percent at Pennsylvania casinos, supra note 258.*

265. *Id.*

266. *Id.*

267. John Guerriero, *Revenue down at Presque Isle Downs*, ERIE TIMES-NEWS, Aug. 20, 2009.

268. *Sands revenues drop, but will likely grow this week*, THE MORNING CALL, Sept. 10, 2009.

269. *Id.*

270. *Id.*

271. *Revenues from slots drop at Sands casino*, THE MORNING CALL, Sept. 22, 2009.

272. See Bartizek, *supra note 255* (quoting Joe Weinert of Spectrum Gaming Group, "[W]e predict that growth is going to slow. The casino industry will follow the larger economic picture.>").

21-27, 2009, but kept just \$3.98 million in gross terminal revenue.<sup>273</sup> This marked the first time gross terminal revenue dipped below \$4 million for the four-month-old casino.<sup>274</sup> At a public forum in October 2009, panelists admitted the Sands was underperforming.<sup>275</sup> Gaming analyst Robert LaFleur told a crowd of about 100 residents that the Sands' take was expected to be \$300 per machine per day but it is closer to \$200.<sup>276</sup>

Competition from within the Commonwealth and outside the state may be fueling the fire. Monroe County's Mount Airy Casino Resort blamed the opening of the Sands Casino and Resort in Bethlehem in May 2009 for its 15 percent dip in the third quarter of 2009.<sup>277</sup> "When a competitor opens up so close, you expect to split that market with them," said George Toth, president and chief executive officer of Mount Airy.<sup>278</sup> In October 2009, Meadows Racetrack & Casino near Pittsburgh laid off workers after a dismal summer.<sup>279</sup> Its owner Bill Paulos cited the August opening of Rivers Casino in Pittsburgh as one reason for its drop.<sup>280</sup>

Interestingly, Pennsylvania's legalization of slots is tabbed as the reason for Atlantic City's decline,<sup>281</sup> but soon the tables may be turned thanks to Ohio. In November 2009, the Buckeye State legalized gambling.<sup>282</sup> Voters approved a referendum, called Issue 3, which would amend Ohio's constitution and permit four casinos to operate, by a 53 percent to 47 percent margin.<sup>283</sup> Ohioans previously rejected similar initiatives four times before, including two times in the past three years.<sup>284</sup> One year earlier, nearly two-thirds of voters said no to a proposed casino in Clinton County.<sup>285</sup>

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273. *Sands revenues continue to lag*, THE MORNING CALL, Sept. 29, 2009.

274. *Id.*

275. Nicole Radzievich, *Gambling forum hits the highs and lows*, THE MORNING CALL, Oct. 23, 2009, at A1.

276. *Id.*

277. Allabaugh, *supra* note 257.

278. *Id.* The two casinos are within a one hour drive of one another.

279. Mike Weeschagin, *Meadows Racetrack & Casino cites economy, slow season for cuts in staff*, PITTSBURGH TRIBUNE REVIEW, Oct. 15, 2009.

280. *Id.*

281. Parmley, *supra* note 254 ("Since the first Pennsylvania slots house debuted in November 2006, Atlantic City's slots revenue has steadily eroded.").

282. Jon Craig, *Voters OK casinos*, THE CINCINNATI ENQUIRER, Nov. 4, 2009.

283. Joe Hallett & Mark Niquette, *Casinos finally hit payoff*, THE COLUMBUS DISPATCH, Nov. 5, 2009, at 1B.

284. James Nash, *State Issue 3; Ohio OKs casinos*, THE COLUMBUS DISPATCH, Nov. 4, 2009, at 1A.

285. *Id.*



Although Ohio casinos have a long road before opening,<sup>286</sup> they have the potential to have a significant impact on their neighbors, including Pennsylvania. Casinos in western Pennsylvania likely will feel the impact of casinos opening in Cleveland, Cincinnati, Columbus, and Toledo. The Rivers Casino in Pittsburgh could lose traffic once the Cleveland facility opens.<sup>287</sup> Erie's Presque Isle Downs is also a one-hour drive from Cleveland and could be impacted. Casino officials projected Ohio residents would comprise at least one-fifth of its customer base when it opened.<sup>288</sup> "We've seen it time and time again—for many gamblers convenience is the No. 1 criteria in choosing a casino," said gaming analyst Joe Weinert.<sup>289</sup> Another analyst, Andrew Zarnett, said Ohio's casinos would "cannibalize gaming revenues at West Virginia, southern Indiana, and Western Pennsylvania properties."<sup>290</sup>

Ohio casinos have another advantage over Pennsylvania casinos. They are taxed at a significantly lower rate—33 percent compared to Pennsylvania's 55 percent.<sup>291</sup> As a result, casino operators in Pennsylvania are pushing lawmakers to finalize plans to add table games to the mix (and at a much lower tax rate).<sup>292</sup> "We at least would be able to have a level playing field," said David LaTorre, spokesman for the Meadows Racetrack & Casino in Washington County.<sup>293</sup>

While all may have been fine when the first property tax reduction was made in 2008, several things have occurred that may hurt future efforts.<sup>294</sup> Therefore, Act 1 gambles on casinos to fund future property tax relief.

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286. Ohio legislators have six months to pass legislation enabling casino development. Craig, *supra* note 282. It would take about a year before ground is broken, and it would be 2012 before the first casino would open its doors. *Id.*

287. Gary Rotstein, *Ohio casinos will mean competition for Pa., W.Va.*, PITTSBURGH POST-GAZETTE, Nov. 5, 2009, at B-1 (quoting George Matta, Rivers spokesman, "We are developing a strong following out of the Ohio market. Our bus traffic is increasing, plus we have commuters for the day.").

288. *Id.*

289. *Id.*

290. Suzette Parmley, *Pa. slots revenue up, but competition looms*, THE PHILADELPHIA INQUIRER, Nov. 5, 2009, at D4.

291. Rotstein, *supra* note 287.

292. *Id.* See *infra* part III.C.3 for a discussion of efforts to bring table games to Pennsylvania.

293. *Id.* Mr. Torre did not know what percentage of Ohioans make up his casino's customers but acknowledged that nearby competition would be "a concern." *Id.*

294. Besides the issues previously discussed, another problem lurking in the shadows is an investigation into how slots licenses were awarded in the first place. See Matt Birkbeck, *State grand jury looking into how gaming board issued slot licenses*, THE MORNING CALL, Nov. 19, 2009, at A11; Tom Barnes, *Attorney General investigating casino license awardees*, PITTSBURGH POST-GAZETTE, Nov. 19, 2009, at B-1.

## 7. Reductions Less than Promised

Act 1's promised 35 percent property tax reduction has not materialized.<sup>295</sup> In reality, reductions are closer to 10 percent.<sup>296</sup> The reductions in the first two years have been mostly unchanged, though some districts actually saw a smaller reduction in year two.<sup>297</sup> Each school district in Bucks County, for example, received less in relief in 2009 than in 2008.<sup>298</sup>

"It's not the panacea we've been promised," said State Rep. Paul Clymer.<sup>299</sup> The Bucks County Republican called Act 1 "a major disappointment to the people of Pennsylvania" and alleged that higher figures were used during the debates to garner the public's support for gambling.<sup>300</sup>

The problem is compounded by raises in property taxes, which basically made any reductions a wash.<sup>301</sup> Also, more homeowners may be applying and qualifying for homestead exclusions, meaning the pot needs to be split in more ways.<sup>302</sup>

## 8. Questionable Source of Funding

In addition, there is the issue of whether education should be funded, in any way, by gambling.<sup>303</sup> Elanco School Board sparked this ethical debate when it turned down more than \$440,000 in slots revenue

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295. Joan Hellyer, *Drop in tax bills comes up short*, BUCKS COUNTY COURIER TIMES, July 12, 2009, at 1.

296. Relief Certain, *supra* note 120.

297. Hellyer, *supra* note 295.

298. Gary Weckselblatt, *Property tax relief takes a little dip*, BUCKS COUNTY COURIER TIMES, May 5, 2009, at 1.

299. *Id.*

300. Gary Weckselblatt, *More slots money equals 2nd tax cut*, BUCKS COUNTY COURIER TIMES, March 30, 2009, at 1.

301. Bill Vidonic, *Relief from slots revenue overbilled*, BEAVER COUNTY TIMES, May 18, 2009.

302. See Heather Faulhefer, *Break on tax same as '08*, THE EVENING SUN (Hanover, Pa.), May 7, 2009. See also *\$200 tax break for Pa. homeowners*, BUCKS COUNTY COURIER TIMES, April 14, 2009, at 1.

303. One columnist summed up his views on the debate:

When the legislature first considered the idea of using money from legalized slot machines to cut school district property taxes, some called it "slots for tots." It was intended to be derisive, to show we were using an unsavory source of money for the noble goal of educating children. But I think we should embrace the alliterative opportunities. Let's have "Poker for Paving," "Black Jack for Jails," and "Craps for College."

Mark Gydish, *Step right up and place your bets on [the] future*, THE TIMES LEADER (Lancaster, Pa.), Oct. 8, 2009.

in May 2008.<sup>304</sup> By a 5-3 vote, it became the first school district in Pennsylvania to say no to gaming revenue, citing the “social ills associated with slot machine operations” as its primary reason.<sup>305</sup>

The community was split on the decision. Some residents stood behind their school board directors.<sup>306</sup> Others chastised the board.<sup>307</sup> Each would ultimately have his or her say, as Act 1 requires any district that turns down slots money to ask voters for their opinions.<sup>308</sup> At the Nov. 4, 2008, general election, voters of the district were asked if they favored receiving state funds to reduce property taxes.<sup>309</sup> They overwhelmingly voted in favor of receiving property tax relief, thus overruling the board.<sup>310</sup>

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304. Brian Wallace, *Elanco: No to \$lot\$: Lone district in state to reject gambling revenue*, INTELLIGENCER JOURNAL, July 2, 2008, available at <http://articles.lancasteronline.com/local/4/223883>. The decision meant that nearly three-quarters of the district's property owners who had sought and received homestead or farmstead exclusions, 6,644 owners, would not get the \$66.53 reduction they would have been entitled to had the district accepted the allocation. *Id.* Although \$66.53 sounds miniscule, it would have offset nearly all of the \$69 increase in properties taxes that the average property owner would pay for the fiscal year. *Id.*

305. *Id.* Board president Loren Martin said, “I think it’s kind of ironic that we bring something into the state that creates social problems in our families, and we’re using it to fund education. It just doesn’t make a lot of sense.” *Id.*

306. See Michael Yoder, *Elanco board hears citizen ire on slots money refusal; Some come to defense of members*, INTELLIGENCER JOURNAL, July 22, 2008, available at <http://articles.lancasteronline.com/local/4/224811>. “Your decision makes good sense and is certainly a step towards a safer community and stronger families. I can assure you that there are many taxpayers in the Elanco School District that applaud your decision based on moral and ethical principles,” said resident Galen Martin, who also presented letters signed by three local churches in support of the board. *Id.* See also Jody Wenger, *Opinion, Right thing to do: Slots not a winner*, LANCASTER SUNDAY NEWS, July 27, 2008 (“The board members of Elanco have demonstrated long-range thinking in realizing that the seemingly immediate benefits of accepting these funds do not outweigh the detrimental effects of gambling to individuals, families, and society as a whole.”); Robyn Meadows, *Elanco voters buck school board, accept gambling dollars to lower taxes*, LANCASTER NEW ERA, Nov. 5, 2008, available at <http://articles.lancasteronline.com/local/4/229769> (quoting district resident Holly Gage, “I support property tax, but not at the expense of someone’s disease (gambling addiction).”).

307. See Yoder, *supra* note 306. One resident presented the board with a petition containing 850 signatures calling for the school board members who voted in favor of rejecting the money to resign. *Id.* Another resident, Ed Warner, said, “You are not the moral leaders of our community. We have ministers, priests, rabbis. You are school board administrators.” *Id.*

308. 53 P.S. § 6926.904.

309. Patrick Burns, *Elanco tax relief now up to voters*, INTELLIGENCER JOURNAL, Nov. 1, 2008, available at <http://articles.lancasteronline.com/local/4/229588>.

310. Patrick Burns, *Elanco OKs slots money, Was only district in state to refuse tax relief dollars*, INTELLIGENCER JOURNAL, Nov. 5, 2008, available at <http://articles.lancasteronline.com/local/4/229739>. Vote totals revealed that 7,723 of the 11,033 voters approved the referendum to accept the slots money. Election returns, <http://66.216.166.82/PubICE/default.asp?Category=VotesLC&Service=Totals&O=0862&Cat=Q> (last visited Nov. 24, 2009). The numbers mirrored predictions. Tim Shay, spokesman for Tax Alliance, a

Despite the vote, the controversy created an interesting moral debate for and against Act 1. Antigambling activists argue that casinos will “destroy the fabric of a community.”<sup>311</sup> Police arrested more than a dozen people for various acts of civil disobedience after protesting at the construction site for a Philadelphia casino.<sup>312</sup> Supporters point out that, thus far, there have been little, if any, problems arising out of casinos.<sup>313</sup> Even before the Sands Casino opened, opponents were pointing out the moral evils associated with gambling, but since it has opened, even the staunchest of opponents admit such problems have not materialized.<sup>314</sup>

### C. *The Future of Act 1*

Almost immediately after the 2007 primary election, in which the first front-end referendum was posed to voters and overwhelmingly defeated, the battle lines were drawn. Some people defended Act 1 while others looked to bury it.

Supporters heralded the act for finally accomplishing what three previous acts failed to do: the promotion of equality in taxes for all Pennsylvanians. For instance, State Representative P. Michael Sturla, a Democrat from Lancaster County, defended the legislation, saying Act 1 struck a balance between tax burdens for seniors and others.<sup>315</sup> Another

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group founded in response to the board’s decision, predicted an “overwhelming vote to take the money.” Burns, *supra* note 309. An informal poll by the Lancaster newspaper, the *Intelligencer Journal*, also found 81 percent of the 675 respondents disagreed with the board. *Id.*

Although the referendum to accept the slots money was approved, it will not mean immediate tax relief for residents this year. It would take until the 2009-10 school year before Elanco residents actually would have their property taxes reduced. Robyn Meadows, *Elanco voters buck school board, accept gambling dollars to lower taxes*, LANCASTER NEW ERA, Nov. 5, 2008, available at <http://articles.lancasteronline.com/local/4/229769>.

311. Nicole Radziewich, *Gambling forum hits the highs and the lows*, THE MORNING CALL, Oct. 23, 2009, at A1. A Department of Health survey showed that 46 percent of the 1,000 Pennsylvania residents age 18 or older gambled in the previous year. Gary Rotstein, *Younger men dominate table games*, PITTSBURGH POST-GAZETTE, Nov. 2, 2009, at A-1. Only 1.4 percent reported gambling caused any personal or financial problems. *Id.* Because the survey relied on self-reporting, the numbers may be low. *Id.*

312. Peter Mucha & Robert Moran, *14 protesters arrested at site of SugarHouse Casino*, PHILADELPHIA INQUIRER, Sept. 30, 2009, at B2.

313. See, e.g., Radziewich, *supra* note 311; Bill White, *Gaming forum turned into lovefeast*, THE MORNING CALL, Oct. 29, 2009, at A19.

314. White, *supra* note 313. Opponents say the impact will still be felt. *Id.* (quoting David Wickmann of Moravian Church Northern Province, “This is a very early stage in the process. . . . Typically, this will not pop up until four or five years down the road.”)

315. See Dave Pidgeon, *Voters to weigh tax shift, but Act 1’s critics says it will hurt many, benefit few*, LANCASTER INTELLIGENCER JOURNAL, May 2, 2007, at A-1.

Act 1 supporter, Governor Rendell, expressed disappointment with the election results.<sup>316</sup> However, he faulted voter confusion for the defeat.<sup>317</sup>

Opponents of Act 1 quickly reacted to the Governor's remarks. Newberry Township resident Dennis Smith claimed voters made an intelligent decision, not one guided by ignorance.<sup>318</sup> State Senator Mike Waugh, a Republican from Shrewsbury, also disagreed that voter confusion was to blame for the vote.<sup>319</sup> Although the Pennsylvania School Boards Association (PSBA) remained relatively neutral on Act 1 prior to the vote,<sup>320</sup> after the vote Thomas Gentzel, PSBA's executive director, said taxpayers made their choice.<sup>321</sup>

### 1. Why Something Needs to Change

Whether one believes the law is a success or a failure, one thing is true: "We're still better off with (Act 1) than without it."<sup>322</sup> But why should taxpayers settle? Why should taxpayers not demand true property tax relief? And why can't lawmakers deliver? The answer is they should and can. Property tax bills are a huge burden for everyone, and no one should be forced to choose between putting food on the table, purchasing life-sustaining medications, or heating their home during the winter versus paying their property tax bills.

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316. See Press release, Commonwealth of Pa., Governor Rendell Issues Statement on Act 1 Referenda Results (May 16, 2007), available at <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=463172>.

317. See *id.* (quoting Gov. Rendell: "Unfortunately, in many cases, the full value of the property tax relief that the shift would have provided was not clear to the voters," and "Had the district fully informed its voters of the total value of the tax shift, residents might have voted to cut their property taxes by 25 percent. But they simply were not told the facts.").

318. See Dennis Smith, Letter to the Editor, *'No' vote pleasing*, THE PATRIOT-NEWS, May 21, 2007, at A-6 ("I don't claim to have all the answers; however, rest assured the voting public was not 'confused.' To the contrary, the voting public was quite lucid with their choice of an emphatic 'no' to Act 1.").

319. See Charles Schillinger & Christina Kauffman, *Lawmakers on property tax reform: Start over*, THE YORK DISPATCH, May 17, 2007 (quoting Sen. Waugh: "I give the voters a lot more credit than that. There's no question voters went to the ballot box not in favor of an income tax increase in return for property tax relief.").

320. See Thomas J. Gentzel, Op-Ed, *PSBA's Position on Property Tax Reform* (October 2005), available at <http://www.psba.org/issues-advocacy/issues-research/act1-tax-reform/propertytaxrelief-OPED101405.asp> (last visited Nov. 27, 2009).

321. Jo Ciavaglia, *What's next for Act 1*, PHILLYBURBS.COM (May 17, 2007), available at <http://www.phillyburbs.com/pb-dyn/articlePrint.cfm?id=1348065> (last visited Nov. 27, 2009) (quoting Mr. Gentzel: "The message is abundantly clear, and that is the public doesn't want a local tax shift to solve the school funding problem.").

322. Hellyer, *supra* note 295 (quoting said David Steil, a former state representative who helped craft the law).

That said, property taxes are a major source of revenue for school districts, not to mention counties and municipalities. If property tax revenue is eliminated, then it must be replaced with something.

The state's portion of education costs accounted for an average of approximately 38 percent of the actual costs to run a school district.<sup>323</sup> Although the state's annual allocation to public education increased each year, the increased revenue did not keep pace with the increased costs.<sup>324</sup> In fact, Pennsylvania's education spending barely kept pace with the rate of inflation during the ten years between 1992 and 2002.<sup>325</sup>

Pennsylvania schools fared poorly in comparison to schools in other states in terms of education funding. A United States Census Bureau report found Pennsylvania ranked 46th in terms of total education funding provided by the state.<sup>326</sup> Only Illinois, Nebraska, and South Dakota provided less in terms of state subsidies.<sup>327</sup> At the head of the class was Massachusetts, which also has the best overall student achievement.<sup>328</sup> Compared to Pennsylvania, Massachusetts spends \$2,100 more per pupil at the state level.<sup>329</sup>

At a time when Pennsylvania pupils are starting to show record progress in student achievement, "[w]e cannot afford to lose momentum now."<sup>330</sup> In recent years, Pennsylvania has made a firm commitment to education. For instance, in 2003, there were 297 school districts spending less than \$8,500 per student.<sup>331</sup> By 2007-08, no school districts spent less than \$8,500 per student.<sup>332</sup> The increased commitment resulted in Pennsylvania being the only state to make progress in reading and math at the primary and secondary levels.<sup>333</sup>

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323. See Eleanor Chute, *Pa. schools say they need more help from state*, PITTSBURGH POST-GAZETTE, May 22, 2007, available at <http://www.post-gazette.com/pg/07142/787969-298.stm>. See also PA. SCH. BDS. ASS'N, A BLUEPRINT FOR COMPREHENSIVE LOCAL TAX REFORM 12 chart (2005), available at <http://www.psba.org/issues-advocacy/issues-research/act1-tax-reform/BlueprintLocalTaxReform.pdf> [hereinafter BLUEPRINT].

324. BLUEPRINT, *supra* note 323, at 11.

325. *Id.* at 12.

326. Press Release, Pa. Dept. of Ed., U.S. Census report reinforces importance of adequate school funding in this year's budget (July 28, 2009). The report studied funding for the 2006-07 school year. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.* (quoting Gerald Zahorchak, state education secretary).

331. Press Release, Commonwealth of Pa., Governor Rendell Signs Education Budget Preserving Pennsylvania's Academic Progress, Keeping Property Taxes Down (Oct. 9, 2009).

332. *Id.*

333. *Id.*

## 2. How Can Change be Accomplished

Even though there is little agreement about Act 1, one thing is clear: something else needs to be done, and it did not take long for a new proposal to reach the table. Just days after the primary election in 2007, Gov. Rendell unveiled his plan, which proposed to increase the state sales tax and use the revenue to reduce property taxes.<sup>334</sup> Forty percent of the revenue from the one percent increase in the sales tax would fund property tax relief.<sup>335</sup> Opponents of the plan said the state sales tax would have to be increased by at least 3 percent from its current 6 percent rate.<sup>336</sup>

State Representative Sam Rohrer, a Berks County Republican,<sup>337</sup> also slammed the governor's plan.<sup>338</sup> Instead, he lobbied for support of his School Property Tax Elimination Act (SPTEA).<sup>339</sup> Under the plan, property taxes are phased out and nuisance taxes are eliminated.<sup>340</sup> The state sales tax is not increased but is expanded to cover more items subject to it.<sup>341</sup> Lastly, the local school EIT would be eliminated and replaced with a higher state income tax.<sup>342</sup> SPTEA is receiving a lot of publicity and earned the endorsements of the Pennsylvania Taxpayers Cyber Coalition (PTCC) and Pennsylvania Coalition of Taxpayer

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334. See Press Release, Commonwealth of Pa., Governor Rendell Issues Statement on Act 1 Referenda Results (May 16, 2007), available at <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=463172> (quoting Gov. Rendell: "As we enter into a tough budget process, we may find that a sales tax increase is necessary and I want to be sure that if we need to increase this tax, we dedicate a substantial portion of any such increase to lower property taxes statewide.").

335. Charles Schillinger and Christina Kauffman, *Lawmakers on property tax reform: Start over*, THE YORK DISPATCH, May 17, 2007.

336. See Ciavaglia, *supra* note 321.

337. Property tax reform is likely to be thrust into the spotlight once again, as Rep. Rohrer recently announced his candidacy for governor. James O'Toole, *Rep. Rohrer announces candidacy for governor*, PITTSBURGH POST-GAZETTE, Nov. 18, 2009, at B-1.

338. Press Release, State Rep. Samuel Rohrer, Rohrer opposes governor's sales tax expansion (Aug. 25, 2009) ("The governor seems unable to understand that, on taxes, no means no;" "The governor's proposal is just another attempt to dig deeper into the pockets of taxpayers;" "The governor just doesn't get it.").

339. H.B. 1275, 2007-08 Gen. Assem., Reg. Sess. (Pa. 2008). The bill, like Rep. Perzel's bills, died in committee. See Andrew M. Seder, *Lack of agreement hindering property tax reform*, THE TIMES LEADER, Aug. 10, 2008, at A-1. It has not been reintroduced as a house bill, but it is listed as House Resolution 1275. Elizabeth Skrapits, *Groups show support for cutting school property tax*, THE CITIZENS' VOICE, Sept. 25, 2009.

340. *Id.*

341. *Id.*

342. *Id.*

Associations (PCTA), grassroots groups with members from across the commonwealth lobbying for reform in school finance.<sup>343</sup>

State Representative John Perzel, a Philadelphia Republican, proposed the Older Pennsylvanian Property Tax Elimination Act.<sup>344</sup> The former House Speaker's plan would completely eliminate property taxes for Pennsylvanians over the age of 65 with income of less than \$40,000 annually.<sup>345</sup> Although the act passed in the house,<sup>346</sup> it was referred to the House Appropriations Committee, where it died.<sup>347</sup>

PSBA rightly recognizes that property tax relief is not an easy fix and has called for "comprehensive tax reform"<sup>348</sup> by asking legislators to reconsider its 2005 proposal for property tax reform.<sup>349</sup> The PSBA plan called for greater authority by school districts to levy taxes.<sup>350</sup> The measure seems counterintuitive at first, especially in light of the number of people thinking school board spending is out of control to begin with. But PSBA contends that school districts relied so heavily on property

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343. See Pa. Taxpayers Cyber Coalition, <http://mysite.verizon.net/drbsr/PTCCWeb/index.htm> (last visited Nov. 24, 2009). The groups even organized a rally at the State Capitol Rotunda in June to show their support for the bill. See Pa. Taxpayers Cyber Coalition, Save Our Homes Rally, June 2, 2008, available at <http://mysite.verizon.net/drbsr/PTCCWeb/rally060208.htm> (last visited Nov. 24, 2009).

344. H.B. 1600, 2007-08 Gen. Assem., Reg. Sess. (Pa. 2008) and H.B. 1951, 2007-08 Gen. Assem., Reg. Sess. (Pa. 2008). As the name suggests, only senior citizens would benefit under this plan, and as a result, it has drawn its share of criticism. See, e.g., Guy Petroziello, *Taxing tax freeze*, BUCKS COUNTY COURIER TIMES, Sept. 20, 2009, at 12 ("But giving senior citizens all the due they deserve, the thousands and thousands of taxpayers who have not yet reached their golden years are not, as they say, chopped liver.").

345. *Id.* The City of Pittsburgh has adopted a similar ordinance to aid seniors on fixed incomes. *Low-income seniors in Pittsburgh given property tax relief*, PITTSBURGH TRIBUNE-REVIEW, Sept. 16, 2009. Residents of the city who are at least 60 years old and earn less than \$30,000 annually will receive a 30-percent cut in their property tax bills. *Id.* Several other bills have also been introduced in the General Assembly that would benefit seniors, but instead of eliminating property taxes, they would freeze property taxes for seniors. See Weckselblatt, *Seniors warned*, *supra* note 210 (noting at least four bills that have been introduced). These bills are being motivated, primarily, by the looming tax hike anticipated to account for pension increases. See *supra* notes 209-217 and accompanying text for a discussion of the pension fiasco that could result in property taxes skyrocketing in the next couple years.

346. Press Release, State Rep. John Perzel, House Passes Perzel Amendment Eliminating Senior Property Taxes (Jan. 28, 2008), available at <http://www.johnperzel.com/?sectionid=268&parentid=1&sectiontree=268&itemid=1132>.

347. Press Release, State Rep. John Perzel, Perzel Launches Effort to Force Vote on Senior Property Tax Elimination Bill (Aug. 13, 2008), available at <http://www.johnperzel.com/?sectionid=268&parentid=1&sectiontree=268&itemid=1144>. The bill will have to be reintroduced since the session ended with it still in committee.

348. Ciavaglia, *supra* note 321 (quoting Mr. Gentzel).

349. See Eleanor Chute, *Pa. Schools say they need more help from state*, PITTSBURGH POST-GAZETTE, May 22, 2007, available at <http://www.post-gazette.com/pg/07142/787969-298.stm>.

350. BLUEPRINT, *supra* note 323, at 7.



taxes only because their ability to levy other taxes had been severely limited or even eliminated.<sup>351</sup> The plan also sought an increase in state subsidies<sup>352</sup> and asked the General Assembly to help school districts reduce costs, in part by eliminating unfunded mandates.<sup>353</sup>

At least two school districts (Tunkhannock and Coatesville area school districts) have asked lawmakers to repeal Act 1.<sup>354</sup> To date, this has not happened, but since its enactment, there have been numerous attempts to change Pennsylvania's landmark tax reform act.<sup>355</sup>

### 3. What Does the Future Hold

In 2009, Pennsylvania's failure to pass a budget by the start of the new fiscal year led to another card being dealt—the possibility of the legalization of table games.<sup>356</sup> The addition of table games would increase the bank, i.e., the General Fund, by adding \$200 million in revenue in 2009-10 and \$121 million in 2010-11.<sup>357</sup>

When slots were first approved, there was some talk that table games would follow, but not quite this soon. Governor Rendell said he hoped that the fourteen casinos authorized under the prior gaming law would be operational before table games were added to the mix.<sup>358</sup> “Economic exigencies,” however, forced lawmakers to fold.<sup>359</sup>

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351. *Id.*

352. *Id.* at 11.

353. *Id.* at 15-23.

354. Daniel Patrick Sheehan & Tom Coombe, *Ready or not, here's Act 1*, MORNING CALL, April 15, 2007, at A1.

355. Because of the sheer volume of amendments and new bills introduced dealing with property tax reform since Act 1's enactment, this comment examines only a select few. For instance, the PSBA gathered information on forty bills providing relief from unfunded mandates for the 2005-06 legislative session alone. See BLUEPRINT, *supra* note 323, at 29-33. The list was not exhaustive. *Id.* See also Andrew M. Seder, *Lack of agreement hindering property tax reform*, THE TIMES LEADER, Aug. 10, 2008, at A-1 for a short list and brief explanation of proposed bills.

356. As of the time this issue went to publication, no bill actually legalizing table games had been signed. However, the budget lawmakers approved and the governor signed, albeit several months late, used revenue from table games to help fill the budget gap. Barring some major difficulty, it is generally viewed as a matter of time before the details of the measure are worked out. See, e.g., Laura Vescey, *Table game deal expected soon*, THE PATRIOT-NEWS, Nov. 23, 2009.

357. John L. Micek, *Legislators lay cards on table*, THE MORNING CALL, Sept. 13, 2009, at A1.

358. *Id.*

359. *Id.* (quoting Gov. Rendell). The possibility remains that the state could actually be subject to a law suit by allowing table games so early in the game. Under the 2004 slots law, any major change to the law within five years of licensing, which occurred in late 2006, could result in the state having to pay back the casinos their one-time \$50 million licensing fee. *House bill prompts outcry from stand-alone casino operators*, PITTSBURGH POST-GAZETTE, Oct. 8, 2009.

Several issues still need to be hashed out concerning table games. One is at what rate to set the licensing fee and taxes. Rendell wants to charge a \$15 million licensing fee and tax table game revenues at 16 percent.<sup>360</sup> One of the House versions of a bill called for a 34 percent tax, more than twice what Rendell proposed.<sup>361</sup> Meanwhile, one of the Senate bills proposes to tax gaming revenue at 14 percent, with 2 percent going to the host municipality.<sup>362</sup> Democrats, who control the House, were seeking a \$20 million licensing fee, and Republicans, who control the Senate, were seeking a \$15 million licensing fee.<sup>363</sup>

What tax rate and licensing fee is ultimately decided upon is important in evaluating how successful table games will be. Setting too high of a tax could put Pennsylvania casinos at a disadvantage. For instance, New Jersey levies a 9.25 percent tax on Atlantic City casinos.<sup>364</sup> Pennsylvania already taxes slot machine revenue at 55 percent.<sup>365</sup> To remain competitive, casino operators are hoping for a lower licensing fee and tax rate and have spent thousands lobbying Harrisburg for the best deal.<sup>366</sup>

The addition of table games could result in a big payout to casinos. Table games typically draw a younger, more affluent crowd.<sup>367</sup> Projections show the addition of table games would result in a 25 percent increase in gross gaming revenue annually.<sup>368</sup> That amounts to at least \$165 million in new revenue each year.<sup>369</sup> “From an economic standpoint, Pennsylvania would be able to tap a whole other customer segment that right now is choosing to play in Atlantic City, West Virginia, upstate New York or Las Vegas.”<sup>370</sup>

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360. Jennifer Lin, *Rendell hits lawmakers on table-games delay*, THE PHILADELPHIA INQUIRER, Oct. 31, 2009, at B1.

361. *Id.*

362. *Id.*

363. John L. Micek, *Pieces of table games puzzle still missing*, THE MORNING CALL, Oct. 15, 2009, at A1.

364. Suzette Parmley & Mario F. Cattabiani, *Budget bill delayed by debate on taxing table games*, THE PHILADELPHIA INQUIRER, Oct. 20, 2009.

365. *Id.*

366. Matt Assad, *Sands spends the most to woo lawmakers*, THE MORNING CALL, Nov. 17, 2009, at A1.

367. Roger Quigley, *Casino plans 400 new 'good-paying jobs'*, THE PATRIOT-NEWS, Oct. 15, 2009. *See also* Rotstein, *supra* note 311.

368. Mark Belko, *Table games on the table*, PITTSBURGH POST-GAZETTE, Sept. 12, 2009, at A1 (quoting Joseph Weinert, a gaming consultant).

369. *Id.* The expansion into table games would also result in the creation of thousands of new jobs because they are labor intensive. *See* State Rep. Robert M. Tomlinson, Editorial, *Table games will yield 16,000 jobs and a billion dollar boost*, BUCKS COUNTY COURIER TIMES, Sept. 22, 2009, at 8 (estimating a 3.5 percent increase in slots revenue, 16,000 new jobs, \$150 million in tax revenue for the state, and a \$1 billion boost to the economy in general).

370. Belko, *supra* note 368.

What is also not clear is what the revenue will be used to fund. Property tax relief appears to be the wild card. More than 180 amendments have been introduced, but no consensus has been reached.<sup>371</sup> Senator Robert Tomlinson's plan funnels the money into the state's general fund.<sup>372</sup> Majority Whip Bill DeWeese's plan earmarks the revenue for property tax relief.<sup>373</sup> Rep. Ron Miller's amendment, which also allocated funds for property tax relief, failed to garner enough votes to pass, though.<sup>374</sup> State Rep. Paul Clymer also wants to see the funds go towards reducing property tax bills.<sup>375</sup> The measure also seems to have gained public support.<sup>376</sup> No one is currently showing their hand, so what exactly the addition of table games means for property tax relief remains to be seen.

#### IV. CONCLUSION

Property taxes comprise a substantial portion of tax bills and can easily pose a substantial burden on homeowners. Considering that education is funded by property taxes in large part, at least in Pennsylvania, the issue is further complicated when school finance is factored into the equation.

While Pennsylvania lawmakers have made a noble approach to balance lower taxes with quality education, their efforts have largely missed the mark. A trilogy of legislation between 1998 and 2004 each failed to get a passing grade from school districts and taxpayers. Act 1 is just the latest effort to reform school property taxes. Passed in 2006, the law mirrors earlier legislation, with one major exception: school districts must participate.

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371. *Debate over table games focuses on how to spend the revenue*, YORK DAILY RECORD, Oct. 6, 2009.

372. John L. Micek, *Table games would boost revenue, create jobs, panel is told*, THE MORNING CALL, Sept. 17, 2009, at A1.

373. *Id.*

374. Press Release, State Rep. Ron Miller, House Democrats kill Miller's attempt to provide property tax relief, support for senior citizens (Oct. 12, 2009).

375. Quigley, *supra* note 367.

376. See, e.g., Jim Gregory, Editorial, *Property taxes seeing no help from gambling*, THE MORNING CALL, Oct. 28, 2009, at A21 ("The sleight of the hand here, however, is that all of a sudden the table game money is being misdirected to the state general fund instead of to the property taxpayers."); Gregory Crosbie, Editorial, *Spending cuts preferable, but likely wouldn't survive*, THE MORNING CALL, Sept. 17, 2009, at A14 ("I have never been a big fan of gambling. Having said that, I realize that Nevada built Las Vegas on the back of gambling. Therefore, with the profligate spending by the state of Pennsylvania, we might as well allow table games in the slot casinos and tax the heck out of the profits."); Wayne A. Schiff, Editorial, *Pennsylvania is the house, and the house always wins*, THE MORNING CALL, Sept. 17, 2009, at A14 ("Slots are the bread and butter of the casino industry, but table games are where the odds are much more in favor of the house, and the more the house gets, the more my house gets.").

On its face, Act 1 appears to be a good law. It appears to offer tax relief to homeowners and extra incentives to senior citizens. In reality, however, the Taxpayer Relief Act is a tax shift in disguise, albeit a poor one. Besides being tied to the state's new slot machines, relief from school property tax is also dependent on increased income taxes. As a result, some taxpayers actually end up losing under the plan by having to pay more in income taxes than what they save in property taxes.

Despite having a greater voice in the taxing authority of school district, voters have avoided the temptation to gamble on Act 1. Consequently, lawmakers have considered several options to fix Act 1, ranging from repealing it to amending it. While the General Assembly tries to figure out its next move, all taxpayers can do is pull the lever on the slot machine and hope for some sort of payout.