

The Proposed Elimination of Property Tax: Another Attack on Local Control

by Ira Weiss, Esq.

Real estate tax provides over 80% of the revenue to fund school districts in Pennsylvania. House Bill 76/Senate Bill 76, also known as the Property Tax Independence Act, proposes to eliminate real estate taxes for school districts and replace that revenue with funding from a single state source.



Ira Weiss

There are several components to the Act:

- An increase in the state personal income tax from 3.07% to 4.95%;
- An increase in the state sales tax to 7%;
- Adding certain items which are currently not taxed to the taxable base including food, clothing and professional services such as washing, cleaning, waxing, polishing or inspecting a motor vehicle; dry cleaning and tailoring; adjustment, collection or reporting services; secretarial or editing services; pest control, building maintenance or cleaning services; and lawn care.

This Bill is the latest step in the legislature's grand plan to place the control of school districts and the revenue necessary to fund them in the hands of the state rather than allowing the control to remain at a local level. This erosion of control has been an evolutionary process. Act 34 of 1973, aka The Taj Mahal Act, was the first major move to trim local control. That Act requires voter referendum if school construction costs exceed estimates by a certain limit. The next move on local control came with the passage of Act 1

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which limits millage increases to the Employment Cost Index. Now comes HB/SB 76 which would erode even more local control of school district finances. School boards would no longer have taxing authority and districts will no longer have the ability to make decisions fundamental to educating their students.

Proponents of HB/SB 76 claim that the real estate tax is an archaic tax that no longer works to satisfy the economic needs of schools. They claim that an increase in personal income and sales taxes will be more fair and effective than property tax. However, what these supporters overlook is the benefits of the real estate tax for school districts and individual taxpayers. Real estate taxes are generally stable and predictable. They are relatively easy and inexpensive to collect. Local elected officials are answerable to local voters when they set the tax rate.

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Recent Developments on the Issue of Transgender Student Rights

by Annemarie K. Harr, Esq.



Annemarie K. Harr

On February 22, 2017, the Department of Justice, Civil Rights Division ("DOJ") and the Department of Education, Office for Civil Rights ("OCR") issued a joint Dear Colleague Letter that withdraws the statements of policy and guidance in the Dear Colleague Letter on Transgender Students that was issued on May 13, 2016. Importantly, the most recent Dear Colleague Letter does not make substantive changes to the law, nor does it create a need to revise school policies that allow for students to use facilities of the gender with which they identify, should your District already have such a policy in place.

In the February 22 Dear Colleague Letter, the DOJ and OCR state that under recent case law there is a conflict with how courts are interpreting the legal definition of "sex", which is relevant to the application of Title IX. In this context, the DOJ and OCR believe that states and local school districts should be in charge of establishing local educational policy, rather than enforcing school district policy by way of a federal mandate. Therefore, the previous federal guidance that required districts to allow students to, among other things, use facilities consistent with the gender with which the student identified, was withdrawn and rescinded.

Similarly important, on February 27, 2017, a preliminary injunction was granted by the U.S. District Court for the Western District of Pennsylvania in *Evancho et. al. v. Pine-Richland School District*. This ruling effectively prohibits Pine-Richland School District from forcing students who are transgender to use either single-user bathrooms or bathrooms labeled as matching their assigned sexes. The injunction does not bring closure to the case, but does allow the students to use the bathroom of the gender with which they identify while the final outcome is still pending.

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Proposed Elimination of Property Tax *continued*

If HB/SB 76 were to be passed, the results could be disastrous for individual taxpayers and school districts. The Bill shifts the tax burden from commercial taxpayers such as office buildings, malls, apartment owners and industrial taxpayers to individuals. If commercial taxpayers no longer have to pay property tax, individual taxpayers will have to cover that commercial property tax relief through increased personal income and sales tax. And, municipalities and counties may still levy real estate taxes against individuals. The Bill also affords school districts the ability to continue to levy real estate taxes to pay off existing debt. Most of this debt is issued as 20-year bonds, meaning that it could take many years for a total elimination of real estate tax. According to an analysis completed by PASBO (Pennsylvania Association of School Business Officials), about 43% of districts would need to keep at least 20% of their existing levy to pay down debt and a few districts would need to keep all or almost all of their levy to pay down current bonds. This means that individual taxpayers will end up paying increased personal income, sales, and property tax. Finally, both sales and income taxes are sensitive to overall economic conditions and an economic downturn means less revenue which means less predictability for school districts when estimating their tax revenues.

In 2015, the state Senate vote on this Bill resulted in a tie. The measure failed after a tiebreaking vote by Lt. Governor Mike Stack. Though it is unlikely that the Bill would have been passed in the state House and subsequently signed by Governor Wolf, the Bill is gaining momentum again. We will continue to keep you updated on any developments.



We're Speaking...

- Attorney Ira Weiss presented a seminar at the 2017 PASBO Conference and Exhibits in Pittsburgh on March 22, 2017. Mr. Weiss' session was titled, "Fair Labor Standards Act – Changes and Final Rulings."
- Attorney Weiss will also be participating in the 2017 Pennsylvania Bureau of Mediation and Pennsylvania Labor Relations Board Joint Conference on March 29, 2017 in Camp Hill. Mr. Weiss will serve as a panel member for a session on "Negotiating Health Care After the Affordable Care Act."
- On March 31, 2017, Attorney Weiss will be speaking on the topic of equalizing the millage rate after reassessment and other post-reassessment concerns at the Intermediate Unit 1 meeting of business managers.
- Attorneys Jocelyn Kramer and Rebecca Hall will be presenting at the National Business Institute's "FBAs and BIPs: An Essential Legal Guide" seminar in Pittsburgh on April 26, 2017. Ms. Kramer's session is entitled "Handling FBA/BIP Disputes: Essentials Schools Need to Prove Their Position." Ms. Hall will present on "BIPs and IEP Behavioral Components: Critical Legal Considerations" and "Special Education Due Process Hearing Steps and Best Practices."

Transgender Student Rights *continued*

Most recently, on March 6, 2017, the Supreme Court announced that it was sending the case in *G.G. v. Gloucester County School*

School Boards have the authority to create and enact policies for the benefit of the school district that they serve.

Board back to the Fourth Circuit Court of Appeals to be reconsidered in light of the February 22 Dear Colleague Letter. The case, similar to *Evancho*, was filed against the Gloucester County School Board for adopting a policy that requires students who are

transgender to use "alternate private" restroom facilities.

Despite all of this, what has remained consistent is a School Board's authority to create and enact policies for the benefit of the school district that they serve, so long as those policies are consistent with the law. Our office will continue to monitor these developments, and update you accordingly.

As always, if you have any questions regarding this topic, do not hesitate to contact our office.

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer, LLC.

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