



HB 1189, the Optional Property Tax Elimination Act (OPTEA)

On April 15, 2013, State Representative Seth Grove (R – 196, York County) introduced House Bill 1189, the Optional Property Tax Elimination Act. This legislation is simply another fraud being perpetrated on Pennsylvania taxpayers and was obviously designed to defeat HB/SB 76, the Property Tax Independence Act. The text of the legislation and a review of its history are here: <http://goo.gl/6chysM>

Early on Monday, September 23, 2013 – the first day of the new session – HB 1189 was shoved out of committee in less than a half-hour with little warning and was on the House floor for first consideration ninety minutes later. It passed second consideration on October 1 and had final passage and was sent to the Senate on October 2.

HB 1189 was not subjected to any committee hearings, was never analyzed by any of the various Capitol agencies that perform such analyses, and was passed through the House of Representatives without ANY debate. Such fast-tracked legislation that was passed so quickly and without the benefit of public comment or legislative scrutiny is very reminiscent of the 2005 midnight pay raise that caused the ouster of seventeen members of the General Assembly. The legislation is fully supported by the House GOP leadership led by Representative Mike Turzai, who undoubtedly encouraged the rapid movement of the bill.

The record of the vote for final House passage of HB 1189 is here: <http://goo.gl/RyabMV>

As of this writing, HB 1189 is in the Senate awaiting consideration.

An Analysis of HB 1189, the Optional Property Tax Elimination Act (OPTEA)

HB 1189, Representative Seth Grove's optional property tax "relief" bill is nothing more than a useless diversion to keep legislators from seriously considering more comprehensive measures like HB 76. All concerned should oppose this legislation for the reasons stated in this analysis.

OPTEA Guarantees Nothing

From the legislation (emphasis added):

"An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, providing for **OPTIONAL** property tax elimination."

"This chapter shall authorize a school district to levy, assess and collect an elimination tax as a means of **reducing** or eliminating property taxation."

What the bill says is that a local school district has the option of enabling any of three alternate taxes that include a business privilege tax, a mercantile (gross receipts) tax, or an earned income tax to reduce or eliminate school property taxes. This bill is actually an amendment to Act 511 of 1965 that authorizes schools to optionally derive revenue from a basket of ten different taxes. The amendment now authorizes the schools to use that revenue from three of those taxes to directly reduce school property taxes.

Note first of all that this is an OPTION, not a mandate. Local school boards may or may not enact this at their discretion. The local tax shift idea has been tried before in a slightly different form on three different occasions: Act 50, Act 72, and Act 1. With Act 50 and Act 72 the option to enable a shift to an earned income tax was given to the local school boards; very few chose to do this. With Act 1, the choice for a partial shift to a local earned income tax was given to the voters through a May 2007 referendum that was overwhelmingly rejected in 494 of 498 eligible school districts. Having been rejected on three separate occasions, Rep. Grove and his leadership are well aware that this kind of local shift is unacceptable to the taxpayers. Despite that, they will attempt it yet again in the hope that they can deceive the taxpayers into believing that they'll receive property tax "relief" and kill HB 76 at the same time.

Second, the bill says "reducing or eliminating" property taxation. It does not in any way guarantee total elimination. If the school district opts for a reduction rather than elimination, they can still continue to increase property taxes. Over time the property tax will rise to its original level, only then with new taxes to pay. And if the school district settles on a specific percentage of relief, will they increase the alternate tax to maintain that percentage when they increase property taxes? If they choose to totally eliminate the property tax through an EIT, the Act 1 limits that now exist for property taxes will apply to the EIT, meaning the school district can increase the income tax each year as they can now do with the property tax.

The OPTEA Replacement Revenue Sources Raise Costs for Everyone

Note one more part of the legislation:

"Section 613. Mercantile or business privilege tax.

(a) Wholesale dealers.--Each school district shall have the power and may levy, assess and collect a tax on each dollar of the whole volume of business transacted by wholesale dealers in goods, wares and merchandise.

(b) Retail sales.--Each school district shall have the power and may levy, assess and collect a tax on each dollar of sales by:

(1) Retail dealers in goods, wares and merchandise, including proprietors of restaurants or other places where food, drink and refreshments are served.

(2) Providers of services."

If the school district chooses one of these mercantile taxes the business owners will pass along those taxes to the end user, increasing prices for every shopper in the school district. If a school district enables this tax and a neighboring school district does not, it will drive business away from the enabling district to the one with lower prices, harming local businesses.

Worse, if a school district chooses to impose a mercantile tax in combination with an earned income tax it would be devastating to small businesses. The mercantile tax is assessed on gross sales, regardless of whether or not the business is profitable, so the merchant is taxed on the front end. The merchant then pays again on the back end through the earned income tax on his or her profits, effectively taxing the merchant twice on the same income.

Finally, see (b)(1) and (b)(2) above. Section (b)(1) does not specify what goods are to be taxed. Will the tax be imposed on providers of life necessities such as utilities, home heating fuels, and prescription drugs? "Services" in (b)(2) are not defined; will the mercantile tax apply to ALL services including tuition, health, hospital, and dental services, and home health care? Including the providers of these items and services in the mercantile tax base will almost certainly raise costs for consumers as providers increase prices to offset the increased taxes. The result of such overarching taxation would be to cause harm to the most vulnerable of Pennsylvania's taxpayers – the poor and those on fixed incomes.

OPTEA Is Clearly Discriminatory, Favoring Wealthy School Districts

Through its taxing methodology, OPTEA offers the greatest benefit to residents of those school districts that already have a strong tax base while giving no hope of relief to residents of districts that are poorer or do not already have a strong commercial property tax base.

What kind of relief will be given to the many school districts that are primarily residential and have no commercial tax base to utilize the mercantile or business privilege tax? What about districts that are now struggling because their residents do not have the cumulative wealth to pay for their schools through property taxes? How will a shift to a local EIT help them when that overall wealth is simply not available? This bill is designed, if actually enabled by the school district, to bring maximum relief to wealthy school districts while leaving poorer districts or those without a commercial tax base with no option to give relief to their property taxpayers. This legislation is blatantly discriminatory, favoring wealthy school districts and those districts with a large commercial tax base over poorer districts – where the relief is generally needed most – that do not have the required assets to offer relief through the provisions of this legislation.

OPTEA Has Little Legislative or Taxpayer Support

HB 1189 has, as of this writing, only 31 co-sponsors, many of whom are either first or second termers who are subject to leadership pressure or those longer-term Representatives who are firmly aligned with the leadership that opposes HB 76. There is NO support from taxpayers. In fact, the 84 member groups of the grassroots Pennsylvania Coalition of Taxpayer Associations will do all in their power to oppose this legislation and those who support it.

This legislation is a worthless fraud, the only purpose of which is to try to draw attention from, and offer a useless alternative to, HB 76. It has not been subjected to the vetting process by either committee hearings or by analyses from the IFO, Department of Revenue, or the House Appropriations Committee. It does nothing to solve the fundamental problems with the property tax and allows the legislature to again boast that they've given homeowners property tax "relief" while accomplishing absolutely nothing. The advantage for them is when school districts refuse to enable the local taxation the Harrisburg politicians can wash their hands of the matter by saying it wasn't their fault that it wasn't enabled and blame it on the school boards.

There is no comparison whatsoever between HB 1189 and HB 76. HB 76 totally ELIMINATES the school property tax on a statewide level; HB 1189 guarantees NOTHING.

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