

OPEN SPACE REFERENDA & TAX TECHNICAL BULLETIN

An open space referendum is an effective tool for raising funds specifically for conservation efforts. In Pennsylvania, local governments can use voter-approved funds to protect open spaces with agricultural, recreational, natural, scenic, historic, or cultural value. While a referendum is only legally required if proposed financing exceeds statutory debt or tax limits, it is often used even when those limits are not exceeded, as it ensures the revenue is dedicated to specific conservation purposes. Additionally, it can help secure future funding if additional debt or tax increases are needed.

Voter approved tax revenues or bond proceeds can be used for conservation purposes described in the ballot questions. Examples of how the revenues can be used include: purchase of conservation easements; purchase of agricultural easements; purchase of land in fee; and purchase of trail easements. Act 153 also permits a percentage of revenue received to be used for stewardship, maintenance and recreational development on properties where conservation interests have been acquired through this funding tool. The bottom line is that this tool helps a municipality create a funding source that can be leveraged with other sources of funding to more effectively conserve land.

TYPES OF OPEN SPACE REFERENDA

Municipal open space referendum may be used to ask voters about one of three different types of funding mechanisms.

1. Dedicated earned income tax
2. Dedicated property tax
3. Borrowing through bonds or other municipal loans to finance specific preservation projects.

In Pennsylvania, earned income taxes are the most common source of dedicated open space funds approved by voters. As of the 2023 status report on Local Municipal Open Space Referendums in Pennsylvania, produced by WeConservePA:

- 71 out of 125 (57%) were for earned income taxes;
- 13 (10%) were for property taxes;
- 1 (1%) was for a joint earned income and property tax; and
- 40 (32%) were for bond issues.

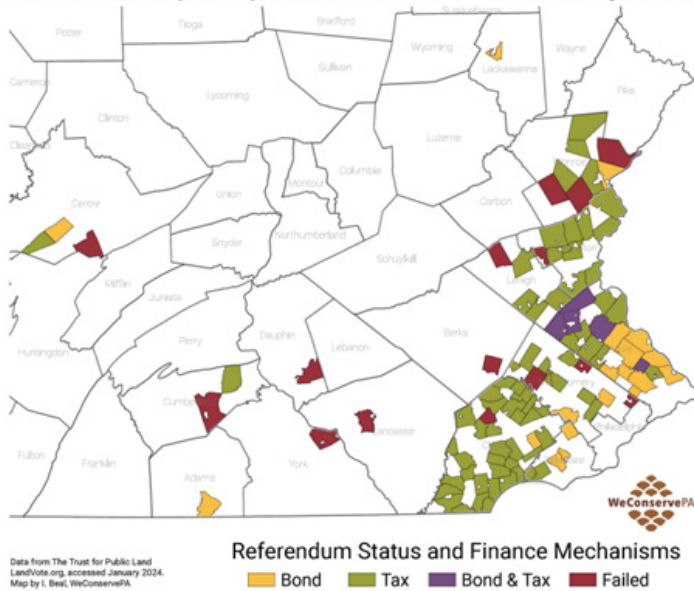
SUCCESS IN PENNSYLVANIA

Referenda are widely used and popular for funding conservation projects. Since 1996, Pennsylvania voters have approved 80% of proposed conservation referenda (124 out of 157) passed, generating almost \$1.6 billion for local and regional conservation purposes. Of all 157 referendums, both passed and failed, the average vote was 62% in favor and 38% opposed.



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Overview of Open Space Referendums in Pennsylvania



Locations of municipal open space referendums in Pennsylvania.

Most municipalities with passed open space referendums are in Eastern Pennsylvania, with 90% located within the Delaware River Basin. Chester County and Bucks County are hotspots with the highest number of passed open space referendums.

KEY CONSIDERATIONS

Before launching a conservation referendum campaign, it is important to assess the following:

- **Consistency with municipal goals:** Ensure an open space referendum is consistent with municipal goals. This goal should be supported by the municipal comprehensive plan and, in many cases, it may be explicitly identified as a goal.
- **Gauge Opposition:** Strong opposition from elected officials, community leaders, or organized interest groups can be a significant barrier to success. If opposition is prominent, especially from influential figures, the cost and effort required for the campaign might outweigh the chances of success. In such cases, it is important to evaluate whether the political climate is conducive to a referendum.
- **Gauge Support:** Conservation advocates should assess the support of local elected officials

and other influential community leaders. Their backing is crucial for the success of the referendum. All elected officials should be supportive of this initiative. If there is strong resistance from these key stakeholders, it might be wise to reconsider pursuing a campaign.

- **Conduct Polling and Assess Public Opinion:** If financial resources allow, conducting public polling is highly recommended to gauge both community support for conservation funding and the specific priorities people want to protect (e.g., open space, parks, agriculture). Polling can also help determine how much funding the community is willing to support. Strong public opposition to increased conservation funding may signal that launching a referendum campaign would be unwise, as it could be difficult to overcome widespread resistance.

ENABLING LEGISLATION

Pennsylvania's Act 153 of 1996 permits cities, boroughs, and townships to impose earned income, property, and realty transfer taxes with a simple majority vote. The revenue generated from these taxes is dedicated to the purchase of open space lands or easements.

Act 115 of 2013 expands on Act 153 by allowing dedicated open space taxes to be used not only for acquiring land and easements but also for developing, designing, improving, and maintaining open space protected under Act 153 referenda. It also clarifies that a referendum is required to repeal open space taxes that have been approved by voters.



REFERENDA RULES

Pennsylvania Election Code Requirements

Requirements and methods for placing a referendum question on the ballot is outlined in the Pennsylvania Election Code (P.L. 133, No. 320)

To place a conservation financing question on the ballot, a local government must follow these steps:

1. **Pass an Ordinance:** The governing body must first pass an ordinance to authorize placing the question on the ballot.
2. **Submit the Question for Approval:**
 - **Tax Measures:** For tax-related measures, the question must be filed with the county board of elections at least 13 Tuesdays before the next primary or general election. The question should be phrased as follows:

“Do you favor the imposition of a [tax rate or millage] by [local government unit] to be used to [describe purpose]?”
 - **Debt Referendum:** For a debt referendum, the question must be filed at least 45 days in advance of the election and should be phrased similarly to:

“Shall debt in the sum of [amount] dollars for the purpose of financing [describe purpose] be authorized to be incurred as debt approved by the electors?”

3. Publish Election Notices:

- Election notices must be published in local newspapers and legal journals between two and three weeks before the election. The notices should clearly describe the ballot measure, ensuring voters understand its intent and that the measure authorizes all planned spending. For example:

“...for the acquisition of land and conservation easements for open space, recreation, and the preservation of farmland.”

- If the funds will be used for specific property or easement acquisitions (instead of general conservation purposes), these acquisitions must be detailed in the notice.

These steps ensure that the process is legally compliant and that voters are fully informed about the conservation financing proposal.

CAMPAIGN RULES

Campaign Finance Reporting Law: Participants in a referendum campaign must comply with Pennsylvania’s Campaign Finance Reporting Law (25 P.S. §§ 3241-3260b). Key provisions include:

1. **Political Committees:** Any organization that spends or receives more than \$250 to influence the outcome of a referendum must register as a political committee with the county board of elections. The committee must appoint a treasurer and a chairperson, and submit



Land preserved with open space funds can provide recreational opportunities for the community.

regular reports documenting contributions and expenditures.

- **Multiple Organizations:** If several organizations are campaigning for the same referendum, they can form a single political committee instead of registering separately. Each organization can then report its financial and in-kind contributions through this committee.
2. **Enforcement:** While the Department of State investigates complaints, there is limited enforcement of this area of campaign finance law. The Department does not actively monitor elections for compliance.
 3. **Legal Guidance:** Organizations should consult the Department of State and possibly legal counsel for guidance on campaign finance laws and compliance.

Education-Only Activities: Land trusts or similar organizations can engage in educational activities related to a referendum, such as providing factual information to voters, without advocating for a specific vote outcome. In this case, they do not need to register as a political committee.

Ethics Rules: Pennsylvania law outlines the following rules for government officials and employees:

- **Local Governments:** Cannot officially support or oppose a ballot measure.
- **Elected Officials:** Can take a public stance and promote a ballot measure, but they must avoid using non-elected staff or other government resources.
- **Non-Elected Government Employees:** Cannot support or oppose a ballot measure in their official capacity but may do so on their personal time, if no government resources are used.

Before becoming involved in a campaign, individuals or organizations should consult with the Pennsylvania Ethics Commission and legal counsel to ensure compliance with the rules.

PROCESS AND PLANNING

Choose the Election

- Determine the most appropriate election—primary, general, or municipal—for placing the ballot question.
 - Primary elections attract a smaller, more conservative voter base (8-10%), less likely to support new taxes or borrowing.
 - General elections generate a larger, more balanced turnout (15-20%), but the referendum might be placed lower on the ballot, reducing visibility.
 - A crowded ballot with multiple issues can make it harder to communicate the campaign’s message.
 - If other tax or bond initiatives are on the ballot, consider postponing the referendum to avoid it getting lost.



Photo of open space by William Hill.



Open space funds are often used to buffer or manage development pressures.

Establish Timing

- Start groundwork (gathering information, meeting with local leaders, forming coalitions, creating materials) 6 months to a year before the election.
- Begin public campaigning 3 months before Election Day to limit the spread of misinformation.

Draft Official Map Creation

- The official map should include up-to-date base map features, including current parcel and road information. Some official maps also represent existing protected areas, such as floodplains, protected land, and municipally-owned land.
- An engineer, planning consultant, or surveyor can assist with producing the map.

Development of and Open Space Plan

Many advocates use a municipality's adopted open space, natural resource, recreation, or farmland preservation plan to guide the referendum.

Alternatively, they may prepare a new plan or update an existing one. This plan will serve as the basis for the establishment of a dedicated open space funding source and the findings can inform public messaging. The plan should address key issues, including:

- **Conservation and Open Space Goals:** Define the community's conservation and open space objectives.
- **Land Selection for Protection:** Outline the criteria for selecting land for conservation.
- **Program Administration:** Identify who will manage the program.

- **Funding Allocation:** Decide whether the funds will be used to purchase land, easements, or both.
- **Realistic Acreage Goals:** Set achievable acreage targets for conservation.
- **Program Costs:** Estimate the cost of implementing the program, including future improvement and maintenance expenses.
- **Financing Methods:** Evaluate available financing options (e.g., bonds, earned income taxes, property taxes, realty transfer taxes) and determine how much revenue each option will generate.
- **Tax Impact:** Assess who will be most affected by the tax.
- **Cost to Average Household:** Calculate the anticipated cost for the average household in the community.

Public Outreach

Public support for the referendum is crucial, and it is important for voters to understand how much they will pay and how the municipality will spend the funds. The campaign should clearly describe the proposal, emphasizing how individuals and interest groups will benefit from it. To build support, it is essential to engage a wide range of local organizations and elected officials who can help spread the message to their members and constituents. It is essential to listen to the elected officials to develop an effective public outreach strategy. Additionally, campaigns should seek endorsements from local political parties and encourage them to include the referendum in their election materials to further raise awareness and support.

Effective ways to win the support of voters include:

- **Hold Public Meetings:** Engage with the community by hosting open meetings to discuss the referendum.
- **Organize Private Meetings with Key Groups:** Meet with influential groups such as environmental organizations, planning commissions, athletic leagues, farming associations, and senior citizen groups to garner support.
- **Distribute Yard Signs and Campaign Posters:** Place signs and posters throughout the community, especially along busy roads, to increase visibility.
- **Use Digital Platforms:** Post information on the local government's website and create separate websites or social media pages (e.g., Facebook) to reach a broader audience.
- **Engage the Press:** Build relationships with local media to encourage coverage that supports the referendum.
- **Publicize Success Stories:** Highlight past open space successes to demonstrate how the referendum will positively impact the community.
- **Create Visual Content:** Develop a video, Power-Point presentation, and infographics to share online and at in-person events or meetings.
- **Mail Campaign Materials:** Send multiple mailings, newsletters, and postcards in the two to three weeks before the election. Focus on sending these to voters who have participated in at least the last three elections.



Yard signs advocating for the preservation of Crebilly Farm by voting for the open space tax in Westtown Township.



Public outreach flyers used for the East Vincent open space referendum.

- **Phone Banks:** Organize phone banks during the last weekend before the election to educate voters and remind them to vote.
- **Election Day Outreach:** Have volunteers hold signs, distribute flyers, or staff information tables at polling places to inform voters about the referendum and answer questions.

Messaging

Develop strong messaging:

- Focus on how the funding will benefit the community.
 - Managing development proactively
 - Ensuring community recreational needs are met
 - Emphasize cost-savings, which tend to resonate with voters, particularly those who may not be conservationists or outdoor enthusiasts.
 - A Cost of Community Services Study can help make the case that funding land preservation can ultimately save taxpayer funds when compared to residential development.
 - Avoid technical language associated with conservation, and focus on

Collaborate with Neighboring Communities:

- If a neighboring community has a similar referendum, coordinate efforts to avoid confusion and conflicting messages.



Materials

Campaign materials should be clear and understandable by the public, avoiding technical language.

Key components to include are:

- **Summary of the Ballot Measure:** Clearly explain the referendum and why it is necessary.
- **Fund Breakdown:** Provide a detailed breakdown of how the proposed funds will be allocated.
- **Description of Protected Areas:** Highlight the natural areas that the measure will protect.
- **List of Supporters:** Include a list of influential supporters or endorsements to build credibility.
- **Estimated Costs:** Provide the anticipated annual costs to the average household.
- **Community-Specific Information:** Include relevant background information about the local community and answers to frequently asked questions.

Enacting the Tax

- Although the approval of a referendum is a crucial step, it does not automatically implement the tax or incur the debt.
- After the referendum passes, the governing body must pass an ordinance to officially enact the proposed financing and make it effective.

Next Steps

Ordinance Drafting

After the referendum passes, the consultant must be prepared with the ordinance language and staff support to establish the township's open space committee and program. This is when momentum shifts to active interest from landowners. If the consultant isn't available to assist, the program risks losing momentum.

Establishment of an Open Space Committee

After passing an open space referenda and establishing dedicated open space funding, many municipalities create an open space committee, to make recommendations to the governing body regarding open space spending.

Open Space Planning

To effectively use funds and protect the most suitable lands, a greenways and open space network plan must be developed. This plan involves gathering relevant information, setting municipal goals, and creating a coordinated open space system. Key lands are identified, and priorities and preservation methods are established, including land acquisition and conservation easements. Public input helps shape the plan. Reliable appraisals and baseline documentation for conservation easements are essential for negotiations and legal protection. For recreational land, master site plans guide facility development and connections to neighborhoods. Though planning and monitoring costs are small, they are crucial for maintaining community quality of life and place.

EXAMPLES

Chester County

As of 2023, 25 Chester County municipalities (34%) have passed a referendum establishing open space funding. Of those Chester County municipalities, 17 passed an income tax, 6 passed a property tax and 1 passed a bond.

Below is a list of municipalities in Chester County that have successfully passed an open space referendum in the last 15 years.

- East Coventry Township (November 2010)
 - Income tax
 - 53% voted yes
- East Nottingham Township (November 2015)
 - Income tax
 - 56% voted yes
 - This referendum determined whether to keep the existing tax in place
- East Whiteland Township (November 2024)
 - Income and property tax
 - 55% voted yes
- Newlin Township (2016)
 - Property tax
 - 60% voted yes
- West Bradford (November 2017)
 - Income Tax
 - 67% voted yes
- Westtown Township (November 2022)
 - Income and property tax
 - 67% voted yes
- Uwchlan Township (November 2024)
 - Income Tax
 - 56% voted yes

Delaware County

Only 5 municipalities in Delaware County have passed open space referendums, 2 with property tax and 3 with bonds.

- Chadds Ford Township (Spring 2005)
 - Property tax
 - Pass 72%
- Concord Township (November 2004)
 - Property tax
 - Pass 71%
- Middletown Township (Spring 2005) and (Spring 2019)
 - Both bonds
 - Pass 79% and 76% respectively
- Radnor Township (November 2006)
 - Bond
 - Pass 79%
- Upper Providence Township (Spring 2003)
 - Bond
 - Pass 65%

ADDITIONAL RESOURCES

- *WeConservePA Library*
- *Trust for Public Land: Conservation Almanac*

