

Referendum to Authorize a Tax or Bond for Conservation



Pennsylvanians may vote to establish a tax specifically dedicated to open space protection in their municipality. Voters may also approve borrowing by their county or municipality for conservation projects.

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Introduction

A conservation referendum is a highly successful mechanism for raising money dedicated specifically to conservation. Local governments¹ in Pennsylvania can protect open space with agricultural, recreational, natural, scenic, historic, or cultural value using funds approved by voters in a primary or general election.

Voter approval via a referendum is only legally required if the proposed conservation financing would put a local government over its statutory debt or tax limits. However, a referendum may still be desirable even if a local government is below its debt

¹ For the purposes of this guide, “local government” refers to a county or municipality.

² Data from The Trust for Public Land’s LandVote database: www.landvote.org

³ Ibid.

and tax limits, because the referendum serves to *dedicate* the tax or bond revenue to the specific conservation purpose described in the referendum. Also, a referendum may be useful if the government will seek to incur additional debt or raise taxes in the future for purposes that are subject to the statutory debt and tax limits.

Referenda are effective—and popular—mechanisms to fund conservation projects in communities. Between 1987 and 2017, states, counties, and municipalities across the United States passed 1,980 of 2,624 proposed conservation ballot measures (75%), generating nearly \$76 billion for open space, parks, watersheds, recreation areas, and wildlife preserves.²

Between 1987 and 2017, Pennsylvania voters approved 129 of 164 proposed conservation ballot measures (79%), allocating nearly \$1.6 billion for conservation purposes.³ 126 of the 129 referenda were at the county and municipal level; three were statewide.⁴

This guide focuses on how to pass a referendum in a Pennsylvania county or municipality.

Tax and Borrowing Options

Dedicated Taxes

Pennsylvania’s [Act 153](#) of 1996 allows—with a simple majority vote—all cities, boroughs, and townships to levy dedicated earned income, property, and realty transfer taxes for the purchase of open space lands or

⁴ In 1987, Pennsylvania voters approved a debt referendum to provide \$100 million for the state’s [Agricultural Conservation Easement Purchase Program](#). In 1993, voters approved a \$50 million bond issue for the [Keystone Recreation, Park and Conservation Fund](#). In 2005, voters passed [Growing Greener II](#), a \$625 million bond issue.

easements. Counties may not levy dedicated taxes under the act.

There are no limits on voter-authorized property and earned income tax rates. However, state law limits the local real estate transfer tax to 1.0%. The money from dedicated taxes must be spent on open space protection under the rules laid out in the act.

[Act 115](#) of 2013 provides that, in addition to acquiring land and easements, dedicated open space taxes may be used to develop, design, improve, and maintain open space that has been protected under Act 153 referenda. It also clarifies that a referendum is required to repeal voter-approved open space taxes.

Non-Voted and Voter-Approved Debt

All counties and municipalities in Pennsylvania may issue non-voted debt, provided they are within the statutory debt limits permitted under the [Local Government Unit Debt Act](#). A county may issue up to 300% of its average annual revenue over the previous three years, while municipalities are capped at 250%.

If a bond issue would exceed the debt limit or hamper the local government's financial flexibility by using too much of its non-voted debt issuing capacity, the Local Government Unit Debt Act gives local governments authority to conduct a referendum to incur electoral debt. There are no limits on the amount of debt, and local governments may spend the money for any elector-approved purpose.

Rules Governing Referenda

Pennsylvania Election Code Requirements

The method for placing a referendum question on a ballot is set forth in the [Pennsylvania Election Code](#) (P.L. 1333, No. 320).

Pass an Ordinance

First, the governing body must pass an ordinance to have the question placed on the ballot. See "Featured Library Items" in the online guide for examples, including ones from [Allen Township](#) and [Barrett Township](#).

Question for Approval

For tax measures, the municipality must then file the question with the county board of elections at least 13 Tuesdays before the next primary or general election. To conform with Act 153, the question for approval of a dedicated tax must be phrased with the following words:

Do you favor the imposition of a [describe the tax in millage or rate] by [local government unit] to be used to [purpose]?"

For a debt referendum, the question must be submitted to the county board of elections at least 45 days in advance of the election. According to the Local Government Unit Debt Act, the question must be phrased substantially as follows:

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?

Election Notices

For both tax and debt referendum questions, it is also necessary to publish election notices in local newspapers and legal journals beginning no earlier than three weeks before the election but no later than two weeks before the election. The purpose of the ballot measure should be described carefully so that a) the intent is clear to the voters and b) the measure authorizes all of the intended spending. An example might be:

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

If a government plans to spend the tax or bond money on specific property or easement acquisitions (rather than dedicating it for unspecified future conservation purchases), these must be described.

Bond Expiration

The Local Government Unit Debt Act stipulates that the authority to issue a voter-approved bond expires 10 years after the referendum passes. If a government unit fails to issue the entire bond in that time period, it can either issue the remaining bond as non-electoral debt (which counts towards debt limits) or seek to pass another referendum.

Enabling Legislation

While voter approval of a referendum question is a significant accomplishment, it alone does not implement the tax or incur the debt. The governing body must pass an ordinance to enact the proposed financing. See “Featured Library Items” in the online guide for examples, including ones from [Lower Saucon Township](#) and [Upper Milford Township](#).

Rules Governing Campaigns

Campaign Finance Reporting Law

Political Committees

*In addition to adhering to [IRS lobbying regulations](#),*⁵ participants in a referendum campaign must comply with Pennsylvania’s [Campaign Finance Reporting Law](#) (25 P. S. §§ 3241-3260b). Under this law, any organization that receives or spends more than \$250 to influence the outcome of a referendum must register as a political committee with the county board of elections and submit reports documenting expenditures and contributions.⁶ Each committee must have both a treasurer and chairperson.

If multiple organizations are lobbying voters to pass a measure, each organization does not need to register separately as a political committee; instead, the organizations can form and register one political committee. Each organization can then report its monetary and in-kind staff contributions on the committee finance reports.

Conversations with staff from the Pennsylvania Ethics Commission and Department of State reveal that, in practice, there is little to no enforcement of this obscure area of Pennsylvania election law.⁷ The Department of State will investigate complaints it receives, but does not monitor elections to catch organizations that fail to comply.

Consult the [Department of State](#) (and, possibly, legal counsel) with any questions about campaign finance law in Pennsylvania.

Education-Only

Rather than lobby for a “yes vote,” land trusts can function in a purely educational capacity with regard to ballot measures. By providing information to voters but not asking them to vote a certain way, a land trust does not need to register as a political committee.

Ethics

Pennsylvania law includes the following rules:

- Local governments cannot support or oppose a ballot measure.
- Elected officials may take a public stance and promote a ballot measure in their official capacity, as long as this does not involve non-elected staff or other government resources.
- Non-elected government employees acting in their capacity as government employees cannot support or oppose a ballot measure. However, they may advocate during their own personal time without the use of government resources.

Consult the [Pennsylvania Ethics Commission](#) (and, possibly, legal counsel) with any questions before becoming involved in a campaign.

How to Pass a Referendum

Preliminary Considerations

Opposition, especially from prominent elected officials, community leaders, or highly motivated groups⁸ can be a major obstacle to passing a referendum. In situations where there is strong, organized opposition to conservation funding, the cost of running a campaign may not be worth the risk of losing. Before launching a campaign, it is crucial that conservation advocates gauge the support of local elected officials and other influential people in order

⁵ Advocating for “yes” votes on a referendum is considered as lobbying under federal tax law.

⁶ In the case of a statewide referendum, committees must register with the Pennsylvania Department of State.

⁷ Phone conversations between Nate Lotze and staff on 10/18/2017.

⁸ Developers sometimes oppose conservation referenda; they also sometimes support them.

to decide whether a referendum campaign makes strategic sense.

If financial resources allow, it is a good idea to conduct polling to gauge the community's support for conservation funding. (Some campaigns use Republican pollsters, since their results are less likely to be dismissed as propaganda by conservatives sitting on local governing boards that must vote to allow a referendum to proceed.) Polling data can show what people want to protect and how much funding they will tolerate. As is the case with opposition from local leaders, strong public opposition to increased conservation funding may make it unwise to launch a referendum campaign in a community.

Organization

One key to a successful campaign is organization. The referendum process, as with any political campaign, requires time and effort.

Timing

After deciding to launch a campaign, advocates should first choose the election in which the referendum will be included on the ballot. Primary elections usually draw only the most committed voters (8-10% of the electorate), who tend to be less inclined to support new taxes or borrowing. General elections generate a larger and more ideologically balanced turnout (15-20% of the electorate).

However, with a crowded general election ballot, the referendum measure might be placed near the bottom, increasing the likelihood of voters skipping it. Also, the blizzard of candidates and issues can make it difficult to clearly communicate the campaign's message to the public. In some cases, especially when other tax or bond initiatives are on the ballot, it may be prudent to postpone a conservation referendum so it is not lost in the shuffle.

Advocates should begin laying the groundwork for a campaign (gathering information, meeting with local leaders, forming coalitions, creating campaign materials, etc.) six months to a year before the vote. Outright public campaigning should wait until around three months before Election Day; going

public too early risks giving the opposition time to organize.

Message

Advocates should stick to their central message, focusing on how the funding will benefit the community and the costs of *not* approving the referendum. Cost-savings arguments usually resonate most with voters, especially those who may not be conservationists or outdoor enthusiasts themselves.

If a neighboring community has a similar referendum scheduled, campaigns should work together to avoid confusion and conflicting messages.

Ballot Language

In addition to meeting basic legal requirements, well-crafted ballot language can be crucial for success. Language, ideally informed by polling data, should identify the most compelling purposes for the funding, such as protecting drinking water sources or preserving a community's rural character. Language should be easy to read, with minimum legalese, and should present the costs in a clear and understandable way. A title that captures the central goal of the ballot measure is also helpful.

Components of a Campaign

While every campaign is unique, most successful campaigns do the following:

- Decide whether to hire professional help to organize and run the campaign.
- Anticipate costs and develop a preliminary budget.
- Organize a campaign committee with at least a committee chair and treasurer (see "Political Committees" above); recruit a team of volunteers. A well-organized, committed group of people is essential to pass most referenda.
- Assign responsibilities and monitor a schedule of tasks.
- Find a well-respected local champion to serve as primary spokesperson. Request support from other key community members.

- Solicit financial contributions. (Campaign materials generated by the registered political committee should indicate that donations to the committee are not deductible for income tax purposes.)
- Hire a polling firm to conduct a public opinion survey before (see “Preliminary Considerations”) or during a campaign. Use insights from the poll responses to shape campaign messaging and literature.
- Initiate a dialogue with landowners, farmers, or other potentially affected audiences to explain the proposed referendum and its benefits.
- Encourage participation from other supportive groups.

Guidance

Many advocates use a municipality’s adopted open space, natural resource, recreation, or farmland preservation plan to guide the scope of the referendum. Another option is to prepare a new plan, or update an existing plan. The plan should address these basic issues:

- What are the community’s conservation and open space goals?
- How will land be selected for protection?
- Who will administer the program?
- Will the funds purchase land, easements, or both?
- What are realistic acreage goals?
- How much will the program cost to implement? Will it incur future improvement and maintenance costs?
- Which financing methods (bonds, earned income taxes, property taxes, realty transfer taxes, or combinations) are available and appropriate? How much revenue will each generate?
- Who will the tax affect the most?
- How much will it cost the average household in the community?

Public Outreach

Public support for the referendum is critical. Voters deserve to know how much money they will pay and how the municipality will spend it. A campaign should describe the proposal clearly and explain how individuals and interest groups will benefit.

Generally, this involves engaging a wide variety of local organizations and elected officials, who can spread the campaign message to their members and constituents. Campaigns should also ask local political parties to endorse the referendum and acknowledge the referendum in their election handout material.

Effective ways to win the support of voters include:

- Hold public meetings.
- Organize private meetings with key groups. Examples include: environmental and watershed groups, environmental advisory councils, planning commissions, park and recreation boards, athletic leagues, farming groups, and senior citizen groups.
- Distribute yard signs and campaign posters throughout the community, especially along busy roads.
- Post information on the local government’s website and establish a separate website and/or social media pages on platforms like Facebook and Twitter.
- Cultivate members of the press to write articles supporting the referendum.
- Publicize open space success stories to highlight the ways the referendum will benefit the community.
- Create a video, PowerPoint presentation, and series of infographics to share online and at in-person events and meetings.
- Send out multiple mailings, newsletters, and postcards in the two to three weeks before the election. Obtain a voter list from the county and only mail to people who have voted at least once in the previous three elections; avoid wasting money and time on people who do not vote.

- Conduct phone banks on the last weekend before the election to educate citizens about the referendum and remind them to vote. (Again, only focus on residents with a history of voting.)
- On Election Day, have volunteers hold signs, distribute flyers, or staff information tables at polling places to describe the referendum to voters and answer questions.

Campaign Materials

Published information about the referendum should define (or avoid) conservation jargon, such as *conservation easement* or *in perpetuity*. Materials might also include:

- A summary explaining the ballot measure and why it is necessary
- A breakdown of funds targeted in the proposed measure
- A description of the natural areas the measure will protect
- A list of influential supporters or endorsements
- Anticipated annual costs to the average household
- Other relevant background information specific to the community and answers to frequently asked questions

After the Vote

In the absence of powerful opposition, the strategies and practices outlined above should, in most cases, lead to passage of the referendum. However, whether the measure is successful or not, advocates should acknowledge the efforts of everyone involved in the campaign, particularly any elected officials who championed the cause.

As noted in “Enabling Legislation” above, the governing body of the municipality or county must enact an ordinance to implement the financing authorized in the referendum. Once the ordinance is enacted, advocates can shift their focus to ensuring that it achieves the desired conservation objectives.

⁹ *National*: The Nature Conservancy (TNC), The Trust for Public Land (TPL), and TCF. *Local*: Land Conservancy of Adams County (LCAC), the Appalachian Trail

They can hold meetings to distribute information about the initiative, meet with people interested in selling or preserving their land (if applicable), and share success stories through the communication channels established during the campaign.

Case Study: Adams County

The story behind a 2008 initiative in Adams County, Pennsylvania offers insight into the process of passing a conservation referendum.

An Opportunity

In the early 2000s, a county ballot measure was considered but never pursued. When the 2,500-acre Glatfelter Tree Farm came up for sale, local officials and conservationists knew they needed to work quickly to secure the acquisition funds. The local township supervisors and the Adams County Board of Commissioners initiated a dialogue between the farm owners and parties interested in preserving the land.

Considering the daunting price tag of \$12.5 million, purchasing the tree farm required fundraising at many levels. Although nearly half of the needed funds had been pledged by the Pennsylvania Department of Conservation and Natural Resources (DCNR) and the Richard King Mellon Foundation, it was clear that Adams County would have to step up to the plate with a funding commitment of its own.

The county commissioners agreed to pursue a bond referendum to provide \$3.7 million to acquire the tree farm. This commitment created the necessary leverage for The Conservation Fund (TCF) to negotiate a sales agreement and close on the property with bridge funding. Once the sales agreement was negotiated, work began immediately to pass the referendum.

Organizing a Team

A team⁹ of national and local organizations began working on the bond referendum. TNC enlisted the expertise and resources of its national conservation referendum team, which has worked with TPL since

Conservancy, and the Adams County Farmland Preservation Board.

1986 to pass ballot measures across the country (with a 90% success rate). The team prefers to begin the campaign work at least one year in advance, which in this case, gave them time to put the measure on the ballot for the 2008 presidential election.

Research

TPL conducted feasibility research to analyze the situation on the ground. The feasibility study thoroughly evaluated funding options in the county and analyzed revenue projections. It also covered ballot language, best management practices from previous measures, and the county's election history.

This study concluded that Adams County could incur additional debt in the form of a municipal bond, and provided data for the next phase of the process: public polling to determine if the taxpayers were willing to assume additional county debt.¹⁰

Funding a poll can be costly. In this case, TPL and TNC leveraged foundation funding while LCAC provided a small match. One of the most valuable aspects of the polling was to test ballot language and understand which aspects of the measure were most important to voters. These insights shaped the team's public outreach campaign.

The poll also indicated that the public recognized the value of clean water, farmland preservation, and wilderness access and would support more than just the amount needed to purchase the tree farm. Armed with that knowledge, the team increased the proposed bond amount to \$10 million.

Fundraising

Because it would spend or receive more than \$250 to influence the election, TPL established a political committee to run the campaign, per Pennsylvania law. (TPL had a 501(c)4 structure designed to house local ballot measures, which housed the committee.) The committee raised over \$52,000 from partner organizations and individual donors. With this budget, the team was able to complete five mailings and produce palm cards that were distributed at the

polls. The team also secured volunteers to be present at most of the voting locations on Election Day to pass out materials and speak with voters.

Success

The referendum passed with 75% approval. While conservation referenda are rather common in eastern Pennsylvania, no county west of the Susquehanna River had ever passed one.

Through additional local public and private fundraising, and the award of a \$3.5 million U.S. Forest Service Forest grant, the project was completed in early 2010 and the tree farm was incorporated into the adjacent Michaux State Forest.

The success of the Adams County conservation referendum was the result of collaboration, creative funding, a well-researched ballot measure, effective messaging and communication strategies, and ample local support.

Case Study: Smithfield Township

In 2016, voters in Smithfield Township, Monroe County (PA) approved a \$2 million bond (known as the Smithfield Township Water Quality, Forest, and Wildlife Habitat Fund) to finance land and water protection. The referendum passed by a large margin, with 76% support.

Several key elements of the campaign contributed to the passage of the referendum.

Local Leaders

All three township supervisors were committed to protecting the area's natural resources and publicly supported the ballot measure. A well-known landowner and naturalist in the area also campaigned for the referendum. Their support added legitimacy to the campaign.

Clear Goals

The campaign established clear goals for the conservation funding. The \$2 million bond would be

¹⁰ Feasibility studies are a valuable tool for pollsters, providing background information on the region and guidance on what type of questions to ask.

used to acquire land and conservation easements in strategic areas in order to:

- Protect drinking water supplies;
- Protect water quality in lakes, rivers, and streams;
- Protect forests and wildlife habitat; and
- Protect wetlands that provide flood protection.

A Strong Coalition

Multiple groups were involved with the campaign. The Nature Conservancy created a Facebook page to promote the ballot measure.¹¹ The Trust for Public Land conducted research and polling, and worked on the ground with Pocono Heritage Land Trust (PHLT) to educate voters. Because PHLT only engaged in education (rather than lobbying), it was not required to register as a political committee.

An Effective Message

Polling [consistently shows](#) that clean water is a top environmental priority for voters. The campaign capitalized on this by emphasizing in its communications that the money would be used to protect drinking water supplies for township residents.

Social Media

The Facebook page (called “Vote Yes on Smithfield Water Quality”) served as the campaign’s online headquarters. The campaign used the page to share educational materials and links to articles about the referendum, as well as videos and photos of events. The page generated grassroots interest in the ballot measure.

Voter Education

In written and verbal communications, the campaign clearly articulated that the measure would only cost the average homeowner an extra \$2.50 per month. It reassured voters that all acquisitions would be in cooperation with willing landowners, and that there would be an annual public audit of how the funds were spent. The campaign also made sure to define

terms like *conservation easement* so voters did not feel overwhelmed by jargon.

The campaign distributed a two-page [document](#) to explain the ballot measure and answer common questions.

Ballot Placement and Language

The ballot was placed on the November 2016 ballot. Because of the presidential election, this timing offered the promise of high voter turnout. The township supervisors had the measure placed at the top of the ballot; the campaign highlighted this in its public outreach.

The measure used straightforward language that clearly explained the financial cost and numerous conservation benefits of the proposal:

Shall debt in the sum of Two Million Dollars (\$2,000,000.00) for the purpose of financing the acquisition of land, development rights and/or conservation easements in the township for the protection of drinking water supplies; water quality in lakes and streams; wetlands that provide flood protection; forests and wildlife habitat be authorized to be incurred as debt approved by the electors?

Resources at ConservationTools.org

To find experts and other resources, including additional case studies of successful ballot measures, see the right column of the on-line edition at <http://conservationtools.org/guides/16>.

¹¹ Because this was the only lobbying action taken, and it cost less than \$250 (in staff time), TNC did not have to register as a political committee. However, it did file an

Independent Expenditure Report, which is required for expenses between \$100 and \$250.

Submit Comments

Help improve the next edition of this guide. Email your suggestions to the Pennsylvania Land Trust Association at aloza@conserveland.org. Thank you.

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