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The Consolidated County Assessment Law Commentary

Title 53 of the Pennsylvania Consolidated Statutes (Municipalities Generally) Chapter 88 Consolidated County Assessment

§ 8801. Short title and scope of chapter.

This chapter shall be known and may be cited as The Consolidated County Assessment Law. This chapter shall apply in all counties of the second class A, third, fourth, fifth, sixth, seventh, and eighth classes of the Commonwealth.

Commentary:

This chapter will ***not*** apply to Philadelphia or Allegheny County ***except*** for the provisions in Sections 8801(b)(2), 8811(b)(5), and 8842(b)(2) relating to the valuation of real property used for the purpose of wind energy generation.[1]

§8802. Definitions.

Definitions have been added, omitted, amended, and updated. Substantive changes have been made.

[1] Act 167 of 2006 amended the Fourth to Eighth Class County Assessment Law to delineate the method by which wind turbine generators, wind energy appliances and equipment, including towers and tower foundations, and the property on which such is situated is to be valued and assessed. Because Act 167 applies to ALL counties, the formal short title of the Fourth to Eighth Class County Assessment Law was changed to "The Fourth to Eighth Class and Selective County Assessment Law." The Consolidated County Assessment Law incorporates the contents of Act 167. PLEASE NOTE: For purposes of this commentary and accompanying footnotes, "The Fourth to Eighth Class and Selective County Assessment Law" will be referred to as the Fourth to Eighth Class County Assessment Law.

Commentary:

The following definitions have been added:

"Assessed value." The assessment placed on real property by the county assessment office upon which all real estate taxes shall be calculated.

"Assessment." Assessed value.

"Auxiliary appeal board." An auxiliary board of assessment appeals created in accordance with Section 8853.

"Board of assessment appeals." The assessment appeals board in counties of the second class A and third class, and in counties of the fourth through eighth class where the county commissioners do not serve as a board of assessment revision.

"Board of assessment revision." County commissioners in counties of fourth through eighth class when serving as assessment appeals board.

"Chief assessor." The individual appointed by the board of county commissioners with the advice of the board of assessment appeals.[2]

"County assessment office." The division of county government responsible for preparing and maintaining the assessment rolls, the uniform parcel identifier systems, tax maps, and other administrative duties relating to the assessment of real property in accordance with this chapter.

"Countywide revision of assessment." A change in established predetermined ratio or revaluation of all real property within a county.

"Interim assessment." A change to the assessment roll anytime during the year.

"Municipality." A county, city, borough, incorporated town or township.

"Parcel identifier." An identifying number assigned to real property in accordance with the Act of January 15, 1988 (P.L. 1, No. 1) known as The Uniform Parcel Identifier Law.

"Taxing district." A county, city, borough, incorporated town, township, school district and county institution district.

The following definitions have been amended:

"Board." The board of assessment appeals or the board of assessment revision established in accordance with Section 8851. The term "board," when used in conjunction with hearing and determining appeals from assessments, shall include an auxiliary appeal board.

[2] "Chief assessor," as a defined term, exists in the Fourth to Eighth Class County Assessment Law. However, this position exists in every county.

"County commissioners." The board of county commissioners or, in home rule charter counties, the body or individual exercising the equivalent authority.

"Spot reassessment." The reassessment of a property or properties by a county assessment office that is not conducted as part of a countywide revision of assessment and which creates, sustains or increases disproportionality among properties' assessed values. The term does not include board action ruling on an appeal.

> ☞ Definition of "spot reassessment" was amended to state that a change in assessment by the board as a result of *an appeal* does not constitute spot reassessment. This is consistent with appellate court rulings.[3] This definition does not appear in the General County Assessment Law or the Fourth to Eighth Class County Assessment Law, but case law applies the principal to all counties.

The following definitions were omitted:

"Appointed assessors."[4] The assessors appointed by and the subordinate assessors appointed by the board for the second, second A and third classes.

"Assistant assessor."[5] Such assistant assessors as appointed by the board to assist the chief assessor or the board.

"Assessor."[6] The assessor elected in each borough, town and township of the first class[7] and elected in each ward of each city, borough or town, including the assistant assessor, if any, in first class townships.

"Board of revision of taxes."[8] The board of revision of taxes in counties of the first class.

"Board for the assessment and revision of taxes."[9] The board for the assessment and revision of taxes in counties of the second, second A and third classes.

§8803. Excluded provisions.

This section is substantially a reenactment of language in the General County Assessment Law[10] and the Fourth to Eighth Class County Assessment Law.[11]

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[3] *Millcreek Township School District v. Erie County Board of Assessment Appeals*, 737 A.2d 335 (Pa. Cmwlth. 1999); *Vees v. Carbon County Bd. of Assessment Appeals*, 867 A.2d 742 (Pa. Cmwlth. 2005).
[4] Appears only in the General County Assessment Law.
[5] Appears only in the Fourth to Eighth Class County Assessment Law.
[6] Appears in the Fourth to Eighth Class County Assessment Law and the General County Assessment Law.
[7] The office of elected assessor was eliminated in second class townships by Act 166 of 2006 and Act 167 of 2006.
[8] Appears only in the General County Assessment Law.
[9] Appears only in the General County Assessment Law.
[10] §103.
[11] §105.

§8804. Construction.

All dates specified in this chapter for the performance of any acts or duties shall be construed to be mandatory and not discretionary with the officials or other persons who are designated by this chapter to perform such acts or duties. This chapter is to be read in pari materia with the Institutions of Purely Public Charity Act.

§8811. Subjects of local taxation.

This section is substantially a reenactment of language in the General County Assessment Law[12] and the Fourth to Eighth Class County Assessment Law[13] as it pertains to the subjects of local taxation and the exceptions thereto.[14] Most of the changes to this section are stylistic. The paragraphs have been broken down into subparts to make the language more readable.

All of the provisions of Act 142 of 2006 and Act 167 of 2006 have also been incorporated into this act.

Commentary:

Act 142 of 2006 amended the County Code by adding Section 1770.9, which prohibits the assessment of signs and sign structures for real estate tax purposes regardless of whether the structure has become affixed to the real estate.[15]

Act 167 of 2006 amended the Fourth to Eighth Class County Assessment Law by, among other things, providing for the valuation of wind turbine generators, wind energy appliances and equipment, including towers and tower foundations, and the property on which such is situated all classes of counties in the Commonwealth. (Section 10 of Act 167[16] is preserved in Section 5 of this act.[17])

A ***substantive addition*** to this section is the inclusion of telecommunication (cell) towers as property subject to real estate taxation. The addition of telecommunication towers as a subject of taxation incorporates the holding of *Shenandoah Mobile v. Dauphin County Board of Assessment*, 869 A.2d 562 (Pa. Cmwlth. 2005).

[12] §201(a) of the General. Subsections (b) and (c) are covered in later sections of the consolidation.
[13] §201(a) of the 4th-8th. Subsections (b) and (c) are covered in later sections of the consolidation.
[14] The Third Class County Assessment Board Law does not enumerate subjects of local taxation.
[15] Act 38 of 2007 amended the Second Class County Code to prohibit the assessment of signs and sign structures for real estate tax purposes in counties of the second class and second class A.
[16] Section 10 of Act 167 states: The following provisions shall not affect any agreement or agreed-to assessment practice actively in place in a county on the effective date of this section: (1) The addition of Section 103(b) of the act. (2) The addition of Section 201(a.1) of the act. (3) The addition of Section 602.4 of the act.
[17] Section 5 of the bill states: The following provisions shall not affect any agreement or agreed-to assessment practice actively in place in a county on January 28, 2007: (1) Section 8801(b)(2). (2) Section 8811(b)(5). (3) Section 8842(b)(2). NOTE: January 28, 2007 was the effective date of Act 167 of 2006.

Commentary:

One of the primary issues[18] addressed in *Shenandoah* was whether a telecommunications tower is "real estate" and, therefore, subject to real property taxation. Cellular towers are not specifically listed as subject to taxation in the assessment laws. However, the assessment laws provide that counties may assess "all other things…now taxable by the laws of this Commonwealth for county, city and school purposes."[19] The Commonwealth Court applied a three-part test established in a previous ruling[20] to ascertain whether a cell tower fell within the catchall provision of the assessment laws and should be considered realty for taxation purposes. This test requires the courts to consider: 1) whether the structure is substantially affixed to the land; 2) whether the fixture is essential to the use of the facility; and 3) the intention of the parties when they attach or assemble the fixture.

After applying this three-part test, the Court in *Shenandoah* affirmed that cellular towers were taxable realty:

> Cellular communications tower was a fixture which was properly included in realty tax assessment; tower was bolted into concrete pad and could not be easily moved, tower and concrete pad were one piece of realty in that one could not function without the other, parties intended tower to be a fixture by virtue of five-year lease and bolting of tower into concrete pad and removal of tower only when business warranted, and characterization of tower as chattel[21] by state for purposes for sales and use tax did not did not preclude realty assessment.

§8812. Exemptions from taxation.

This section is derived from language in the General County Assessment Law[22] and the Fourth to Eighth Class County Assessment Law[23] pertaining to exemptions from taxation. For the most part, the exemption sections of these two statutes mirror each other. Some technical amendments were made to the language in this section. Four phrases were also included in this section and are noted.

Technical amendments to Section 8812: (1) the phrase "occupancy and enjoyment," as it relates to property, was changed to "occupancy and use;" (2) the phrase "associations and institutions of benevolence or charity" was changed to "institutions of purely public charity;" and (3) the term "schoolhouses" was changed to "school buildings."

The first inclusion in Section 8812(a)(3)(ii) exempts:

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[18] The other issue addressed in this case was whether, in this particular instance, the assessment of the tower constituted a spot reassessment.

[19] General County Assessment Law, Section 201(c); 72 P.S. 5020-201; Fourth to Eighth Class County Assessment Law, Section 201(c); 72 P.S. 5453.201.

[20] *In re Sheetz, Inc*., 657 A.2d 1011 (Pa. Cmwlth. 1995). This case found that gasoline canopies were taxable as real property.

[21] Personal property.

[22] §204(a), (b), (c). §204(d) covered in §8865.

[23] §202(a), (b), (c). §202(d) covered in §8865. §202(a)(13) addressed by §8811.

> The property of associations and institutions of benevolence or charity are necessary to and actually used for the principal purposes of the institution and are not used in such a manner as to compete with commercial enterprise.

This phrase currently exists in Section 202(a)(3) of the Fourth to Eighth Class County Assessment Law. The phrase does not appear in the General County Assessment Law. As these two laws were merged into the consolidated statutes, this phrase now appears in Section 8812(3).

The second inclusion is in Section 8812(a)(4). This section exempts:

> All property of a charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least 95% of the residential housing units from a low-income Federal housing program as long as any surplus from such assistance or subsidy is monitored by the appropriate governmental agency and used solely to advance common charitable purposes within the charitable organization.

This phrase currently exists in Section 204(a)(3) of the General County Assessment Law. It was added to the General County Assessment Law by Act 141 of 1992 as a result of an adverse court decision.[24] This provision is not in the Fourth to Eighth Class County Assessment Law.

The third inclusion is in Section 8812(a)(14):

> In the case of concert music halls used partly for exempt purposes and partly for nonexempt purposes, that part measured either in area or in time, whichever is the lesser, which is used for nonexempt purposes, shall be valued, assessed and subject to taxation.

This phrase currently exists in Section 204(a)(12) of the General County Assessment Law. The provision does not exist in the Fourth to Eighth Class County Assessment Law.

The fourth inclusion is in Section 8812(c):

> Each provision of this chapter is to be read in para materia with the act of November 26, 1997 (P.L. 508, No. 55), known as the Institutions of Purely Public Charity Act and to the extent that a provision of this chapter is inconsistent with the Institutions of Purely Public Charity Act, the provision is superseded by that act.

Commentary:

With the enactment of the Institutions of Purely Public Charities Act (Act 55),[25] it is plausible that Act 55 will supersede the three notable inclusions referenced above. In addition, Act 55 would seemingly supersede the consolidated statute relating to institutions of purely public charity, *generally*, and the inclusion of Section 8812(c) reflects this.

[24] *G.D.L. Plaza Corp. v. Council Rock School District*, 515 Pa. 54, 526 A.2d 1173 (Pa. 1987).
[25] 1997, P.L. 508, No. 55.

§8813. Temporary tax exemption for residential construction.

This section is a reenactment of language in the General County Assessment Law[26] and the Fourth to Eighth Class County Assessment Law.[27] No substantive changes have been made.

§8814. Temporary assessment change for real estate subject to a sewer ban order.

This section is a reenactment of language in the General County Assessment Law[28] and the Fourth to Eighth Class County Assessment Law.[29] No substantive changes have been made.

§8815. Catastrophic loss.

This section is substantially a reenactment of language in the General County Assessment Law,[30] the Fourth to Eighth Class County Assessment Law,[31] and the Third Class County Assessment Board Law.[32] The language was updated but no substantive changes have been made.

§8816. Clerical and mathematical errors.

This section is derived from language in the General County Assessment Law,[33] the Fourth to Eighth Class County Assessment Law,[34] and the Third Class County Assessment Board Law.[35] A ***substantive addition*** has been made to this section to clarify the existing state of the law by permitting a change in assessment upon the discovery of a clerical or mathematical error. Section 8816 (b) states:

> Nothing in this section shall be construed as prohibiting an assessment office from increasing an assessment for the current taxable year upon the discovery of a clerical or mathematical error.

Commentary:

In *Callas v. Armstrong County*,[36] the Commonwealth Court affirmed the authority of a board of assessment appeals to correct assessment errors, noting:

> If the taxing authority were not permitted to correct clerical or mathematical assessment errors, uniformity would not be maintained and such non-uniform assessments would be illegal as violative of both our Constitution and the Assessment Law. Such a result is absurd and would result in some taxpayers

[26] §205(a), (b).
[27] §203.
[28] §206.
[29] §204.
[30] §511(e)(1)(2), (f), (g).
[31] §702(d.1)(1)(2).
[32] §8.3(a), (b).
[33] §505.1.
[34] §703.3.
[35] §8.4.
[36] 453 A.2d 25, (Pa. Cmwlth. 1982).

> bearing an excessive tax burden. Accordingly, we conclude that the Board has the power (and, indeed, the duty) to correct erroneous and improper assessments to achieve the mandated uniformity.

The courts have limited a change in assessment of a property when it exceeds the mere correction of clerical or mathematical errors under *Callas.*[37]

§8817. Changes in assessed valuation.

This section is derived from language in the Fourth to Eighth Class County Assessment Law,[38] and the Third Class County Assessment Board Law.[39] Section 602(ii) of the Fourth to Eighth Class County Assessment Law has been excluded from the consolidated assessment law.

Commentary:

Section 602(ii) of the Fourth to Eighth Class County Assessment Law permits the reassessment of land *when the economy of the county or any portion thereof has depreciated or appreciated to such extent that real estate values generally in that area are affected.* The practical application of Section 602(ii) results in an unconstitutional spot reassessment as it has been defined by the courts and, thus, the language has been omitted from the consolidated assessment law. Statutory law and case law[40] stipulate that an assessment can only be changed when: (1) there is a countywide reassessment; (2) a property assessment is appealed; (3) a parcel is subdivided or combined; (4) new improvements are added or portions of the property are demolished; and (5) a catastrophic loss occurs to the property. Spot reassessment is further defined in Section 8843.

Language from the Pennsylvania Municipalities Planning Code (MPC)[41] has also been codified in this section. Section 513(b) of the MPC reads:

> The recording of a subdivision plan shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed.

Reassessment initiated by the county assessment office because a property is sold is normally the equivalent of a spot reassessment. However, Section 602.1 of the Fourth to Eighth Class County Assessment Law provides: The board may change the assessed valuation on real property when (i) a parcel of land is divided and conveyed away in smaller parcels. An assessment office is permitted to reassess lots upon subdivision once one of the parcels is sold. The reasoning is that a large parcel of ground that has an approved subdivision is more valuable than the same parcel of raw land. The MPC prohibition against changing an assessment simply because an approved

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[37] *O'Merle v. Monroe County*, 504 A.2d 975 (Pa. Cmwlth. 1986); See also *Radecke v. York County Board of Assessment Appeals*, 798 A.2d 265 (Pa. Cmwlth. 2002).
[38] §602.1(i), (iii).
[39] §6.1.
[40] *Groner v. Monroe County Board of Assessment Appeals*, 803 A2d 1270 (Pa. 2002); *Althouse v. County of Monroe*, 633 A.2d 1267 (Pa. Cmwlth. 1993); *City of Lancaster v. County of Lancaster*, 599 A.2d 289 (Pa. Cmwlth. 1991); appeal denied by *City of Lancaster, Twp. of Fulton v. County of Lancaster, Bd. of Com'r of Co. of Lancaster*, 530 Pa. 634, 606 A.2d 903 (1992).
[41] 1968, P.L. 805, No. 247.

subdivision plan is recorded prevents assessment offices from changing the total assessment until there is some change such as a sale of one of the lots or the installation of improvements (infrastructure such as roads, utilities).

§8818. Assessment of lands divided by boundary lines.

This section is substantially a reenactment of language in the General County Assessment Law[42] and the Fourth to Eighth Class County Assessment Law[43] as regards the assessment of land which is divided by the boundary lines of the various classes of municipalities. The language is updated.

Commentary:

The current "rules" for assessing land that is divided by boundary lines are very cumbersome and confusing. Earlier drafts of the consolidated law would have established ***"one rule"*** for the ***division of property divided by municipal lines as follows:***

> **Assessment of lands divided by municipal boundary lines. --** When the boundary lines between municipalities divide a tract of land, the land located in each municipality shall be assessed in the municipality in which it is located, regardless of where the mansion house is situated.

Because there are ***literally thousands*** of properties in the Commonwealth that are divided by municipal boundary lines, concerns arose with regard to the implementation of "one rule" for the division of property. First, this proposal would likely create a substantial amount of work for counties. Properties divided by boundary lines would have to be identified and assessment rolls altered if the taxing district in which the divided property changed as a result of the "one rule". Also, a municipality that had been receiving the tax revenue from land that, under the current rules, had been assessed as if it were situate in that municipality may be disgruntled because of the loss of revenue. A landowner may, under the "one rule" proposal, have land assessed in a municipality that has higher taxes than the municipality in which the land was previously assessed.

As a result of these concerns, Section 8818 maintains the current "rules" as delineated in the Fourth to Eighth Class County Assessment Law and the General County Assessment Law for the assessment of property divided by municipal boundary lines. The language was updated. The labyrinth of rules can be summarized in Section 8818 as follows:

> **(a) Assessment of lands divided by county boundary lines.--** [44]
>
> (1) If county boundary lines divide a tract of land, the land will be assessed in the county in which the house is located.
>
> (2) If county boundary lines pass through the mansion house, the owner of the land may choose the county in which the property will be assessed. If the owner refuses or fails to choose the county in which the property will be assessed, the county in which the larger portion of the mansion house is located has the right of assessment.

[42] §§411, 412, 413, 414.
[43] §§608, 609, 610, 611, 612.
[44] Fourth to Eighth Class County Assessment Law, §608; General County Assessment Law, §411.

(3) When vacant land is divided by the boundary lines of two counties, the land located in each county shall be assessed therein.

(b) Assessment of lands divided by township boundary lines.-- [45]

(1) When land is divided by the boundary lines of a township and a city, a township and a borough, or a township and a town, and the mansion house is located in the township, all of the land will be assessed in the township.

(2) When land is divided by the boundary lines of a township and a city, a township and a borough, a township and a town, or two townships, and the mansion house is located in the city, borough, town or one township, then the land shall be assessed in the municipality in which it actually lies.

(3) When vacant land is divided by the boundary lines of two townships, the land located in each township will be assessed therein.

(c) Assessment where township boundary lines passes through mansion house.-- [46] When the boundary lines of any township and a city, borough, or township pass through the mansion house, the owner of the land may choose the municipality in which the land will be assessed. If the owner refuses or neglects to choose, the mansion house will be considered to be entirely located in the township for assessment purposes.

(d) Assessment where lands are divided by boundary lines between cities, boroughs or cities and boroughs.-- [47]

(1) When lands are divided by the boundary lines of two or more cities, two or more boroughs, or one or more cities and one or more boroughs, the lands will be assessed in the city or borough in which the mansion house is located.

(2) When the boundary lines pass through the mansion house, the lands will be assessed in the city or borough in which the larger portion of the mansion house is located.

(3) When vacant land is divided by the boundary lines of two or more cities, two or more boroughs, or one or more cities and one or more boroughs, the land located in each municipality shall be assessed therein.

(e) Assessment of coal underlying lands divided by county, city, township, or borough boundary lines. -- [48]

Where coal is lying underneath lands that are divided by county, city, township, or borough lines, and the ownership of the coal has been severed from the ownership of the strata or surface, the county assessment office shall assess each division of coal in the municipality in which it actually lies.

[45] Fourth to Eighth Class County Assessment Law, §609; General County Assessment Law, §412.
[46] Fourth to Eighth Class County Assessment Law, §610; General County Assessment Law, §413.
[47] Fourth to Eighth Class County Assessment Law, §611.
[48] Fourth to Eighth Class County Assessment Law, §612; General County Assessment Law, §414.

§8819. Separate assessment of coal and surface.

This section is a reenactment of language in the General County Assessment Law[49] and the Fourth to Eighth Class County Assessment Law[50] as regards the assessment of coal and surface lands. There were no substantive changes to this section.

§8820. Assessment of real estate subject to ground rent or mortgage.

This section is a reenactment of language in the General County Assessment Law[51] and the Fourth to Eighth Class County Assessment Law.[52] There were no substantive changes to this section.

§8821. Assessment of mobile homes and house trailers.

This section is substantially a reenactment of language in the General County Assessment Law[53] and the Fourth to Eighth Class County Assessment Law[54] with regard to the assessment of mobile homes and house trailers. This language has been updated and stylistic changes have been made.

§8822. Taxing districts lying in more than one county and choice of assessment ratio.

This is substantially a reenactment of a provision that currently exists in the Fourth to Eighth Class County Assessment Law[55] and the General County Assessment Law.[56] The language has been updated and stylistic changes have been made. Section 672.1 of the Public School Code, which pertains to school districts lying in more than one county or in more than one municipality, has also been codified in this section.

§8823. Limitation on tax increase after a countywide reassessment.

This section is patterned after language in the General County Assessment Law[57] and the Fourth to Eighth Class County Assessment Law.[58] **This section also preserves the anti-windfall provisions adopted in Section 327 of Act 1, Special Session 1, 2006.** ***Substantive changes*** have been made.

[49] §415.
[50] §616.
[51] §416.
[52] §617.
[53] §§203.1, 402.1, 407.
[54] §§201.1, 602.3, 605.2, 617.1.
[55] §§703.2, 613, 614.
[56] §§420, 421.
[57] §402(b).
[58] §602(b).

Commentary:

(1) Act 1 of 2006. Traditionally, the assessment laws[59] contained provisions limiting the amount of real estate tax revenues that could be levied by a political subdivision[60] in the year following a countywide reassessment or a change in the predetermined ratio. These provisions are commonly referred to as the "anti-windfall" provisions. Prior to 2004, the laws required a political subdivision[61] to reduce its millage rate so that the total amount of taxes levied on the properties in the year following a reassessment increased by no more than a specified percentage from the previous year.[62]

In 2004 and 2005, three bills were signed into law[63] which changed the implementation of the anti-windfall procedures by political subdivisions. These acts require political subdivisions to follow a "two-step" process when increasing real property taxes by a percentage permitted by law following a countywide reassessment. The first step requires a political subdivision to establish a revenue-neutral millage rate.[64] The second step is optional. By a separate vote, a political subdivision may institute a final tax rate that limits the total amount of taxes levied to no more than the maximum percentage increase delineated by the assessment laws.

In 2006, the Taxpayer Relief Act[65] was enacted (Act 1). Act 1 contains its own anti-windfall provision which applies to all school districts.[66] Section 327 directs that after a countywide reassessment,[67] a school district which, after July 1, 2006, for the first time levies its real estate taxes on that revised assessment or valuation, must reduce its millage rate so that the total amount of taxes levied on the properties subsequent to the reassessment increases "less than or equal to the index for the preceding year."

Therefore, two standards exist for implementing the anti-windfall procedures following a countywide reassessment: one for school districts, pursuant to Act 1, and one for counties and municipalities, pursuant to the assessment laws.

The Consolidated County Assessment Law applies to counties of the second class A through eighth class and all of the municipalities and school districts therein. The fact that two anti-windfall standards exist, one for school districts and one for counties and municipalities, had to be addressed. Thus, Section 8823, explicitly recognizes the application of Section 327 of the act of June 27, 2006, Special Session 1, No. 1, known as the Taxpayer Relief Act as the anti-windfall provision applicable to school districts and, for all other taxing districts, retains the

[59] The General County Assessment Law, §402(b); The Fourth to Eighth Class and Selective County Assessment Law, §602(b); The Second Class County Code, §1980.2.
[60] Political subdivisions include counties.
[61] These provisions do not apply to Philadelphia.
[62] The General County Assessment Law limited the increase to 10% for both municipalities and school districts. The Fourth to Eighth Class County Assessment Law limited the increase to 5% for municipalities and 10% for school districts. The Second Class County Code limited the increase to 5% for both municipalities and school districts in a second class county.
[63] Act 91 of 2004; Act 71 of 2005; and Act 91 of 2005.
[64] Excluding newly constructed buildings and structures, as well as improvements made to existing structures.
[65] 2006, Special Session 1, No. 1.
[66] Except Philadelphia.
[67] Includes a change in the county predetermined ratio.

"two-step" process under which the taxing district must first establish a revenue-neutral millage rate and only then may it, by a separate vote, institute a final tax rate that limits the total amount of taxes levied up to a fixed percentage.

(2) Anti-windfall cap limitations. ***Substantive changes*** have been made to this section in order to reconcile the differing anti-windfall cap limitations in the General County Assessment Law and Fourth to Eighth Class County Assessment Law.

The General County Assessment Law and the Fourth to Eighth Class County Assessment Law prohibit a tax increase as a result of a countywide reassessment for political subdivisions. However, political subdivisions in counties of the second class A and third class may take a second step and specifically vote to increase taxes up to 10% of the total amount of taxes levied against the properties in the previous year. In fourth to eighth class counties, political subdivisions are limited to a 5% increase. This "two-step" process was implemented via Act 91 of 2004 and Act 91 of 2005.[68]

Section 8823 would make the anti-windfall provisions **uniform** by implementing the **10% anti-windfall** provisions currently found in the General County Assessment Law for **all** counties and municipalities in the year following a reassessment.

The committee deemed it prudent to have one rate for all counties, municipalities, and school districts. The 10% rate was chosen because, when the bill was initially drafted in 2005, all school districts[69] (excluding Philadelphia and Pittsburgh) in the Commonwealth were permitted to increase revenue via a two-step process up to 10% in the year following a reassessment, as well as counties of the 2A and third class and the municipalities[70] within those counties. Nearly 1,300 taxing districts were under the 10% cap in 2005. As of 2010, there are approximately 777 taxing districts under the 10% cap. Counties of the fourth through eighth class and the municipalities within those counties are currently limited to a 5% increase. As of 2010, there are over 1,700 taxing district under the 5% cap. Again, the anti-windfall provisions contained in the assessment laws no longer apply to school districts due to the enactment of Act 1 of 2006.

Section 8823 (a), (b), and (c) provides:

> (a) Scope.--
>
> (1) Except as set forth in paragraph (2), this section applies to taxing districts in counties within the scope of this chapter under Section 8801 (b)(1) (relating to short title and scope of chapter).
>
> (2) This section does not apply to a school district subject to Section 327 of the act of June 27, 2006, (1st Sp. Sess., P.L.1873, No. 1), known as the Taxpayer Relief Act.
>
> (b) Initial rate.--In the first year that any county implements a county-wide revision of assessment by revaluing the properties and applies an established predetermined ratio or changes its assessment base by applying a change in the predetermined ratio, a taxing district levying its real estate taxes on the revised assessment roll for the first time shall reduce its tax rate, if necessary, so that the

[68] Act 71 of 2005 created a "two-step" process for Allegheny County.
[69] 499 out of 501 in 2005.
[70] Including counties.

> total amount of taxes levied for that year against the real properties contained in the duplicate does not exceed the total amount it levied on such properties in the preceding year. The tax rate shall be fixed at a figure that will accomplish this purpose.
>
> (c) Final rate.--After establishing a tax rate under subsection (b), a taxing district may, by a separate and specific vote, establish a final tax rate for the first year in which the reassessment is implemented to levy its real estate taxes on the revised assessment. The tax rate under this subsection shall be fixed at a figure which limits the total amount of taxes levied for that year against the real properties contained in the duplicate for the preceding year to not more than 10% greater than the total amount it levied on such properties the preceding year, notwithstanding the increased valuations of such properties under the revised assessment.

Section 8823 (d) and (e) reflect current law.

> (d) For the purpose of determining the total amount of taxes to be levied for said first year under subsections (b) and (c), the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing houses need not be considered.
>
> (e) With the approval of the court of common pleas, upon good cause shown, any taxing district may increase the tax rate herein prescribed, notwithstanding the provisions of this subsection.

§8831. Chief assessor.

This section is derived from language in the Fourth to Eighth Class County Assessment Law[71] with regard to the appointment, compensation, and duties of the chief assessor. The language in the General County Assessment Law[72] is very archaic; thus, most of the language in this section is primarily derived from the Fourth to Eighth Class County Assessment Law. The language has been revised and updated.

One ***substantive change*** in this section is a new requirement that any person who is appointed to the position of chief assessor must be *currently* licensed as a Certified Pennsylvania Evaluator (CPE), pursuant to the Assessor's Certification Act[73] and applicable regulations. [74]

Commentary:

Section 8831 is ***new in part*** as it pertains to the appointment of a chief assessor in counties of the 2A and third class. The Third Class County Assessment Board Law and the General County Assessment Law are silent with regard to the manner in which the chief assessor is hired or

[71] §§401, 403, *405 (Oath of office-omitted).
[72] §308.
[73] 1992, P.L. 155, No. 28.
[74] 49 Pa. Code Ch. 36, Subch. C (relating to Certified Pennsylvania Evaluators).

appointed. In practice, the chief assessor in 2A through eighth class counties is appointed by the Board of County Commissioners.
In counties of the 2A and third class, the board of assessment appeals is much more involved in the oversight of the county assessment office. Thus, the ***new language*** in Section 8831 recognizes the function of this independent board stating:

> The chief assessor shall be appointed by the county commissioners with the advice of the board.

Ultimately the power of appointment of the chief assessor remains with the county commissioners. In fourth to eighth class counties, the county commissioners often function as the board of assessment appeals.

The Assessor's Certification Act[75] currently requires that all assessors[76] be licensed as a CPE. Section 3(a) of the Act states:

> Certification of assessors.--It shall be the duty of the board[77] to certify all assessors in this Commonwealth. Any assessor employed on or before March 16, 1992, but not holding the title of Certified Pennsylvania Evaluator shall have three years from the effective date of employment as an assessor to obtain certification by the board. Any assessor employed after March 16, 1992, shall obtain certification within a period of three years from the effective date of employment as an assessor.

The Assessment Reform Committee concluded that a person should not be considered qualified for appointment as chief assessor unless he or she has a current CPE licensure. This Committee reached this conclusion upon consideration of the many important duties associated with the position of chief assessor, such as:

- The chief assessor is responsible to oversee the performance of the subordinate assessors. The Assessors Certification Act provides that only Certified Pennsylvania Evaluators (CPE) can value and assess property for tax purposes. It would be logically impossible to expect a chief assessor who is not certified to be able to supervise subordinate assessors who are certified.
- The chief assessor is responsible to review and certify the assessment roll as containing accurate assessments of all real estate within the county. This is the role of an assessor which, as defined by the Assessors Certification Act, requires the individual to be a CPE.
- Assessment law requires that assessors consider the three approaches to value (income, market, cost). Training in each of these methods is a basic requirement to receive the CPE designation. A chief assessor who is not trained in these methods would not be able to legally value property.
- Existing chief assessors will not be affected. They are required to obtain certification within three (3) years as provided in the Assessors Certification Act.

[75] Does not apply to Philadelphia.
[76] Including revaluation company personnel.
[77] The State Board of Certified Real Estate Appraisers.

§8832. Subordinate assessors.

This section is patterned after language in the General County Assessment Law,[78] the Fourth to Eighth Class County Assessment Law,[79] and the Third Class County Assessment Board Law[80] with regard to the hiring, compensation, and duties of subordinate assessors. Much of the language in the current assessment laws is archaic or obsolete. The language has been simplified in this section, and some ***substantive changes*** have been made.

Section 8832 (c) is ***new***, but it is ***not*** a substantive change in the application of law. This subsection requires assessors to be certified as licensed as a CPE. See commentary in Section 8831.

Section 8832 (d) contains a ***substantive change. This subsection abolishes the office of elected assessor.*** The task of the locally elected assessor in valuing property for real estate tax purposes is obsolete.[81]

§8833. Solicitor.

This section is derived from language in the Fourth to Eighth Class County Assessment Law[82] and the Third Class County Assessment Board Law.[83]

Commentary:

Currently, Section 303 of the Fourth to Eighth Class County Assessment Law directs the county solicitor to advise the board of assessment appeals:

> The county solicitor shall be counsel for the board. Such counsel shall advise the board, from time to time, regarding its powers and duties and the rights of citizens of the county and concerning the best methods of legal procedure for carrying out the various provisions of this act, sent the board on all appeals taken from its decisions or orders to all courts of competent jurisdiction.

Section 2 of the Third Class County Assessment Board Law permits the board of assessment appeals to appoint its own solicitor:

> The said board may appoint one person, learned in the law, as solicitor of said board to advise it upon all legal matters pertaining to its duties. The salary of said solicitor shall be fixed by the salary board of the county and shall be paid by the county.

[78] §506.
[79] §§402, 404.
[80] §§4, 5(a).
[81] Assessors must be licensed as a Certified Pennsylvania Evaluator (CPE) pursuant to the Assessor's Certification Act, 1992, P.L. 155, No. 28.
[82] §303.
[83] §2.

For purposes of uniformity in 2A through eighth class counties, Section 8833 merges the two current sections of law by permitting either the appointment of a separate solicitor *or* utilizing the county solicitor as legal counsel. Section 8833 states:

> The board may appoint an attorney as solicitor to the board and assessment office to advise on all legal matters and appear for and represent the board on all appeals taken from its decisions or orders to all courts of competent jurisdiction. The salary of the appointed solicitor shall be fixed by the salary board of the county. If the board does not appoint a solicitor in accordance with this section, the county solicitor must serve as solicitor to the board and assessment office to the extent that there is not a conflict of interest.

§8834. Assessment records system.

This section is derived from language in the Fourth to Eighth Class County Assessment Law[84] and the Third Class County Assessment Board Law[85] with regard to the preparation and maintenance of permanent assessment records. This section should be read in conjunction with Section 8841.

The language in Section 8834 has been updated, and reference to the Uniform Parcel Identifier Law[86] (UPID) has been added to this section. The UPID was passed in 1988 to permit a county to require the implementation of a uniform parcel identifier system. This system is to provide for a permanent record of all county tax maps with the parcel identifier clearly visible.[87] The parcel identifier usually incorporates the numeric code for the municipality in which the parcel is located with the addition of the map number and the parcel number.

Commentary:

This section eliminates Section 307 of the Fourth to Eighth Class County Assessment Law because it is essentially obsolete. It was enacted in conjunction with Section 306, which required a permanent records system to be established before January 1, 1958. This section should also be read together with §8841.

[84] §306(a).
[85] §17.
[86] 1988, P.L. 1, No. 1.
[87] §3.

§8841. Assessment roll and interim revisions.

This section is derived from language in the General County Assessment Law,[88] the Fourth to Eighth Class County Assessment Law,[89] and the Third Class County Assessment Board Law[90] pertaining to the preparation and form of the assessment roll, interim revisions to the assessment roll, and public inspection of the assessment roll. The language in this section has been updated, and references to the Uniform Parcel Identifier Law[91] and the Right-to-Know Law are included.[92]

§8842. Valuation of property.

This section is substantially a reenactment of language in the General County Assessment Law,[93] the Fourth to Eighth Class County Assessment Law,[94] and the Third Class County Assessment Board Law[95] regarding the establishment of the county predetermined ratio and the valuation of property. Some stylistic changes have been made. The provisions of Act 39 of 2003 and Act 167 of 2006 have also been incorporated into this section.

Act 39 amended Section 402 of the General County Assessment Law to require the consideration of rent restrictions and income tax credits when valuing property,[96] as follows:

> Section 402. Valuation of Property.--* * *
>
> (c) (1) In arriving at the actual value of real property, the impact of applicable rent restrictions, affordability requirements or any other related restrictions prescribed by any Federal or State programs shall be considered.
>
> (2) Federal or State income tax credits with respect to property shall not be considered real property or income attributable to real property.
>
> (3) This subsection shall apply in all counties and other political subdivisions in this Commonwealth.

Act 167 of 2006 amended Section 602.4 of the Fourth to Eighth Class County Assessment Law to provide for the valuation of real property used for the purpose of wind energy generation in **ALL** counties in the Commonwealth, as follows:

> Section 602.4. Valuation of Real Property Used for the Purpose of Wind Energy Generation….
>
> The valuation of real property used for the purpose of wind energy generation for assessment purposes shall be developed by the county assessor utilizing the income capitalization approach to value. The valuation shall be

[88] §§405, 441, 502, 503, 504, 505(b), 507, 509.
[89] §§601 (part) 603, 604, 701(a) (part), 701(a.1).
[90] §§3(a), 7(a), (b), (f), 8(a)(1).
[91] 1988, P.L. 1, No. 1.
[92] 2008, P.L. 6, No 3.
[93] §§402(a), (a.1), 418*, 419.* *Obsolete.
[94] §602(a).
[95] §7(c), (d), (e).
[96] E.g. subsidized housing.

> determined by the capitalized value of the land lease agreements, supplemented by the sales comparison data approach as deemed necessary by the county assessor. The lessee, or lessor on behalf of the lessee, shall provide the nonproprietary lease and lease income information reasonably needed by the county assessor to determine value by September 1. (Section 8842 (b)(2) of the act).

An ***exclusion*** was made to this section. See commentary below.

Commentary:

This section excludes the language from Sections 418-419 in the General County Assessment Law. These two sections address the assessment of "Returns of Timber Lands" and "Assessment of Auxiliary Forest Reserves," respectively. These types of properties are covered by the forest reserve provisions of the Pennsylvania Farmland and Forest Land Assessment Act of 1974,[97] otherwise known as "Clean and Green." Therefore, the inclusion of these provisions in the codification is not necessary.

Constitutional challenge to base year valuation:

In Clifton v. Allegheny County, 969 A.2d 1197 (Pa. 2009), the Supreme Court held that, as applied in Allegheny County, the statutory base year system of taxation, which permits "the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violates the Uniformity Clause of the Pennsylvania Constitution." The Supreme Court, however, disagreed with the trial court's conclusion that the base year system was invalid on its face, and that only annual reassessments would be constitutional. The case could be read as hinting that it seemed likely, if not inevitable, that the use of a base year assessment eventually will become unconstitutional. This holding, which is different and narrower than that of the trial court, is that the "base year" method of property valuation, as applied in Allegheny County, violates the Uniformity Clause of the Pennsylvania Constitution. The Supreme Court agreed with the trial court that a countywide reassessment is required in Allegheny County and remanded this matter to the trial court for implementation.

§8843. Spot reassessment.

This section is derived from language in the Third Class County Assessment Board Law[98] that prohibits spot reassessment. The addition of this language will be a ***substantive change*** in *statute* for counties of the fourth through eighth class; however, *case law* already supports the prohibition against spot reassessment. Another ***substantive change*** is the addition of language clarifying that if an assessment is appealed by a taxpayer or taxing district and a subsequent change in assessment results, this action will *not* constitute spot reassessment.

[97] (1974, P.L. 973, No. 319).
[98] §7.1.

Commentary:

Selective reassessment or "spot reassessment" is improper.[99] The same methodology must be used to value all of the property in a county, and the county may not reassess property in a selective part of the county.[100] Collectively, case law has prohibited assessors and the board from reassessing less than an entire county except as correction of errors or as otherwise specifically provided by statute.

Language has also been added to Section 8843 to specify that a change in assessment resulting from *an appeal* to the board by a taxpayer or taxing district shall not constitute a spot reassessment. The courts[101] have noted that the corporate authorities of any county, borough, town, township, or school district, which may feel aggrieved by any assessment of any property or other subject of taxation for its corporate purposes, has the right to appeal in the same manner, subject to the same procedure and *with like effect* as if the appeal were taken by a property owner with respect to the assessment.

§8844. Notice, appeals and certification of values.

This section is derived from provisions of the General County Assessment Law,[102] the Fourth to Eighth Class County Assessment Law,[103] and the Third Class County Assessment Law.[104] There are ***substantive changes*** in this section.

Commentary:

Section 8844(a) enumerates the information required to be set forth on an assessment notice. The only ***substantive change*** in this subsection is the requirement that the assessed value of land be set forth separate and apart from the assessed value of any improvements.

Another ***change*** to Section 8844(c) clarifies that the annual appeal deadline applies to exemption requests. This has been the source of confusion on the part of many assessment offices and charitable organizations. There is a ***substantive change*** in this subsection for fourth to eighth class counties to permit the designation of an appeal deadline as early as the first day of August. This language currently exists for 2A and third class counties. The current appeal date for fourth to eighth class counties is fixed on September 1.

Section 8844(e) also contains ***two substantive changes.***

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[99] *Althouse v. County of Monroe*, 159 Pa. Cmwlth. 467, 633 A.2d 1267 (1993); *O'Merle v. Monroe County Bd. of Assessment Appeals*, 95 Pa. Cmwlth. 141, 504 A.2d 975 (1986); *Callas v. Armstrong County Bd. of Assessment*, 70 Pa. Cmwlth. 272, 453 A.2d 25 (1982); *Radecke v. York County Bd. of Assessment Appeals*, 798 A.2d 265 (Pa. Cmwlth. 2002).

[100] *Lancaster v. County of Lancaster*, 143 Pa. Cmwlth. 476, 599 A.2d 289 (1991).

[101] *In re Springfield School District*), *879 A.2d 335,* (Pa. Cmwlth. 2005); *Vees v. Carbon County Bd. of Assessment Appeals* 867 A.2d 742 (Pa. Cmwlth. 2005); *Millcreek Township Sch. Dist. v. Erie County Bd. of Assessment Appeals*, 737 A.2d 335 (Pa. Cmwlth. 1999).

[102] §§511(b), (c), (d); 513; 514;

[103] §§701(a), (b), (b.1); §702(a), (b), (c), (d), (e)(part), 703

[104] §§8(a)(2), (b), (c), (d), (d.1), (d.2), (d.4), (d.5); 8(e), (f), 14* *Obsolete.

The first ***substantive change*** eliminates the five day time restriction for the board of assessment appeals to mail a copy of its order to the appellant. This requirement is currently delineated in Section 702(e) of the Fourth to Eighth Class County Assessment Law, but the same requirement does not exist in the General County Assessment or in the Third Class County Assessment Law. The courts have noted that "it is the formal notice of the mailing date notification that triggers the appeal period."[105] Language was added in this subsection to uniformly require boards in all counties to give written notice of its decision to the appellant, property owner, and affected taxing districts no later than November 15. November 15th is the date by which the assessment roll must be certified to the various taxing districts each year.

The second ***substantive change*** to Section 8844(e) is the addition of paragraph (3):

> Nothing in this subsection shall be construed to abridge, alter or limit the right of an appellant to assert a challenge under Section 1 of Article VIII of the Constitution of Pennsylvania.

Commentary

Until recently, Pennsylvania courts had upheld the statutory measure of assessment uniformity using the county's common level ratio last published by the STEB (see definitions). In so doing, the courts had repeatedly stated that a taxpayer may not successfully raise a uniformity challenge by comparing his or her assessment-to-market-value ratio with assessment-to-market-value ratios of neighboring properties.[106] Uniformity was only to be determined by applying the STEB ratio to the property's market value in order to arrive at the correct assessment. On December 27, 2006, the Pennsylvania Supreme Court[107] held that courts were required to examine evidence of the assessment-to-market-value ratio of comparable properties in determining whether or not uniformity was violated, if such evidence was presented. This case may raise concerns about the constitutional validity of statutory provisions that preclude examination of comparable property[108] in the appeal process.

§8845. Service of notices.

This section is a reenactment of part of Section 11[109] of the Third Class County Assessment Board Law which permits a right of appeal under specified circumstances when there was a defect in delivering the assessment notice. Section 8845 states:

> No defect in service of any notice shall be sufficient ground for setting any assessment aside, but, upon proof of defective notice, the aggrieved party or taxing district shall have the right to a hearing before the board.

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[105] *Appeal of Borough of West View***,** 501 A.2d 706 (Pa. Cmwlth. 1985).
[106] *Hromisin v. Board of Assessment Appeals of Luzerne County,* 719 A.2d 815 (Pa. Cmwlth. 1998), *appeal denied,* 558 Pa. 634, 737 A.2d 1227 (1999); *Baechtold v. Monroe County Board of Assessment Appeals,* 804 A.2d 713 (Pa. Cmwlth. 2002).
[107] *Downingtown Area School District v. Chester County Bd. of Assessment Appeals,* 913 A.2d 194 (Pa. 2006). Order denying application for reargument issued on March 2, 2007.
[108] The assessment-to-market-value ratio of comparable property.
[109] Part of §11 was moved to §8848.

§8846. Notice of changes given to taxing authorities.

This section is substantially a reenactment of language in the General County Assessment Law,[110] the Fourth to Eighth Class County Assessment Law,[111] and the Third Class County Assessment Board Law[112] regarding notification to taxing authorities regarding changes in assessments. The language has been updated.

§8847. Application of assessment changed as a result of an appeal.

This section is derived from language in the Third Class County Assessment Board Law[113] pertaining to the application of a change in assessment as a result of an appeal. Although this language does not appear in the General County Assessment Law or the Fourth to Eighth Class County Assessment Law, it is reflective of the actual practice in other counties. Section 8847(a) and (b) provide:

> (a) Except as provided in subsection (b), for purposes of taxation, when there is a change in assessment made by the board as a result of an assessment appeal, a taxing district shall apply the changed assessment in computing taxes imposed in the next fiscal year of the taxing district following the fiscal year in which the board heard the appeal and rendered its decision.
>
> (b) Subsection (a) shall not apply to:
>
> (1) Interim assessments made pursuant to §8841(c).
>
> (2) Reductions in assessments due to a catastrophic loss pursuant to §8815.
>
> (3) Correction to assessments made due to clerical or mathematical errors pursuant to §8816.

Commentary:

The delay of implementing a changed assessment to the next fiscal year as per Section 8847 has also been applied by the courts where the taxable *status* of a property converts during the year. The courts have ruled that a change in taxable status during the tax year is not retroactive or even partially effective in the tax year, but effective only in the *beginning of the next year*.[114] Property that is tax-exempt on January 1 does not become taxable if it is purchased by a non-exempt organization during the tax year.[115]

§8848. Special provisions relating to countywide revisions of assessments.

This section addresses the procedures to be followed when a county implements a countywide reassessment as pertaining to notice requirements, informal reviews, appeals, and adjustments of

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[110] §§514.1, 515,* 516.* *Unnecessary. Duplicates covered in §8841.
[111] §703.1.
[112] §8.1.
[113] §§8.5(a), (b), 12, 13.
[114] *In Appeal of Title Services, Inc.*, 433 Pa. 535, 252 A.2d 585 (1969) (superseded by statute re: electric generation facilities as stated in, *Atlantic City Elec. Co. v. United School Dist.*, 780 A.2d 766, (Pa. Cmwlth. 2001).
[115] *In Appeal of Title Services, Inc.*

the common level ratio in the year following a reassessment. Section 8848 is substantially a reenactment of the provisions in the Third Class County Assessment Board Law.[116] However, there are some ***substantive changes*** to existing provisions of the General County Assessment Law[117] and the Fourth to Eighth Class County Assessment Law.[118]

Commentary:

The language in the Third Class County Assessment Board Law was used as a template for Section 8848 as a means of consolidating this law with the General County Assessment Law and the Fourth to Eighth Class County Assessment Law. The Third Class County Assessment Board Law was substantially amended in 1996[119] and 1997.[120] The Assessment Reform Committee deemed it prudent to preserve some of these amendments and apply them to all counties of the 2A through eighth class in this consolidation effort. In addition, the language in the General County Assessment Law is archaic in referring to "inter-triennial and triennial assessments"[121] instead of countywide or interim assessments. Collectively, case law has prohibited assessors and the board from reassessing less than an entire county except as regards correction of errors or as otherwise specifically provided by statute.

Section 8848(a) contains a ***substantive change*** to the Fourth to Eighth Class County Assessment Law by extending from 30 days to 40 days the time period in which a property owner has to appeal following a countywide reassessment.[122] This section also contains a ***substantive change*** to current procedures delineated in the Third Class County Assessment Board Law by omitting the requirement that an assessment notice be placed in the mail within 5 days of the date of the notice. (This requirement does not exist in the General County Assessment Law or the Fourth to Eighth Class County Assessment Law.) Section 8848 requires county assessment offices to specify a mailing date on the notice. This change should benefit taxpayers by delineating a **specific date** from which to calculate the forty-day deadline to file an appeal. Section 8848(a) states:

> When any county proposes to institute a countywide revision of assessments upon real property, the following notice requirements shall apply:
>
> (1) Each property owner shall be notified by mail at the property owner's last known address of the value of the new assessment, the value of their old assessment, and the right to appeal within 40 days as provided in subsection (c)(1). The notice shall state a mailing date and shall be deposited in the United

[116] §§8(d.3), (g), 11 (part), 7.2.
[117] §511(b.1).
[118] §701(c), (c.1).
[119] Acts 83, 88, 89, and 90.
[120] Act 4.
[121] Triennial assessments, that is, reassessing one third of the county at a time and implementing one third of the assessments at a time would be deemed unconstitutional. A body must use the same methodology to value all property in a county at the same time. *Lancaster v. County of Lancaster*, 143 Pa. Cmwlth. 476, 599 A.2d 289 (1991).
[122]Section 509 of the General County Assessment Law requires that notice be given "…by advertisement in one or more newspapers printed in or nearest to the seat of justice of the proper county, ***at least three weeks before the day of appeal,*** of the time and place fixed for such appeal from ***triennial assessments***." (Emphasis added.)

States mail on that date. The notice shall be deemed received by the property owner on the date deposited in the United States mail;

(2) The chief assessor shall maintain a list of all notices and the mailing dates for each and shall affix an affidavit attesting to the mailing dates of the assessment notices. This list shall be a permanent public record of the county assessment office and available for public inspection.

Section 8848(b) contains another ***substantive change*** to the Fourth to Eighth Class County Assessment Law[123] in that it provides an **informal review process** in conjunction with a countywide reassessment by which taxpayers can request an informal meeting to discuss their proposed assessment with the county assessment office or their designee (reassessment contractor) prior to completion of the final assessment roll. This language currently exists in the Third Class County Assessment Board Law as per Act 89 of 1996.

Section 8848(c) contains a ***substantive change*** by deleting language in the Third Class County Assessment Board Law that permits a property owner to file a late (beyond 40 days) appeal from the countywide reassessment if they can demonstrate that the delay was caused by extraordinary circumstances.[124] There has been a significant amount of criticism and confusion over what standard should be applied since this is different from the "nunc pro tunc" standard that is applied by the courts in deciding whether to permit the late filing of a statutory appeal. This ***substantive change*** will clarify that the normal "nunc pro tunc"[125] standard applies before boards of assessment as well as before the courts.[126]

Section 8848(d) (pertaining to the application of the common level ratio after a countywide reassessment) has not been changed. The language is the same in all of the assessment laws.

§8851. Board of assessment appeals and board of assessment revision.

This section is patterned after language in the General County Assessment Law,[127] the Fourth to Eighth Class County Assessment Law,[128] and the Third Class County Assessment Board Law[129] pertaining to: (a) the establishment and membership of the board of assessment appeals and the board of assessment revision; (b) the powers and duties of the board; (c) expenses of the board; and (d) organization of board meetings. The language incorporated in this section from the assessment laws has been substantially updated and some ***substantive changes*** have been made.

Commentary:

The composition of the county assessment appeals board varies between the different classes of counties. Currently, in counties of the 2A and third class, a separate board of assessment appeals

[123] The General County Assessment Law does not contain specific language regarding notification when a county proposes to institute a countywide reassessment.
[124] This language was part of the amendment enacted by Act 89 of 1996.
[125] Latin "now for then." Having retroactive legal effect through a court's inherent power.
[126] See *Union Electric v. Board of Property Assessment*, 746 A.2d 581, (Pa. 2000).
[127] §501.
[128] §§301 (part), 302(a), (b), 304, 305.
[129] §1.

is appointed by the county commissioners to hear appeals and supervise the assessment office. County commissioners in 2A and third class counties may *not* serve as the board of assessment appeals. In counties of the fourth to eighth class,[130] the county commissioners *may* serve as the board of assessment appeals; alternatively, the commissioners may appoint a separate board of assessment appeals. The powers of the separately appointed assessment appeals board in fourth to eighth class counties are limited to:

> (1) hearing and determining appeals from assessments made by the chief county assessor; and (2) adopting rules of procedure with respect to the determination of appeals.[131]

Section 8851 consolidates these current provisions of law by: (1) continuing the requirement that the commissioners in counties of the 2A and third class appoint a separate board of assessment appeals; (2) *authorizing* the commissioners in counties of the fourth to eighth class to appoint a similar board to that in 2A and third class counties with the same powers and duties; (3) permitting county commissioners in counties of the fourth to eighth class to retain their authority to serve as the county board of assessment "revision." A different name is assigned to the board when the commissioners are serving in this capacity in order to differentiate between them in the codification.

As mentioned above, a separately appointed assessment appeals board in fourth to eighth class counties has very limited functions under current provisions of law. If the commissioners in fourth to eighth class counties choose to appoint a separate assessment appeals board under Section 8851, then the board would be responsible for the supervision and management of the administrative and clerical functions of the county assessment office. This is a ***substantive change.***

Another substantive change to the current laws is the abolition of locally elected assessors. See commentary in Section 8832.

§8852. Regulations of the board.

This section is a reenactment of Section 5(b) of the Third Class County Assessment Board Law and Section 1770.3(b) of the County Code to empower the board to adopt, amend, alter, and rescind rules and regulations for the administration of, and the conduct of business and proceedings for itself and for auxiliary appeal boards. These rules are subject to the approval of the county commissioners.

§8853. Auxiliary appeal boards and alternates.

This section is derived from language in the Third Class County Assessment Board Law and the County Code as regards the establishment and membership of temporary auxiliary appeals boards. ***The Senate amended this section. The amendment was a substantive change.***

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[130] Fourth to Eighth Class County Assessment Law, §301. The General County Assessment Law specifies that the commissioners shall compose the Board of Assessment Revision.
[131] §302(b).

Commentary:

A few changes have been made in Section 8853. First, this section would authorize the county commissioners to appoint *alternate* members for auxiliary appeals boards. This power currently exists for 2A and third class counties but not for fourth to eighth class counties.[132] The purpose of selecting alternate members for these boards is to ensure that the hearings can go forward in the event that a regular member is unavailable for a scheduled hearing.

The County Code limits the existence of auxiliary appeals boards to not more than 18 months. This restriction has been omitted. The Third Class County Assessment Board Law specifies that the auxiliary boards will exist for the "period of time required by the auxiliary appeal board to hear and determine appeals." This language accommodates larger counties, in particular, which have a greater volume of appeals than the smaller counties.

The County Code also provides under Section 1770.3:

> The rules and regulations [adopted by the board] may require a witness providing testimony at a hearing relative to any aspect of the value of the real estate which is the subject of the assessment or reassessment appeal to disclose under oath whether any compensation paid for the testimony is contingent on the result obtained.

This language was moved to Section 8852.

As amended by the Senate on second consideration on May 4, 2010, Section 8853 authorizes the county commissioners to appoint auxiliary appeal boards, outside the scope of a countywide reassessment, to hear and determine all annual appeals. The auxiliary appeal boards would exist for the period of time required to hear and determine appeals filed in accordance with Section 8844(e). *This is a substantive change.*

§8854. Appeals to court.

This section is substantially a reenactment of the General County Assessment Law,[133] Fourth to Eighth Class County Assessment Law,[134] and the Third Class County Assessment Board Law[135] regarding the appeal of an assessment to the courts, and the payment of taxes pending appeal. The language in this section has been updated and stylistic changes have been made for easier readability. ***Substantive changes*** have been made.

Commentary:

Until recently, Pennsylvania courts had upheld the statutory measure of assessment uniformity using the county's common level ratio last published by the STEB (see definitions). In so doing, the courts had repeatedly stated that a taxpayer may not successfully raise a uniformity challenge by comparing his or her assessment-to-market-value ratio with assessment-to-market-value ratios

[132] Third Class County Assessment Board Law, §1(c).
[133] §§518.1, 518.2, 519.
[134] §§704, 705.
[135] §§9, 13.

of neighboring properties.[136] Uniformity was only to be determined by applying the STEB ratio to the property's market value in order to arrive at the correct assessment. On December 27, 2006, the Pennsylvania Supreme Court[137] held that courts were required to examine evidence of the assessment-to-market-value ratio of comparable properties in determining whether or not uniformity was violated, if such evidence was presented. This case may raise concerns about the constitutional validity of statutory provisions that preclude examination of comparable property[138] in the appeal process.

Due to the ruling by the Pennsylvania Supreme Court in *Downingtown*, paragraph (9)(ii) was added to Section 8854(a). This is a ***substantive change*.**

> Nothing in this subsection shall be construed to abridge, alter or limit the right of an appellant to assert a challenge under Section 1 of Article VIII of the Constitution of Pennsylvania.

Section 8854(b) contains a ***substantive change*** in that it adopts the rule set forth in the Fourth to Eighth Class County Assessment Law. This provision states that only parties to the appeal before the court of common pleas may appeal to the Commonwealth or Supreme courts. This is the general rule for all other appeals in civil matters in Pennsylvania. The provisions in the General County Assessment Law and Third Class County Assessment Law allow non-parties to appeal even though they did not participate in the lower court appeal. This causes uncertainty and added expense for the parties to an appeal that enter into a settlement agreement even though the agreement was reviewed by the court and approved. This substantive change will remove that uncertainty and encourage affected parties to participate in the action before the court of common pleas.

Section 8854(c) contains a ***substantive change*** by adding clarifying language delineating the method by which interest is to be calculated on refunds due to a taxpayer as a result of a successful appeal of a property assessment. The current law contains a provision that interest is to be paid, but the law does not state when interest begins to accrue. The Pennsylvania Commonwealth Court ruled in *Moore v. Berks County Bd. of Assessment Appeals*[139] that Section 8426(a) of the Local Taxpayers Bill of Rights Act controls when interest begins to accrue.[140] Language has been added to Section 8854(c) to reflect the ruling of this case. This section states that "overpayments of tax due a local taxing authority, including taxes on real property, shall bear simple interest from the date of overpayment until the date of resolution."

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[136] *Hromisin v. Board of Assessment Appeals of Luzerne County,* 719 A.2d 815 (Pa. Cmwlth. 1998), *appeal denied,* 558 Pa. 634, 737 A.2d 1227 (1999); *Baechtold v. Monroe County Board of Assessment Appeals,* 804 A.2d 713 (Pa. Cmwlth. 2002).

[137] *Downingtown Area School District v. Chester County Bd. of Assessment Appeals,* 913 A.2d 194 (Pa. 2006).

[138] The assessment-to-market-value ratio of comparable property.

[139] 888 A.2d 40 (Pa. Cmwlth. 2005).

[140] Effective on January 1, 1999.

§8855. Appeals by taxing districts.

This section is substantially a reenactment of language from the General County Assessment Law,[141] Fourth to Eighth Class County Assessment Law,[142] and the Third Class County Assessment Board Law[143] regarding the appeal of an assessment by taxing districts. This language has been updated.

§8861. Abstracts of building and demolition permits to be forwarded to the county assessment office.

This section is derived from Section 602.2 of the Fourth to Eighth Class County Assessment Law. The language was updated, in part. A ***substantive change*** to this section is the requirement that when a third-party agency or the Department of Labor and Industry issue a building permit as per the Pennsylvania Uniform Construction Code Act (UCC),[144] they must forward a copy of the permit to the county assessment office.

Commentary:

Currently, Section 602.2 requires municipalities to submit building permit information to the county assessment office once a month. The law authorizes the municipality to collect a $10 fee from each person to whom the permit is issued for the administrative costs incurred for compliance with this requirement. With the enactment of the UCC, municipalities are no longer the only entity issuing building permits. The UCC permits third-party agencies and the Department of Labor and Industry to issue permits now as well. The county assessment offices rely on this data to update property record information. Section 8861 primarily reflects the current language of Section 602.2 with the addition of third-party agencies and the Department of Labor and Industry. **Section 8861 was amended by the House Local Government Committee on June 15, 2010, to remove the requirement that building permits contain specified information as set forth in the Section 602.2.[145]**

> (a) Every municipality, third-party agency, or the Department of Labor and Industry responsible for the issuance of building permits, shall forward a copy of each building permit to the county assessment office on or before the first day of every month. In addition to any charge otherwise permitted by law, a municipality, third-party agency, or the Department of Labor and Industry may charge an additional fee of $10 to each person to whom a permit is issued for administrative costs incurred in compliance with this section.
>
> (b) Whenever any person makes improvements to any real property, other than painting of or normal regular repairs to a building, aggregating more than $2,500

[141] §520.
[142] §706.
[143] §18.
[144] 1999, P.L. 491, No. 45.
[145] "…the date of issuance, the names and addresses of the persons owning and a description sufficient to identify the property for which the permit was issued, the nature of the improvements and the amount in dollars in which issued."

in value and a building permit is not required for such improvements, the property owner shall furnish the following information to the board:

(1) the name and address of the person owning the property;
(2) a description of the improvements made or to be made to the property; and
(3) the dollar value of the improvements.

(c) Any person who willfully fails to comply with the provisions of subsection (b), or who willfully falsifies the information provided, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than $50.

§8862. Recorder of Deeds to furnish record of conveyance; compensation.

This section is derived from language in the General County Assessment Law[146] and the Fourth to Eighth Class County Assessment Law[147] to provide for the recording of every deed or conveyance of land in a county. The language has been updated. One ***substantive change*** clarifies that the recorder of deeds should charge fees in accordance with the Recorder of Deeds Fee Law.

Commentary:

The recorder of deeds is specifically authorized in the consolidated assessment law to charge fees in accordance with the fee schedule enumerated in the Recorder of Deeds Fee Law.[148] This is a ***substantive change*** from the current law, which permits the recorder of deeds to collect 15 cents from the person presenting a deed of conveyance for record when it contains one description of land and 10 cents for each additional description.

§8863. Assessment of property of decedent's estates.

This section is derived from the General County Assessment Law[149] and Fourth to Eighth Class County Assessment Law.[150] The language has been updated and a ***change*** was made.

Commentary:

A ***new provision*** in this section clarifies that the property of a deceased individual may be assessed in the name of the decedent or his personal representative.

§8864. Assessment of personal property.

This section is a reenactment of Section 618 of the Fourth to Eighth Class County Assessment Law.

[146] §407(a), (b).
[147] §605.
[148] 1982, P.L. 310, No. 87.
[149] §417.
[150] §615.

§8865. Assessment of occupations.

This section is derived from language in the General County Assessment Law[151] and the Fourth to Eighth Class County Assessment Law[152] pertaining to the assessment of occupation taxes in counties of the fourth to eighth class. The language has been updated to include some recent statutory enactments and to modernize some of the language. ***Some substantive changes have also been made.***

Commentary:

A ***substantive change*** has been made to raise the exemption threshold from $5,000 to $12,000. **Current law** provides that any person whose total income from all sources is less than $5,000 per year may be exempted from payment of the per capita or similar head tax, occupation tax,[153] and occupational privilege tax. Section 8865 raises this exemption to $12,000 to comport with Act 511. Municipalities that levy an occupation tax pursuant to Act 511 will be subject to the exemption provision set forth in Act 511. Alternatively, the exemption threshold delineated in the assessment laws will apply when a municipality levies an occupation tax under the authority of a municipal code.[154]

Another ***substantive change*** is the omission to the reference of the occupational privilege tax. The levy of and exemption from this tax, now referred to as the Local Services Tax (LST), is authorized under Act 511.

This section is updated to require the county assessment office to accept the substitute address of any person certified by the Office of Victim Advocate as eligible to participate in the address confidentiality program pursuant to 23 Pa.C.S. Ch. 67, (Domestic and Sexual Violence Victim Address Confidentiality Act).[155]

A ***substantive change*** also provides that a county assessment office is not required to maintain an occupation tax assessment roll if no taxing district in the county levies an occupation tax. This language mirrors that in Chapter 4 of Act 511 "Optional Occupation Tax Elimination."[156]

§8866. Limitation of rates of specific taxes.

This section is a reenactment of Section 201.2 of the Fourth to Eighth Class County Assessment Law. Section 201.2 was added by the General Assembly in 2002:[157]

> No taxes levied under the provisions of this act or 53 Pa.C.S. § 8402(c) (relating to scope and limitations) shall be levied by any taxing district on admissions to automobile racing facilities with a seating capacity of over 25,000 and a

[151] §§201(b), 202; 204(d); 403, 404.
[152] §§201; 202(d); 601 (part).
[153] The levy of an occupation tax is authorized the First Class Township Code, the Borough Code, the County Code, and the Third Class City Code. The Second Class Township Code does not authorize the levy of an occupation tax.
[154] See note above.
[155] Created by Act 188 of 2004.
[156] Added by Act 130 of 2008.
[157] 2002, P.L. 876, No. 125.

> continuous race area of one mile or more in excess of the per centum collected as of January 1, 2002. The tax base upon which the tax shall be levied shall not exceed 40% of the cost of admission to an automobile racing facility.

§8867. Prohibition on certain levies.

This section is a reenactment of Section 201.3 of the Fourth to Eighth Class County Assessment Law. Section 201.3 was added by the General Assembly in 2002:[158]

> Notwithstanding the provisions of this act, the act of December 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling Act," or 53 Pa.C.S. § 8402(c) (relating to scope and limitations), no taxing district shall levy, assess or collect a tax on admissions to ski facilities after December 1, 2002.

§8868. Optional use by cities.

This section is substantially a reenactment of language in the Fourth to Eighth Class County Assessment Law[159] and the Third Class County Assessment Board Law.[160]

Repeals.

(1) Absolute repeals.

The following acts or parts of acts are repealed absolutely:

- The act of May 21, 1943 (P.L. 571, No. 254), known as the Fourth to Eighth Class and Selective County Assessment Law.
- The act of June 26, 1931 (P.L. 1379, No. 348), referred to as the Third Class County Assessment Board Law.
- Section 1770.3 and Section 1770.9 of the act of Aug. 9, 1955 (P.L. 323, No. 130), known as the County Code.

(2) Limited repeals.

- The act of May 22, 1933 (P.L. 853, No. 155), known as the General County Assessment Law is repealed as it related to second class A, third, fourth, fifth, sixth, seventh and eighth class counties.

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[158] 2002, P.L. 876, No. 125.
[159] §104(a), (b), (c).
[160] §19(a), (b), (c). (NOTE: §19.2 appears in Section 4 of the legislation because of its limited applicability.)

Commentary:

The General County Assessment Law is still be effective for counties of the first and second class.

Section 5 of the act preserves the language from Act 167 of 2006 pertaining to any agreement or agreed-to assessment practice related to the assessment of wind turbine generators or related wind energy appliances and equipment, including towers and tower foundations actively in place in a county on January 28, 2007.

(3) Inconsistent acts.

- All other acts and parts of acts are repealed insofar as they are inconsistent with this chapter.

Effective date.

This act will take effect January 1, 2011,[161] except for Section 3[162] of the act which shall take effect immediately.

[161] Including Section 2317, which states that notwithstanding the provisions of the act of May 23, 1907 (P.L.206, No.167), and the act of June 27, 1939 (P.L.1207, No.405), a city of the second class may employ certain full-time firefighters from a contiguous borough according to delineated conditions. The House added this section to Senate Bill 918 on third consideration on September 21, 2010.

[162] Section 3 of the act adds Subpart D (Employment and Employees), Chapter 91 (Municipal Pensions), Subchapter B (Cities of the Second Class). The Senate amended the bill on third consideration on May 25, 2010, by adding Chapter 91 to require that notwithstanding the provisions of Section 902 (a)(2) of Act 205, any proceeds generated in connection with the lease or sale of the City of Pittsburgh's Parking Authority garages be deposited into: 1) the City's municipal pension system fund; or 2) a fund established within PMRS, in the event the City's pension fund is transferred to PMRS management under Section 902 (c) of Act 205. The amendment would also require that if the administration of the City's pension fund is to be transferred to PMRS, that transfer will be accomplished by October 30, 2011.