

Clearinghouse Rule 09-071

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION CREATING RULES

The state superintendent of public instruction hereby proposes to create ch. PI 15, relating to revenue limit exemptions for energy efficiencies.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Section 121.91 (4) (o) , Stats., and 2009 Wis. Act 28, SECTION 9339. Initial applicability; Public Instruction (6) (b).

Statutory authority: Section 121.91 (4) (o) 1., Stats., and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 121.91 (4) (o) 1., Stats., requires the department to promulgate rules to implement s. 121.91 (4) (o) 1., Stats., including eligibility standards for school districts that wish to increase their revenue limit by the amount spent in that school year on energy efficiency measures, and renewable energy products, that result in the avoidance of, or reduction in, energy costs.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: N/A

Plain language analysis:

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, created a revenue limit exemption that allows a school district to increase its revenue limit by the amount spent by the school district in that school year on energy efficiency measures, and renewable energy products, that result in the avoidance of, or reduction in, energy costs.

The proposed rule establishes eligibility standards and procedures for school districts to follow when implementing revenue limit exemptions for energy efficiency measures. Specifically, school boards of the school districts are required to:

- Identify the specific new expenditures.
- Identify the performance indicators to measure the cost savings as a result of the expenditures.
- Identify the period of time in which the expenditure will be recovered by the cost savings.
- Pass a resolution with specified information by November 1 in the school year in which a tax is to be levied for the expenditure.
- Submit a copy of the resolution to the department within two weeks of passage.
- Levy the amount specified in the resolution when establishing its tax levies.
- Incur the expenditure authorized in its resolution.
- No later than two weeks following the date of the school district's budget hearing, submit to the department specified contents of the addendum to the school district's published budget summary.
- Reduce the school district's following year's revenue limit by the amount of any additional revenue received as a result of the exemption and by the amount levied for which there is not a documented energy expenditure, if any.

- Prohibit any additional revenue received by a school district from being included in the base for determining the school district's revenue limit for the succeeding school year.

In addition, the department is required to:

- Post on its website all the resolutions received by school districts.
- Adjust a school district's revenue limit to include the levy amount specified in the resolution.
- Post on its website the addendum contents received by school districts.
- Reduce a school district's revenue limit for the following year by the amount of any additional revenue received as a result of the exemption.
- Reduce the school district's revenue limit for the following year by an amount the school district levied for which there is no documented expenditure authorized under the exemption, if any.

Because November 6 (school district tax levy due date) is the deadline for determining revenue limits for the 2009-10 school year, emergency rules need to be in place by the fall of 2009.

Summary of, and comparison with, existing or proposed federal regulations: N/A

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to revenue limits.

Summary of factual data and analytical methodologies:

2009 Wisconsin Act 28 provided that a school district's revenue limit may be increased by the amount spent by the district in that school year on energy efficiency measures and renewable energy products that result in avoidance of, or reduction in, energy costs, beginning with revenue limits calculated in the 2009-10 school year. The department is required to promulgate rules to implement this provision, including standards and guidelines districts must meet to use this adjustment. The department is allowed to promulgate emergency rules without the finding of an emergency to implement this provision. A school board is required to adopt a resolution to increase its revenue limit under this provision. The adjustment is nonrecurring.

The rules focus on the process that school districts must use to request energy efficiency revenue limit exemptions and to ensure that the additional expenditure/taxing authority is offset with documented cost savings.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A

Anticipated costs incurred by private sector: N/A

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

David Carlson, Director, School Financial Services, (608) 266-6968, david.carlson@dpi.state.wi.us .

Place where comments are to be submitted and deadline for submission:

The department will publish a hearing notice in the *Administrative Register* which will include this information.

SECTION 1. Chapter PI 15 is created to read:

CHAPTER PI 15

REVENUE LIMIT EXEMPTIONS FOR ENERGY EFFICIENCIES

PI 15.01 Purpose. A school board may not exceed its revenue limit under s. 121.91 (2m), Stats., except as allowed under s. 121.91 (3), (4), and (8), Stats. This chapter sets forth eligibility criteria and procedures for allowing revenue limit exemptions for energy efficiency measures, and renewable energy products as allowed under s. 121.91 (4) (o), Stats.

PI 15.02 Definitions. In this chapter:

(1) "Department" means the Wisconsin department of public instruction.

(2) "Expenditure" or "expenditures" means the amount spent or planned to be spent by the school district in a school year on energy efficiency measures, and renewable energy products that result in the avoidance of, or reduction in, energy costs.

(3) "Revenue limit" means the amount of revenue calculated under s. 121.91 (2m), Stats.

(4) "School board" has the meaning given in s. 115.001 (7), Stats.

(5) "School district" has the meaning given in s. 115.01 (3), Stats.

PI 15.03 School district eligibility requirements.

(1) Under s. 121.91 (4) (o), Stats., if a school board adopts a resolution to do so, the revenue limit otherwise applicable to a school district under sub. 121.91 (2m), Stats., in any school year is increased by the amount spent by the school district in that school year on energy efficiency measures, and renewable energy products, that result in the avoidance of, or reduction in, energy costs.

(2) Prior to adopting a resolution under this section, the school board shall do all of the following:

(a) Identify the specific new expenditures.

(b) Identify the performance indicators to measure the cost savings as a result of the expenditures. The cost savings plan must equal the expenditures.

(c) Identify the period of time in which the expenditure will be recovered by cost savings.

(3) A resolution under this section shall be passed by November 1 in the school year in which a tax is to be levied for the expenditure. The resolution shall include all of the following information:

(a) The name of the school district.

(b) A statement that the school district is exercising its taxing authority under s. 121.91 (4) (o), Stats., to exceed the revenue limit on a non-recurring basis by an amount the school district will spend on new energy efficiency measures and renewable energy products for the current school year.

(c) The amount to be levied and expended.

(d) A list of the cost recovery performance indicators that will measure each expenditure in an amount equal to the exemption request, including the timeline for cost recovery for each expenditure.

(e) A statement that an evaluation of the energy performance indicators will be included as an addendum to the succeeding school year's required published budget summary document under s. 65.90, Stats., and in the school district's newsletter or in the published minutes of the school board meeting.

Note: Appendix A provides a sample resolution.

(4) A school board that passes a resolution under sub. (3) shall submit a copy of that resolution to the department within two weeks of passage.

(5) The school board shall include the levy amount specified in the resolution under sub. (3) (c) when establishing its tax levies under s. 120.12 (3), Stats.

(6) The school board shall incur the expenditure authorized in its resolution under sub. (3) (c).

(7) Annually, no later than two weeks following the date of the school district's budget hearing, the school board shall submit to the department the contents of the addendum to the school district's published budget summary under s. 65.90, Stats. In addition to the resolution, the addendum shall include an evaluation of the performance measures, including the energy cost savings incurred as a result of the school district's expenditure. The school board shall also include the information in this subsection in the school district's newsletter or in the published minutes of the school board meeting.

(8) Any additional revenue received by a school district under this paragraph shall not be included in the base for determining the school district's limit under s. 121.91 (2m), Stats., for the succeeding school year. In addition, the school board shall reduce the school district's following year's revenue limit by the amount levied for which there is not a documented energy expenditure, if any.

PI 15.04 Department requirements. (1) The department shall post on its website all the resolutions received under s. PI 15.03 (4).

(2) The department shall adjust the school district's revenue limit to include the levy amount specified in the resolution under sub. (3) (c).

(3) The department shall post on its website the addendum contents received under s. PI 15.03 (7).

(4) The department shall reduce the following year's revenue limit by the amount of any additional revenue received as a result of this exemption.

(5) Notwithstanding sub. (4), the department will also reduce the school district's following year revenue limit by an amount the school district levied for which there is no documented expenditure authorized under this exemption.

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this ____ day of September, 2009

Tony Evers, PhD
State Superintendent

CHAPTER PI 15

APPENDIX

**SAMPLE RESOLUTION FOR REVENUE LIMIT EXEMPTIONS
FOR ENERGY EFFICIENCIES**

Be it resolved that the school district of _____ is exercising its taxing authority under s. 121.91 (4) (o), Wis. Stats., to exceed the revenue limit on a non-recurring basis by an amount the district will spend on new energy efficiency measures and renewable energy products for the _(insert pertaining school year)_ school year. The amount to be levied and expended is \$_____.

The board has identified the following required performance indicators that will measure the energy savings and/or energy cost avoidance in an amount equal to the exemption request and will include a timeline:

(List performance indicators here)

An evaluation of the energy performance indicators will be included as an addendum in the required _(insert school year following school year above)_ published budget summary document per s. 65.90, Wis. Stats., and in the school district's newsletter or in the published minutes of the school board meeting.