

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 15-072
CHAPTER PI 15
REVENUE LIMIT EXEMPTIONS FOR ENERGY EFFICIENCIES

Analysis by the Department of Public Instruction

Statutory authority: ss. 227.11 (2) (a) and (b), and 227.41 (1), Stats.

Statute interpreted: s. 121.91 (4) (o), Stats.

The proposed rule will align PI 15 with current statute, which was modified by 2011 Wisconsin Act 32 and 2013 Wisconsin Act 20.

State law authorizes a school board to adopt a resolution to exceed the district revenue limit if the energy efficiency project is governed by a performance contract. The proposed rule provides a mechanism for districts to demonstrate compliance with state law via reporting the details of the required performance contract. State law requires a school board to use utility savings from the energy efficiency projects to retire district debt. The rule provides a uniform mechanism to ensure compliance with state law.

Before passing an energy efficiency exemption resolution a school board must enter into a performance contract under s. 66.0133, Stats. A properly executed performance contract will provide the board with the information required for the resolution. The Department of Public Instruction (DPI) provides a sample resolution and a table for districts to use to collect the required information to list each energy efficiency measure/product with related cost recovery performance indicators, estimated cost, and estimated savings and payback period.

A school board may adopt a resolution to increase the revenue limit otherwise applicable to a school district under s. 121.91 (2m), Stats., in any school year by an amount spent by the school district in that school year on a project to implement energy efficiency measures or to purchase energy efficiency products. Districts may use this non-recurring exemption to the revenue limit to pay for an energy efficiency project in a single year or to repay a note, bond, or loan used to finance the project.

The hearing notice was published in the October 26, 2015 edition of the Wisconsin Administrative Register. A public hearing was held on November 18, 2015.

The following persons testified at the April 3, 2015 hearing (some also provided written testimony as well):

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Ric Ericksen	Germantown School District	X		
Dan Choi	McKinstry	X		

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Geoffrey Lacy	Strang, Patteson, Renning, Lewis & Lacy	X		
Linda Dallman	School District of Poynette			X
Kevin White/Liz O'Donnell/Mary Arnold/Cindy Damm/Bill Braun/Joe Conlin/Mike O'Brien	Columbus School District			X
Chadd Hartwig/Lisa Laing/Tom Labus/Kate Ketterhagen/Sara Norton/Mary Coss	Fontana Jt. 8 School District	X		
Michelle S. Langenfeld/Andrew Sarnow	Green Bay Area Public School District	X		
Dan Rossmiller	Wisconsin Association of School Boards	X		

Summary of oral and written public comments relative to the rule, the agency's response to those comments, and changes made as a result of those comments:

Summary of public comments

1. By requiring the inclusion of the terms of the performance contract in the new resolution under this rule, the department would require significant detail beyond what was previously expected of school districts. It would be reasonable to permit districts currently in the process of utilizing a revenue limit exemption for energy efficiencies to use the procedures that have been used for years, that is a resolution that references the nature of the expenditures, not the actual performance contract itself.
2. The implementation of 2013 Wisconsin Act 20 with respect to the changes to the revenue limit exemption has put another administrative burden on school districts. The department is asked to repeal the requirement to claim on the net savings on the revenue limit worksheet, at least for school districts that borrowed money in good faith to conserve energy.
3. School districts have asked for more clarity around the requirements for claiming a revenue limit exemption for energy efficiencies, particularly with respect to the timing between school boards entering into a performance contract and adopting an resolution to exceed the revenue limit for an energy efficiency project.
4. Questions have arisen as to why the term "renewable" was struck from the existing rule in the case of school districts purchasing renewable energy measures under the revenue limit exemption.
5. Concerns have arisen regarding this new rule, such as the desire for a "grandfather clause" in the case of projects that were approved prior to the emergency rule going into effect and include in their performance contract instructional devices, such as "computer labs on a cart," that yield a significant operational savings but are not allowed under the emergency rule. Additionally, there are school districts that are still under revenue limit penalty for under spending their revenue limit 1-5 years ago as a result of these rules.
6. Clarifying PI 15 to ensure that the department is administering the exemption in a matter that is consistent with statutes is appreciated and necessary, especially at a time when sharp budget cuts have limited school districts' ability to address aging and inefficient facilities.

7. Questions have arisen as the department's interpretation of the governing statute and PI 15.03 (8), PI 15.04 (4), and PI 15.04 (5) of the prior rule, which would require a school district's base revenue limit to be perpetually reduced in recurring fashion by the amount of unexpended funds. It is not necessary to interpret the words "following year revenue limit" or "following year's revenue limit" to connote a recurring penalty, but should be read to suggest a one-time, non-recurring adjustment only. Therefore, the changes to repeal PI 15.03 (8) and PI 15.05 (5), and to repeal and recreate PI 15.04 (4), are reasonable changes.

Agency response

1. State law authorizes a school board to adopt a resolution to exceed the district revenue limit if the project is governed by a performance contract. The rule provides a mechanism for districts to demonstrate compliance with state law via reporting the details of the required performance contract.
2. State law requires a school board to use utility savings from the energy efficiency projects to retire district debt. The rule provides a uniform mechanism to ensure compliance with state law.
3. Before passing an energy efficiency exemption resolution a school board must enter into a performance contract under s. 66.0133, Stats. A properly executed performance contract will provide the board with the information required for the resolution. The Department of Public Instruction (DPI) provides a sample resolution and a table for districts to use to collect the required information to list each energy efficiency measure/product with related cost recovery performance indicators, estimated cost, and estimated savings and payback period.

A school board may adopt a resolution to increase the revenue limit otherwise applicable to a school district under s. 121.91 (2m), Stats., in any school year by an amount spent by the school district in that school year on a project to implement energy efficiency measures or to purchase energy efficiency products. District may use this non-recurring exemption to the revenue limit to pay for an energy efficiency project in a single year or to repay a note, bond, or loan used to finance the project.

The permanent rule will include a requirement that the school board must adopt the resolution on or before October 1st and the district must report the information within 10 days to DPI.

4. State law was modified to remove the term "renewable", thus the rule has been modified to reflect state statutes.
5. State law does not include a "grandfather clause" provision for defining eligible projects nor does it include specific authority for DPI to retroactively modify prior revenue limit penalties.
6. DPI agrees the rule will allow the agency to administer the exemption in a matter that is consistent with state statutes.
7. DPI has consistently interpreted and administered the prior administrative rules. The Department recognizes other parties can interpret state law differently. DPI is proposing permanent rules to delete the recurring revenue limit penalty and create a new penalty on a one-time, non-recurring basis.

Changes made as a result of oral or written testimony:

In response to the comments provided in the public hearing, the Department made the following changes:

- Revised ss. PI 15.03 (3) (intro.) and (4) to state that a resolution shall be passed by October 1 (formerly November 1) and a school board that passes a resolution shall submit a copy of that resolution to the department within ten days (formerly two weeks) of passage.

Changes to the analysis or the fiscal estimate:

- No changes were made.

Responses to Clearinghouse Report:

1. Statutory Authority

a. Added a citation to s. 227.11 (2) (a), Stats., and removed the citation to s. 121.91 (4) (o), Stats.

2. Form, Style and Placement in Administrative Code:

- a. Placed parentheses around the word “Note” in the enumeration of provisions treated in the proposed rule, so that the provision appears as “(Note).”
- b. Clarified the rule summary’s explanation of agency authority to explain the Department’s use of general authority to promulgate rules.
- c. Modified the plain language analysis of the proposed rule.
- d. Provided a date by which comments should be submitted in the rule summary’s listing of the place to submit comments.
- e. Placed parentheses around the word “Note” in the SECTION 4 treatment clause, so that the provision appears as “(Note).”
- f. Rephrased the beginning of s. PI 15.03 (3) (g) so that it would flow as one sentence if read together with the introduction.
- g. Removed the stricken period after “expenditure” in s. PI 15.03 (7).
- h. Removed the stricken sentence in the repeal and recreate of s. PI 15.04 (4).
- i. Replaced the brackets throughout ch. PI 15 Appendix A with parentheses where specific information should be inserted.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Revised the Note under s. PI 15.03 (2) (c) to include information about how a reporting form may be obtained.

5. Clarity, Grammar, Punctuation and Plainness:

- a. The Department believes the prohibition on the purchase of one-to-one instructional technology devices is sufficiently clear and does not need to be defined as part of PI 15. School districts are required to have technology plans and the plans contain sufficient detail to document if one-to-one student computers are part of the plan. If a school board decides to purchase personal computers for students, the technology plan should include the project. Districts also publish newsletters for parents and staff that highlight new initiatives and report on current projects.
- b. Deleted the comma following “measures” in the second line of s. PI 15.02 (2).
- c. Revised the phrase in s. PI 15.03 (1) to state “not allowed unless they are necessary.”
- d. Inserted the phrase “all of” between “include” and “the following information” in s. PI 15.03 (3) (intro.).
- e. Deleted the comma following the word “request” in s. PI 15.03 (3) (d).
- f. Added a period following “1” in s. PI 15.03 (3) (f) so that the statutory citation reads as “s. 121.91 (4) (o) 1., Stats.”.
- g. Added the abbreviation “s.” before the statutory citation used in s. PI 15.03 (7) and added a period following “3” so that the citation reads as “s. 121.91 (4) (o) 3., Stats.”.
- h. Added a period following “3” in s. PI 15.04 (am) so that the statutory citation reads as “s. 121.91 (4) (o) 3., Stats.”.
- i. Added a comma after the second use of “Stats.” in s. PI 15.04 (4).
- j. Revised the end of ch. PI 15 Appendix A to read as two separate sentences.
- k. Deleted the first use of the word “for” and added a period after “debt” inside the parentheses in the third paragraph of ch. PI 15 Appendix A.

- l. Modified the citation to s. 66.0133 (2) (b), Stats., in the fourth paragraph of ch. PI 15 Appendix A.
- m. Added “(enter number)” between “remaining” and “year” in order to specify what should be inserted in the fourth paragraph of ch. PI 15 Appendix A.
- n. Inserted the word “to” between “or” and “purchase” in the fifth paragraph of ch. PI 15 Appendix A.
- o. Separated the fifth paragraph of ch. PI 15 Appendix A into two sentences for clarity.
- p. Removed the italics from paragraph six of ch. PI 15 Appendix A.
- q. Replaced the slash between “measure” and product” in paragraph six of ch. PI 15 Appendix A with the word “or.”
- r. Added a period after the word “period” inside the parentheses in paragraph six of ch. PI 15 Appendix A.
- s. Removed the parentheses around “utility” in paragraph seven of ch. PI 15 Appendix A and inserted the word “or” between “energy” and “utility.”