

## Clearinghouse Rule 15-072

# PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 055-15, was published in Register No. 715A2 on July 13, 2015 and approved by State Superintendent Evers on July 24, 2015, and modifies SS 083-13, which was published in Register No. 691 on July 31, 2013 and approved by State Superintendent Evers on August 15, 2013. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, No. 2013AP416, 2015 WL 686178 (Wis. Ct. App. Feb. 19, 2015).

The State Superintendent of Public Instruction hereby proposes to repeal ss. PI 15.03 (8), and 15.04 (5); to amend ss. PI 15.01, 15.02 (2), 15.03 (1), 15.03 (2) (b), 15.03 (3) (intro.), (b), (c), and (d), 15.03 (7), PI 15.04 (3) and (4), and PI 15 Appendix A; to repeal and recreate s. PI 15.04 (4); and to create ss. PI 15.03 (3) (c) Note, (f), and (g), and PI 15.04 (2m); relating to revenue limit exemptions for energy efficiencies.

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## ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

**Statutory authority:** s. 121.91 (4) (o), Stats.

**Explanation of agency authority:**

Under s. 227.11 (2) (a) (intro.), Stats., "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." As such, a rule is required to effectively implement and provide transparency to the revenue limit exemptions for energy efficiencies under s. 121.91 (4) (o), Stats.

**Related statute or rule:** N/A.

**Plain language analysis:**

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

2011 Wisconsin Act 32 and 2013 Wisconsin Act 20 provided that the revenue limit for that school year is increased by the amount spent by the school district in that school year on a project to implement energy efficiency measures or to purchase energy efficiency products including the payment of debt service on a bond or note issued or a state trust fund loan obtained, to finance the project if the project results in the avoidance of, or reduction in, energy costs or operational costs; the project is governed by a performance contract entered into under s. 66.0133; and the bond or note or state trust fund loan obtained issued to finance the project is issued for periods not exceeding 20 years. If a school board issues a bond or note or obtains a state trust fund loan to finance a project, a resolution adopted by a school board is valid for each school year in which the school board pays debt service on the bond, note, or state trust fund loan. However, 2011 Wisconsin Act 32 eliminated the revenue limit exemption for money spent on renewable energy products.

Additionally, 2013 Wisconsin Act 20 provided that if a school district issues a bond or note or obtains a state trust fund loan to finance a project, the amount of debt service included in the amount spent by school districts for the purposes of the revenue limit exemption is the amount paid in the calendar year that begins on January 1 of the school year in which the school district's revenue is increased. If a school district issues a bond or note or obtains a state trust fund loan to finance a

project and the school district's utility costs are measurably reduced as a result of the project, the school board must use the savings to retire the bond, note, or state trust fund loan.

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

**Comparison with rules in adjacent states:** N/A

**Summary of factual data and analytical methodologies:** N/A

**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 economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person: (including email and telephone)**

Carl Bryan  
Budget and Policy Analyst  
Wisconsin Department of Public Instruction  
[Carl.Bryan@dpi.wi.gov](mailto:Carl.Bryan@dpi.wi.gov)  
(608) 267-9127

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at [Carl.Bryan@dpi.wi.gov](mailto:Carl.Bryan@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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**SECTION 1. PI 15.01 is amended to read:**

**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~~ efficiency products as allowed under s. 121.91 (4) (o), Stats.

**SECTION 2. PI 15.02 (2) is amended to read:**

(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~~ efficiency products that result in the avoidance of, or reduction in, energy costs or related operational costs. "Expenditure" does not include amounts spent for the purchase of one-to-one instructional technology devices.

**SECTION 3. PI 15.03 (1) and (2) (b) are amended to read:**

(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 s. 121.91 (2m), Stats., in any school year is increased by the ~~amount spent~~ expenditure by the school district in that school year on energy efficiency measures, and ~~renewable energy efficiency products, that result in the avoidance of, or reduction in, energy costs.~~ Districts may retrofit, replace or update existing equipment or improve facilities if such improvements result in the avoidance of, or reduction in, energy costs or related operational costs. Expenditures for the expansion of facilities or the addition of equipment are not allowed unless it is necessary to improve the efficiency of the existing facility.

(2)

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

**SECTION 4. PI 15.03 (2) (c) Note is created to read:**

Note: To comply with these provisions, the school district may use the reporting form prescribed by the department.

**SECTION 5. PI 15.03 (3) (intro.), (b), (c), and (d) are amended to read:**

(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~~ the following information:

(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 efficiency products for the current~~ applicable school year.

(c) The amount to be ~~levied and~~ expended in accordance with s. 121.91 (4) (o) 1. or 1m., Stats.

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

**SECTION 6. PI 15.03 (3) (f) and (g) are created to read:**

(f) The funding mechanism to be used which meets the requirements of s. 121.91(4)(o)1, Stats.

(g) Identify the contract entered into that governs the project and certify compliance with the performance contracting requirements under s. 66.0133, Stats.

**SECTION 7. PI 15.03 (7) is amended to read:**

(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 achieved as a result of the school district's expenditure.~~ the amount of utility savings per 121.91(4)(o)3, Stats., on a form and in the manner prescribed by the department. 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.

**SECTION 8. PI 15.03 (8) is repealed.**

**SECTION 9. PI 15.04 (2m) is created to read:**

(2m) The department shall reduce the school district's exemption for energy efficiencies by the annual utility cost savings under s. 121.91(4)(o)3, Stats.

**SECTION 10. PI 15.04 (3) is amended to read:**

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

**SECTION 11. PI 15.04 (4) is repealed and recreated to read:**

(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.~~ 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 limit otherwise applicable to a school district in any school year is decreased by an amount equal to the prior year amount levied for which there is not a prior year documented energy expenditure. The amount of the decrease shall not be deducted from the base for determining the school district's limit under s. 121.91 (2m), Stats. for the following school year.

**SECTION 12. PI 15.04 (5) is repealed.**

**SECTION 13. PI 15 Appendix A is amended to read:**

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~~ efficiency products for the (insert pertaining school year) school year and [specify number] years of debt for the term of the [specify bond, note, or state trust fund loan].

The amount to be ~~levied and expended is~~ \$ \_\_\_\_\_:

[Insert the following information indicating the amount to be expended for each school year for the project. Add lines for each year of the debt]

School Year	Amount
20xx-20xx	\$

After review of the recommendations report per 66.0133(2)(b) the district has determined that the \$ \_\_\_\_\_ it would spend on energy efficiency projects recommended in the report is not likely to exceed the amount to be saved in utility costs of \$ \_\_\_\_\_ and non-utility costs of \$ \_\_\_\_\_ over the remaining \_\_\_\_\_ year useful life of the facility to which the measures apply.

The board has entered into a (enter number) year performance contract under s. 66.0133, Stats., with (enter contractor name) for a project to implement the following energy efficiency measures or purchase energy efficiency products and identified the following cost recovery performance indicators to measure energy savings and/or operational savings for each including the timeline for cost recovery:

*(List each energy efficiency measure/ product with related cost recovery performance indicators, estimated cost, estimated savings and payback period)*

The Board shall annually perform an evaluation of the performance indicators and shall report to the electorate as an addendum in the required 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. The Board shall use this evaluation to determine the amount of energy (utility) cost savings, as a result of the project, that shall be applied to retire the debt.

~~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.~~

#### **SECTION 14. EFFECTIVE DATE:**

The proposed 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 \_\_\_\_\_, 2015

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Tony Evers, PhD  
State Superintendent