

Clearinghouse Rule 18-036

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 034-18, was published in Register No. 748A1, on April 2, 2018, and approved by State Superintendent Tony Evers on April 27, 2018. 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*, 368 Wis.2d 444.

The State Superintendent of Public Instruction hereby proposes an order to amend s. PI 15.01, 15.03 (3) (intro.) and (c), PI 15.03 (5), PI 15.03 (6), and PI 15.04 (2); and to repeal s. PI 15.03 (3) (g) and (Note), and PI 15 Appendix A; relating to changes to PI 15 as a result of 2017 Wisconsin Act 59.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statutory authority: s. 121.91 (4) (o) and 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

In order to implement s. 121.91 (4) (o), Stats., it is imperative that school districts demonstrate compliance with the energy efficiency revenue limit exemption to the Department in a standardized manner. Pursuant to s. 227.11 (2) (a) (intro.), Stats., “[e]ach 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.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”)(internal citations omitted). As such, the proposed rule is necessary to enforce the requirements of s. 121.91 (4) (o), Stats.

Related statute or rule: N/A

Plain language analysis:

This rule change will align PI 15 to recent changes in statute as a result of 2017 Wisconsin Act 59, the 2017-19 biennial budget. The changes set forth in this rule order provide that school districts may levy for and expend funds for costs associated with an energy efficiency project, in an amount no greater than the maximum levy specified in the resolution, without incurring additional revenue limit penalties by the Department. As such, school boards are given flexibility under this rule change to expend costs in an amount less than the amount specified in the resolution in any given year.

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

Comparison with rules in adjacent states:

Since revenue limits and their applicable exemptions are a unique function of the school funding system in Wisconsin, there are no comparable rules or programs governing revenue limit exemptions for energy efficiency projects that exist in adjacent states, based on the Department's review.

Summary of factual data and analytical methodologies:

Current law generally limits the total amount of revenue per pupil a school district may receive from general school aids and property taxes in a school year to the amount of revenue received per pupil in the previous school year. However, there are several exceptions (“exemptions”) to the revenue limit. For example, school boards were authorized under prior law to adopt a resolution to exceed the school district’s revenue limit 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 if the energy efficiency project is governed by a performance contract. PI 15 was then promulgated into the DPI Administrative Code on May 1, 2016, to ensure compliance with state law.

Since then, 2017 Wisconsin Act 59, the 2017-19 biennial budget, prohibited school boards from considering a resolution to utilize the revenue limit exemption for energy efficiencies after December 31, 2017, until December 30, 2018. The rule no longer reflects statute as modified by Act 59 and unintentionally creates barriers for school boards in carrying out resolutions that were passed before the enactment of Act 59. Therefore, a rule change is needed to reflect the changes in statute as a result of Act 59. Otherwise, rule will not be consistent with current law and school boards would be required to spend up to the resolution amounts in accordance with the current rule.

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):

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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 adminrules@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.

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 energy efficiency products as allowed under s. 121.91 (4) (o), Stats. This section applies to any resolution adopted under this section before January 1, 2018.

SECTION 2. PI 15.03 (3) (intro.) and (c) are amended to read:

PI 15.03 (3) A resolution under this section shall ~~be passed by October 1 and~~ include all of the following information:

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

SECTION 3. PI 15.03 (3) (g) and (Note) are repealed.

SECTION 4. PI 15.03 (5) is amended to read:

PI 15.03 (5) The school board shall include a levy amount no greater than the maximum levy amount specified in the resolution under sub. (3) (c) when establishing its tax levies under s. 120.12 (3), Stats.

SECTION 5. PI 15.03 (6) is amended to read:

PI 15.03 (6) The school board shall incur the expenditure authorized in its resolution under sub. (3) (c) in an amount no less than the levy amount included under sub. (5).

SECTION 6. PI 15.04 (2) is amended to read:

PI 15.04 (2) The department shall adjust the school district's revenue limit to include the levy amount specified ~~in the resolution~~ under s. PI 15.03 ~~(3)-(e)~~(5).

SECTION 7. PI 15 Appendix A is repealed.

SECTION 8. 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 _____, 2018

Tony Evers, PhD
State Superintendent