PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING 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 Tony 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 Tony 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, 2015 WI App 21, 361 Wis. 2d 255.

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 (2) (c) (Note), (3) (f), and (g), and PI 15.04 (2m); relating to revenue limit exemptions for energy efficiencies.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statutory authority: ss. 227.10 (1), and 227.11 (2) (a) and (b), Stats.

Explanation of agency authority:

The Department of Public Instruction (Department) believes administrative rules are necessary to effectuate the purpose of the underlying statute and for the state to administer the energy efficiency revenue limit exemption in a fair and consistent manner under s. 227.11 (2) (a), Stats. The Department also believes that a rule is required to prescribe the forms and procedures in connection with the statute as dictated in s. 227.11 (2) (b), Stats. Further, under s. 227.10 (1), Stats., the Department is required to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its administration of that statute. As expressed in public comment, both with the currently proposed and the past versions of the rule, the statutory requirements do not specify the manner in which the statutes need to be met. As such, the Department believes it is imperative to standardize the manner in which school districts that utilize the energy efficiency revenue limit exemption under s. 121.91 (4) (o), Stats., demonstrate compliance with the statutes.

Related statute or rule: N/A.

Plain language analysis:

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 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.

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
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(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. Comments must be received on or before December 2, 2015 to be included in the record of rule-making proceedings.

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 they are 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. The form can be obtained by contacting the School Financial Services Team at (608) 267-9114.

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~~October 1 ~~in the school year in which a tax is to be levied for the expenditure. The resolution shall~~ and include all of 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) 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 (4) is amended to read:

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

SECTION 8. 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 s. 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 9. PI 15.03 (8) is repealed.

SECTION 10. 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 11. 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 12. PI 15.04 (4) is repealed and recreated to read:

(4) 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 13. PI 15.04 (5) is repealed.

SECTION 14. 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., on or before October 1st, 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 projects in the _(insert pertaining school year)_ school year.

The project is financed with a (specify bond, note, or state trust fund loan) for a term of _____years.

The amount to be ~~levied and~~ expended ~~is $_____~~:

(Insert the following information indicating the exemption amount to be expended 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 s. 66.0133 (2) (b), Stats., 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 annual utility costs of $_____ and non-utility costs of $_____ over the remaining (enter number) 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 to purchase energy efficiency products. The board has also identified the following cost recovery performance indicators to measure energy savings and/or operational savings for each measure or product, including the timeline for cost recovery:

(List each energy efficiency measure or 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 or 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 15. 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 24th day of March, 2016

Tony Evers, PhD
State Superintendent