

Report From Agency

FINAL REPORT
CLEARINGHOUSE RULE 09-071
CHAPTER PI 15
REVENUE LIMIT EXEMPTIONS FOR ENERGY EFFICIENCIES

Analysis by the Department of Public Instruction

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

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

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 were promulgated effective September 4, 2009, in order 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 included this information in a hearing notice published in the *Administrative Register*.

A public hearing to consider the proposed rule was conducted by the department on November 9, 2009, in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, November 9, 2009

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Dave Mitchell	SIEMENS	X		
Diane Pertzborn	Wis Assoc of School Business Officials	X		
Lisa Voisin	Robert W. Baird	X		

The following persons submitted written testimony: None.

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

Comments – One person commented she would like the interpretation of “incurring expenditures” and “spending” to allow for debt to ease the tax impact. Another person commented she would like debt payments to be allowed as an exemption.

Discussion – Both comments suggest allowing for expenditure exemptions that are not allowed under the authorizing statute, s. 121.91 (4).

The statute refers to the "non-recurring" nature of the school board's authority to levy an additional tax for an energy conservation purpose. Within s. 121.90 Wis. Stats., "non-recurring" means one year. A school board levying a long term (multiple year) debt tax exceeds the one year limitation of the statute.

Additionally, section 121.90 Wis. Stats. requires districts to make long term debt payments within the district's revenue limit without a referendum or outside the district's revenue limit by approved voter referendum. The commenter's requested interpretation would create a new category of long term debt for energy related purposes that would be outside the district's revenue limit and would not require a voter referendum. The language of this new statute does not provide for that expansion of school board authority.

Changes – None.

Changes made as a result of oral or written testimony: None.

Changes to the analysis or the fiscal estimate: None.

Responses to Clearinghouse Report:

5. Clarity, Grammar, Punctuation and Plainness:

a. Recommendation accepted, changes made.

b. For clarity under s. PI 15.03 (2) (b), the term “plan” has been removed from the phrase “cost savings plan.” It is the intent of the sentence that the anticipated savings must equal the amount of the expenditure proposed.

c. Recommendation accepted. Section PI 15.03 (3) (d) has been modified to add the phrase “the cost savings of” after the word “measure.”

d. Recommendation accepted, changes made.

e. Recommendation accepted, changes made.

f. Recommendation accepted, changes made.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.